

## Making Meaning

*Narrative and Metaphor in the Law*

Michael Hanne & Robert Weisberg, eds. (Cambridge University Press 2018), 379 pages

Elizabeth Sherowski, rev'r\*

At its core, the law is an abstract concept. Lawyers, charged with making this abstract concept understandable and relatable, often turn to the rhetorical techniques of narrative and metaphor. Litigation and negotiation revolve around competing narratives, and lawyers use metaphor to relate obscure legal concepts to concrete and familiar items. While there have been a number of articles and books about narrative and metaphor separately, including in the discipline of legal writing, few have examined both techniques in detail and compared them to one another. In *Narrative and Metaphor in the Law*,<sup>1</sup> editors Michael Hanne and Robert Weisberg have collected essays that explore the role that those rhetorical devices play in legal discourse and arranged them in a manner which facilitates focused comparisons of the two.

The book is arranged in nine “conversations” about types of legal discourse where narrative and metaphor can be effective: *Concepts of Legal Justice Systems*,<sup>2</sup> *Legal Persuasion*,<sup>3</sup> *Judicial Opinions*,<sup>4</sup> *Gender in the Law*,<sup>5</sup> *Innovations in Legal Thinking*,<sup>6</sup> *Public Debate Around Crime and Punishment*,<sup>7</sup> *Human Rights Law*,<sup>8</sup> *Creative Work by Lawyers*,<sup>9</sup> and *Legal Activism*.<sup>10</sup> Each conversation is made up of an introduction by the editors and two essays that explore different angles on the conversation’s theme.

---

\* Visiting Assistant Professor, University of Detroit Mercy School of Law. This article was written while the reviewer was a Visiting Assistant Professor at Mercer University School of Law.

**1** NARRATIVE AND METAPHOR IN THE LAW (Michael Hanne & Robert Weisberg eds., 2018).

**2** *Id.* at 13.

**3** *Id.* at 55.

**4** *Id.* at 111.

**5** *Id.* at 151.

**6** *Id.* at 193.

**7** *Id.* at 243.

**8** *Id.* at 289.

**9** *Id.* at 325.

**10** *Id.* at 359.

Two of the conversations, *Gender in the Law* and *Legal Activism*, contain only one essay. The conversation on *Gender and the Law* is Kathy Stanichi and Linda Berger's "Gender Justice: The Role of Stories and Images," which developed as a conversation between the two authors and later became a jointly published essay explaining how "advocates who thoughtfully engage in metaphor-making and storytelling may alter the law's conceptions of gender justice, and indeed of justice for all."<sup>11</sup> The conversation on *Legal Activism* is an actual conversation; the editors interview political activist and law professor Mari Matsuda about her use of narrative and metaphor in her Critical Race Theory legal scholarship to not only describe how the language of the law discriminates, but to advocate for change.<sup>12</sup> Although those exceptions to the dueling essay format were thought provoking and well written, they did not provide the same diversity of viewpoints as the other chapters. This review will focus on the conversations with paired essays, since that organizational system is one of the main innovations of the book.

Each conversation begins with a short introduction, characterized as "framing comments," by the editors. Hanne, who founded the Comparative Literature Program at the University of Auckland and directed it until his retirement in 2010, and Weisberg, a professor of law at Stanford and the founder of the Stanford Criminal Justice Center, have achieved an effective balance in their joint writing between rhetorical technicality and conversational ease. Their comments introduce the specific issues taken up in the conversations and provide helpful context for the contributors' opinions.

In the conversation on *Narrative and Metaphor in Legal Persuasion*<sup>13</sup> (which, as a teacher of advocacy, I found to be one of the most useful chapters in the book), Michael R. Smith introduces the concept of the "metaphoric parable," a short, metaphoric story designed to make a point or teach a lesson (think "The Blind Men and the Elephant" or the frog in a pot of water which is slowly brought to a boil).<sup>14</sup> Smith investigates how metaphoric parable has been used in judicial opinions and provides examples of judges' use of these short persuasive stories. Smith's essay focuses on individual examples pulled from judicial opinions, but it addresses those examples in isolation, rather than in the context of the persuasiveness of the whole opinion. This leaves unresolved the issue of whether the entire opinion is made more persuasive by the inclusion of an isolated metaphorical parable.

In the second essay in the conversation, Raymond W. Gibbs, Jr. recognizes that while a single metaphorical parable can be persuasive, the

11 *Id.* at 157.

13 *Id.* at 55.

12 *Id.* at 367.

14 *Id.* at 65.

stories lawyers tell are usually composed of several smaller narratives and metaphors, with each smaller narrative or metaphor contributing to (or detracting from) the overall persuasiveness of the story.<sup>15</sup> Gibbs discusses how to bring coherence to a multi-metaphor narrative by considering the context, teller, and audience and the effect each will have on the whole.

While both essays are interesting and informative on their own, the connection between them is made stronger by the editors' helpful introduction to the conversation.<sup>16</sup> The introduction provides a foundation for the essays by briefly explaining the development of legal storytelling, addressing the problem of multiple narratives, and explaining how Smith's and Gibbs's conclusions complement each other. Even a reader who is new to the idea of persuasive legal storytelling is therefore able to gain a greater understanding from the two essays together rather than separately.

However, connections between the essays in each conversation vary greatly. Some essays are direct responses to their companions, while others are more loosely related. Roughly half of the contributors are law professors; the rest are scholars in literature, communication, and rhetoric, or attorneys and writers who work in those spaces. This sometimes results in unexpected and delightful pairings, such as that of the poet and law professor Lawrence Joseph with Meredith Wallis, an Oakland attorney who practices civil rights and asylum law but centers her research on children's literature as a source of law. In the conversation on *Creative Work by Lawyers*,<sup>17</sup> Joseph and Wallis discuss how lawyers can use creative works to develop a professional identity and to advance professionalism in the legal community. Both essays use Joseph's 1990 poetry collection *Lawyerland*, based on interviews with lawyers and judges, as the starting point for their discussions of the "lawyer-self" and its relation to others. While Joseph's initial essay reflects *Lawyerland*'s gloom and dissatisfaction among lawyers ("becoming involved with the legal system is like three years of experimental chemotherapy, one hundred percent guaranteed not to work,"<sup>18</sup> one interviewee says), Wallis sees more hope for civility and change. "What satisfies readers about *Lawyerland* is not the knowledge of a crisis with which we were already familiar. It's some truth about how to live with it."<sup>19</sup>

Not every pairing is as successful as that of Joseph and Wallis. In the first essay in the *Crime and Punishment* conversation, popular legal commentator (and recipient of the Legal Writing Institute's Golden Pen Award) Dahlia Lithwick discusses narrative conventions in crime

15 *Id.* at 90.

16 *Id.* at 57.

17 *Id.* at 325.

18 *Id.* at 350.

19 *Id.* at 352.

reporting, focusing on the practical side of how the media's use of narrative and metaphor shapes the public conversation about crime.<sup>20</sup> In the second essay, communication professor L. David Ritchie (not to be confused with the legal writing professor David T. Ritchie) takes a much more scholarly and theoretical look at whether metaphor has any demonstrable effect on the public discourse surrounding crime.<sup>21</sup> They both essentially reach the same conclusions—in fact, Ritchie admits that “I largely agree with Lithwick’s argument”<sup>22</sup>—leaving the reader to wonder why we needed two essays, one much more readable than the other, to get to the same place. Perhaps the editors combined these two essays to show that both practical and scholarly examination of the topic reach the same conclusions, but Lithwick’s essay would have been perfectly capable of making the point by itself.

Pairings such as this contribute to the uneven nature of the collection. The essays that I found most interesting were written in a more conversational style, using examples to demonstrate the rhetorical techniques being discussed. The most interesting pairings were clearly written, explored their topic in depth from several angles, and provided a conclusion or takeaway that attorneys and law professors could use in their practice or in the classroom. However, not every conversation contained all these elements.

Although the editors achieved a gender and subject-matter balance among contributors, they were less successful in achieving cultural diversity. Only three of the sixteen contributors are people of color. While this may be explained by the strong cultural component of persuasive techniques such as narrative and metaphor, which rely on shared experiences for their effectiveness, the shared experiences of non-majoritarian authors and their stories and illustrations of legal ideas would have brought a wider range of voices to the table and made the book that much stronger.

Overall, this book will make advocates reflect more deeply on how they employ these rhetorical devices in their practice and may convince storytelling naysayers of the effectiveness of these devices. Many of the essays or conversations would make excellent stand-alone reading assignments for law school classes: Joseph and Wallis for Professional Responsibility or Attorney Wellness classes, Lithwick for Criminal Law or Criminal Procedure, among others. *Narrative and Metaphor in the Law* is a useful book for advocates and teachers of advocacy to have on their shelves.

.....  
<sup>20</sup> *Id.* at 251.

<sup>22</sup> *Id.* at 271.

<sup>21</sup> *Id.* at 269.