

The Picasso Problem: An Integrative Story of Law, Ethics and the Nature of Property

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ABSTRACT

The use of story telling to teach is as ancient and natural as the art of teaching itself. Stories are valuable pedagogical aids that encourage integration of knowledge, ignite curiosity and lead to transformational insights. This article examines the pedagogical value of story telling in a legal environment course. It describes the variety of story techniques and explores the ways in which stories aid comprehension and integration of learning. It illustrates the affinity between legal analysis and story telling through The Picasso Problem – a story in which promoters propose to jigsaw and sell a Picasso linocut. In this exercise, students analyze and utilize concepts of property, ethics, contracts and intellectual property – all in an effort to determine how this “story” should end.

INTRODUCTION

Teaching is the oldest profession. The need to transfer knowledge and to communicate information is a critical survival skill. Even animals “teach” their offspring essential skills that enable the young to survive and thrive in a hostile environment. In a very real sense, teaching is as natural as breathing. In many instances, the process of teaching begins in response to the childish command announced almost as soon as language itself is acquired: “Tell me a story!”

Stories make connections. They allow the listener to visit another vantage point, to experience an event from a different perspective. They provide a safe laboratory for experimentation, allowing a vicarious participation in events or thoughts that might be “dangerous” or prohibited. At their best, stories engage listeners, igniting their curiosity in an effort to find out, “what happened next.”

The Picasso Problem is an effort to use the universal appeal of a good “story” as a platform for learning legal concepts in a business law course. It is an effort to harness the natural curiosity which a story excites to encourage students to change – not their viewpoint – but their viewing point – and look at “settled” assumptions about property, contracts and ethics in a new way.

WHAT IS A STORY

Steslow and Gardner (2011) define a story as a narrative with a “beginning, middle and an end” (p. 251). However, not every story has an “end”; sometimes stories leave outcomes unresolved and characters dangling. Likewise, some stories are time-shifting, seemingly starting in the “middle” and working forward and backward in time. Stories are frequently fictional,

ranging from the fantasy characters of fairy tales, to characters so clearly delineated as to take on an air of reality.

Stories are not exclusively the realm of fiction. The most effective “eyewitness reports” of current events has a story-like narrative, a point of view that brings the listener close to experiencing the event. “War” stories – which sometimes embellish the role of the speaker – are real life experiences filtered through a lens which organizes random experiences to illustrate a point.

Stories are a staple of pedagogy. Kosa (2008) notes that they form a fundamental part of teaching at the elementary level, and Forman (2007) notes their value in developing leadership in graduate business students. In the context of pedagogy, “stories” appear to be characterized, not by their structure or genre, but by the way in which they transfer information. Unlike a classroom lecture which takes a “frontal” approach to learning, stories transmit information “obliquely,” involving simultaneous transmission of information on multiple levels.

Empirical studies suggest the efficacy of stories as a learning enhancement technique. Miley (2009) reports on a study conducted at the University of New South Wales which evaluated the use of stories in an accounting course for non-accounting majors. Studies surveyed at the conclusion of the class commented positively on the stories in improving comprehension of the material (pp. 363-64). Frisch and Saunders (2008) reported similar results in a biology class that incorporated the use of storytelling (pp. 167-68).

Lickorish (2009) suggests that when listening to a story, left-brain activity focuses on the micro-details of plot and chronology, while the right side creates an overarching framework which categorizes information. As the story progresses, the physiological connection between each side – the corpus callosum – is energized, suggesting that information is being transmitted or integrated (p. 23-24). It is this characteristic of storytelling – its ability to simultaneously transmit information on multiple levels – which make it a fundamental and effective tool of pedagogy.

WHY STORIES ENHANCE LEARNING

There are many reasons why stories enhance learning. The very act of storytelling creates an environment in which learning can occur. Lickorish (2009) observed that “while listening to stories, the learner assumes a state of ‘relaxed curiosity,’ which opens the mind to meanings of the story” (p.23). The value of such an environment cannot be underestimated, particularly when dealing with material which is unfamiliar. Intermittent storytelling within a class – no matter how brief – can provide a respite, a “breather” for students who are panicked or struggling with concepts. It can also serve to re-center those who have become distracted or otherwise lost the conversational “thread” of the class.

Stories are also a form of “active learning” exercise – a technique whose efficacy in engaging students with different learning styles has been well documented (Chomsky & Landsman, (2000); Jones-Rickers & Jones, (1998); Kosa, (2008)). Stories “invite” students to use their imaginations to visualize characters and events. Stories can elicit empathic responses to characters who may initially appear unworthy. Analysis and discussion of stories naturally lead to refining and redefining the circumstances in which the behavior of a character is “good” or “bad.”

Stories also help students to bridge the gap between the familiar and the unfamiliar. For example, discussion of issues of contract drafting becomes immeasurably easier when presented

in the context of an accessible “story.” An agreement embodying the arrangement between Little Sister and Big Brother to transfer her responsibility of taking out the trash in exchange for switching rooms demystifies the contracting process. Defining “trash,” describing exactly how the room “switch” will occur, and considering the impact of “changed circumstances” (via parental interference) is easier to manage when raised in the context of a familiar story. Such concepts – defining terms, defining performance and making provision for changed circumstances – can then be more easily applied in more sophisticated transactions. Moreover, images embedded in the story help with recall of key concepts. The image of an outside authority “disrupting” performance of a contract is made more concrete and more memorable when embodied in the image of a parent rather than that of a bureaucratic regulation which frustrates performance.

Stories also function as metaphors for larger ideas. In his article, *The Parable of the Sadhu*, Bowen McCoy (1983) recounts the story of groups of mountain climbers whose lack of leadership result in the death of a Sadhu, an Indian holy man (pp. 103-08). Not only do such images make lasting impressions, they operate as a catalyst to broader discussions. “What if” questions are natural segues from stories where the facts are open to differing interpretations. As Patricia Loughlan (2006) noted, “A metaphor may do much more than ‘phrase the thought.’ It may structure the thought. It may even make the thought possible” (p. 214).

Whether a multi-page narrative, a simple war story or a brief exposition of a real or fictional situation, stories make a contribution to learning which is deeper and perhaps more lasting than the formulaic approach sometimes favored in business schools.

THE AFFINITY BETWEEN STORIES AND THE LAW

Whatever the pedagogical merits of utilizing stories to enhance learning across the curriculum, the natural affinity between storytelling and the law is both striking and inescapable. Seigel (2006) suggests that the use of “war stories” to illuminate legal practice is quite common (p. 1206), while in his article on legal pedagogy, Arthur Austin (1995) suggests that the use of stories to teach law may even be superior in some respects than the traditional case focused method (p. 479).

The connection between the verbal and written arts and legal skills has been the standard wisdom of pre-law advisors. While the synergies between good writing skills and legal analysis is well recognized (Greenhaw, 1995, pp. 885), the contribution of the study of literature to legal analysis should not be overlooked. In analyzing and discussing good literature, readers consider character, setting, theme and plot – the very context in which actions occurs. Frequently, discussions of literature evolve from discussions of what a particular character did to whether such actions were “right,” or “wrong;” whether a character was “at fault” or whether external circumstances “excused” an action. An author may “explain” or even “advocate” for a character, justifying behavior in terms of experience or environment. Such activities are not far from those of lawyers. Much of effective trial practice centers on “telling a story” which will resonate with a judge or jury. Even outside of the courtroom, however, when interviewing clients, lawyers are required to organize and understand a jumble of facts, impressions or biases in order to determine what really happened or how best to serve the client’s interests.

Stories also encourage use of inductive reasoning as observations of how particular characters act leads to generalizations about broader topics. Some stories use characters as “types” – a device echoed in the law itself in the use of the “reasonable man” standard.

The connection between law and stories is even more direct in consideration of “cases.” “Cases” are “stories” where the ending has been determined by the courts. Every case, even those involving insentient corporations, is at its core, a story of conflicting characters and competing interests. Trial lawyers know this, and use their best efforts to present their case as a human story, reinforcing the reality that cases have consequences that affect the lives of real people. The use of stories “re-humanizes” the law – transforming it from a “cookbook” of dry legal axioms, to a process that seeks to balance the multiple interests that co-exist in every conflict, contract or transaction.

THE PICASSO PROBLEM

The Picasso Problem seeks to harness the natural synergies between storytelling and learning to make learning the law as natural as understanding a story.

The Picasso Problem is aimed at undergraduate students in the business law course. The objective of *The Picasso Problem* is multi-fold: (i) to demonstrate to students the possibility of alternative approaches to treatment of private property; (ii) to help students understand the application of contracts in a situation which was not foreseen at the time of the agreement; and (iii) to encourage students to consider the ethical and policy considerations which contribute to the development of law. The exercise encourages students to consider multiple perspectives, and to “see” the larger questions which are embedded in the simple question: “Should the promoters be permitted to jigsaw the painting?”

THE STORY

Although the problem is based on an actual event, some facts have been added and others changed in order to facilitate consideration of specific legal and ethical issues.

A group of promoters have a great idea: they have decided to purchase a linocut of Pablo Picasso’s *Trois Femmes*. The promoters intended to carve the work into 500 pieces, and sell each at a price of \$135.00. Having purchased the linocut for \$10,000.00 the promoters hoped to turn a tidy profit while providing the masses with the right to own “a beautiful framed piece of a masterpiece.”

For purposes of the exercise, *Trois Femmes* is first sold by Picasso to an art dealer in 1922, when he is literally a “starving artist.” There is no discussion of what the dealer intends to do with the work. After a number of years, the dealer sells it, at a substantial profit, to a collector. The collector displays it in her home, and when she dies, the work is eventually sold to an art dealer who ultimately sells the linocut to the promoters. The promoters do not disclose what they plan to do with the work; and the art dealer does not ask about their plans.

Neither Picasso, nor any subsequent seller had a specific agreement concerning the use of the painting. The original transaction was represented by a Bill of Sale. Subsequent transactions were also evidenced by a Bill of Sale and a statement from the seller that the work was authentic and that the seller had the right to sell the linocut.

TEACHING THE STORY

Students are told to assume that the Estate of Picasso has sued the promoters in an effort to prevent destruction of the painting. Students are provided with a summary of the general

operative principles of law which may be applicable to the transaction, and assigned focused readings on contract law, and the legal and ethical basis of private property rights. In addition, students are introduced to “moral rights” – the legal concept, prominent in France and other countries of the EU – that creators of artistic works have “rights in the integrity of their work that transcend the protection of economic rights” (Bird, 2009, p. 400). In countries recognizing moral rights, an artist enjoys the right to prevent complete destruction of a work. Other rights accorded artists include the right to proper attribution and, even more importantly, to prevent attribution. The latter right permits an artist to disassociate himself from an artistic work and prohibit use of his name in connection with a work. Where the artist’s name is “bankable,” such an action could result in a significant loss of market value (Bird, 2009 pp. 410-13). Students are advised that this is a case of “first impression” – i.e. the court has never before decided a case such as this, so that students are free to argue, not only what the law *is*, but what the law *should be*.

After students have had an opportunity to do the readings, the exercise is presented in class, primarily by a series of open-ended questions posed by the instructor. Students engage in in-class collaboration to further analyze the questions and develop a short oral argument. At the conclusion of classroom discussion and argument, students submit a written argument on behalf of either the estate or the promoters.

ASSESSMENT

Student reaction to the exercise has been positive. While the initial reaction of most classes is to side with the promoters (one student commented that he thought it was an excellent business model), the exercise prompted students to re-examine the assumptions surrounding their conclusion. For example, students who argued that the promoters had the right to destroy the painting based their argument on the assertion that the promoters “owned” the work. Further discussion prompted consideration of what it means to own property, and to a reflection on the nature of property itself. Rather than simply “own” a tangible asset, students were encouraged to consider property as a “bundle” of rights, which could be retained or transferred. Such discussions naturally segue into a discussion of contracts as the method the law uses to determine an allocation of rights. Students were asked to consider who bears the risk when a contract is silent with regard to specific rights, and explore the public policy implications of including a right to destroy as a facet of ownership.

Students’ interest was also piqued by the discussion of the concept of moral rights of artists which are prominent in some European countries. The concept of specialized protection for creative works frequently raised the broader question of whether owners of some types of property have obligations to the larger community. Reflecting on such issues raises the possibility that the Picasso “story” might have more than one possible ending.

CONCLUSION

Beyond reinforcing substantive law concepts, *The Picasso Problem* demonstrates that situations do not present as “contract problems” or “property problems” but as multi-faceted stories, involving several different perspectives. By engaging in the story and seeing things from a different viewing point, students were able to frame issues and form arguments in a natural, conversational way. Linking critical concepts to an easily understood, visually compelling narrative reinforces both recall and comprehension. The use of stories in illustrating legal

concepts reminds us that the best learning is that which occurs naturally, propelled by curiosity, animated by engagement, and played out in the relaxed congeniality of a shared experience.

REFERENCES

Austin, Arthur (1995). Evaluating storytelling as a type of nontraditional scholarship. *Nebraska Law Review*, 74, 479 -528.

Bird, Robert C. (2009). Moral rights: Diagnosis and rehabilitation. *American Business Law Journal*, 46, 407-452.

Chomsky, Carol & Landsman, Maury (2000). Using contracts to teach practical skills: introducing negotiation and drafting into the contracts classroom. *St. Louis Law Journal*, 44, 1545-60.

Forman, Janis (2007). Leaders as storytellers: finding Waldo. *Business Communications Quarterly*, 70, 369-75.

Frisch, Jennifer Kreps & Saunders, Gerald (2008). Using stories in an introductory biology course. *Journal of Biological Education*, 42, 164-69.

Greenhaw, Leigh Hunt (1995). To say what the law is; learning the practice of legal rhetoric. *Valparaiso University Law Review*, 29, 861-90.

Jones-Ridders, Catherine & Jones, Constance (1998). Active learning in the legal environment of business classroom. *Journal of Legal Studies Education*, 16, 174 -85.

Kosa, Jayme Reeber (2008). Tell a story, *Educational Digest*, (Oct.) 43-49..

Lickorish, Sue (2009). Storytelling: how to enrich the learning experience. *Training Journal*, (Feb. 2009) 21-24.

Loughlan, Patricia (2006). Pirates, parasites, reapers, sowers, fruits, foxes...the metaphors of intellectual property. *Sydney Law Review*, 28, 214 - 35.

McCoy, Bowen H. (1983). The Parable of the Sadhu. *Harvard Business Review* 61, 103-08.

Miley, Frances (2009). The storytelling project: innovating to engage students in their learning. *Higher Education Research & Development*, 28, 357- 69.

Seigel, Michael L. (2006). The effective use of war stories in teaching evidence. *St. Louis Law Journal*, 50, 1191 - 1221.

Steslow, Donna M., & Gardner, Carolyn (2011). More than one way to tell a story: integrating storytelling into your law course. *Journal of Legal Studies Education*, 28, 249-71.