

A Comparative Study of Bruner's Literary Narrative and Legal Narrative

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Abstract

Literary narrative and legal narrative have had considerable distance in the research line due to their basic attributes. Literature is based on fiction, while legal narrative is based on credible and practical grounds. However, research forms have been developed to share each other between the two studies recently. In this paper, we try to explore the meaning and characteristics of literary narrative and legal narrative, and compare the two. Especially, the narrative dialectics based on two types of narratives give implications to various areas of human life.

Keywords: *Literary narrative, Legal narrative, Bruner, Dialectic of narrative*

1. Introduction

The works done in court take place by attacking or defending the positions of plaintiffs and defendants in accordance with established procedures. The legal battle in this process is composed of stories. The story in the courtroom plays an important role in leading both to legal justice and to even legal judgment. For this reason, legal narrative is based on facts and use arguments to appeal to those who participate in the decision at the same time. At this time, the legal narrative is required to evoke a familiar and customary reality in constraining precedent and rule in order to achieve its purpose.

Literary narrative, on the other hand, reflects reality and creates fictional possibilities in subjunctive mood. Literary narrative persists as fiction, but the fiction is devalued when it is severely away from reality. In the end, literary narrative has a mission to make familiar things unfamiliar.

Legal narrative and literary narrative have had considerable distance from the study because of their basic attributes. Recently, however, the gap between the two has narrowed. In particular, legal research forms have been developed that share both the law and the literature so that the genre of 'law and literature' is formed [1].

The differences between legal narrative and literary narrative because of the basic attributes of them are still evident, and there are also clearly elements for each narratives to gain from each other. In this paper, we try to analyze and compare the meanings and characteristics of each of these, and draw implications from them.

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2. Meanings and characteristics of literary narrative

2.1. Meaning of literary narrative

Literary narrative is created by imagining possibilities. This imagination creates a familiar and acceptable 'reality'. Thus, literary narrative tries to create verisimilitude-acceptable and believable imitation-by mimicking reality. In other words, it adjusts what is 'familiar' and 'possible' and treats familiar life by reminding something that exists in reality [1].

Literary narrative, based on reality, respect and clarify it, and overthrow expectations for familiar ones. In this way, literary narrative creates 'something similar to reality' by adding 'strange thing' instead of 'familiar' as the way it is [1]

Literary narrative is made by various devices that make up text, such as analogies and plots. At this time, if the world in the story is as familiar as the reality of life, or if it provides feelings more familiar than reality, it becomes good literature. Literature is good at this 'rhetoric of reality'. In particular, the literary narrative 'assumes' the reality by not only talking about 'what state the thing is' but also 'what state it could be' and 'what state it can become' [1].

Our attraction of fictional world in literature can be attributed to the process of human brain development. Human cranial nerves have grown and evolved in a dilemma between familiar and unfamiliar. In a familiar and predictable situation, humans feel secure. However, unexpected events, which are often found, break the existing stable balance. In order to restore stability and consistency, humans have been developed adjusting new events and situations to balance with existing customs. Literature has played a role in buffering the fears associated with this ambiguous and unexpected, unrestrained possibility [2].

2.2. Characteristics of literary narrative

Literary narrative is created by imagining what is possible. The imagination at this time creates a fictional, or 'similar reality' that is acceptable because it is familiar. In order to create such a similar reality, the author needs the material and constraints of past or reality. The writer adjusts what is familiar and possible in the story to create something that exists in reality. From this, the reader can recognize the familiar life from the story and feel familiar with the story that is not in reality [1].

Literary narrative pursues what is fantastic but possible. And literary author creates fiction by combining memory of reality and past with his/her imagination. Through this, literary narrative creates 'fiction more familiar than truth'. Therefore, the fiction of literary narrative does not coincide with reality, but it can not be created without memories of past and present. In other words, the author's fiction can not exist without the reality from the past or reality [1].

3. Meanings and characteristics of legal narrative

3.1. Meanings of legal narrative

The legal narrative is a narrative structure has a skeptical characteristic of recognizing the legitimacy of suspicion, which has opposing personality and rhetorical purpose in argument. The legal narrative is based on reality and does not escape from it. At the same time, however, the attorney's defense uses rhetoric for judging favorable to him/her. Legal narrative inevitably has a significant impact on the parties involved. As a result, the legal narrative

should not be regarded simply as a story at face value. These characteristics give the legal narrative its identity [1].

Legal narrative is used to justify their position and attack the other's position. This story plays a crucial role in making legal decisions, so unlike everyday stories, it pursues credibility rather than amusement. The legal narrative has its own distinctive features due to its inevitably significant influence on the parties involved [1].

The legal narrative pursues credibility, so it must deal with realistic stories and should not escape from them. At the same time, legal narrative should appeal to those who make legal decisions, so they use rational methods that are favorable to them. In other words, legal narrative is rooted in reality, but it is a story that is produced by one visual point. For this reason, those who have to make decisions by listening to legal narrative are obliged to take into consideration the intentions of the narrative without accepting them at face value.

3.2. Characteristics of legal narrative

Robert Cover, in his article "『Nomos and narrative』", written in 1983, said [3]:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution, there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which to live.

With due respect to judge and jury and to the procedural constraints of the law itself, cases are decided not only on their legal merits but on the artfulness of an attorney's narrative. So if literary fiction treats the familiar with reverence in order to achieve verisimilitude, law stories need to honor the devices of great fiction if they are to get their full measure from judge and jury.

Where does the legitimacy of a legal narrative that is favorable to the oneself come to be used in court? There are four factors that give credibility to legal narrative that combine truth and rhetorical elements [1]:

First, the legal process controls lawyers' rhetoric. The legal process provides an opportunity for a lawyer to interrogate and refute witnesses on the other side. The legal process also ensures that witnesses are limited in the content and method of interrogation to ensure that the interrogation is within reasonable limits. In addition, legal procedures prevent rhetoric scams by giving them the opportunity to speak to each other, both attacking and disputing.

Second, the principle of stare decisis limits the content of the argument based on previous precedents. This is the core of common law, and it is the principle to judge the case based on the judgment of similar lawsuit in the past. Although legal narrative rarely leads to favorable rulings using fluent rhetoric, it sometimes wins court trials by proving suitable case. In order to create a legal narrative that is favorable to oneself, it is necessary to form a story by discerning past lawsuits that are similar to this one and favorable to oneself.

Third, trust in ritualization is the basis for legal legality. The belief that you can be protected in court, as others have done in the past, gives you established trust in the legitimacy of the law in modern democracy.

Fourth, over the above list, the fact that a narrative that everyone can understand as common sense can be used in the legal argument guarantees the legality of the law. By using legal narrative, the law is not exclusive to lawyers and judges. Narrative argument opens the way to law to all.

4. Comparison of literary narrative and legal narrative

4.1. Dialectic of narrative

Literary narrative seeks to be fantastic but possible, but legal narrative follows actual and past records. Literary narrative is formed through imagination of possibilities. The fiction created by adjusting the familiar and the possible creates the verisimilitude by recognizing the familiar life. On the other hand, legal narrative creates a constant story based on past legal cases. It reflects the real and logical real world [1].

Literary narrative and legal narrative create unexpected possibilities while creating established practices. They attain their existence values only when they are persuasive to the person who delivers them. The way in which literary narrative convinces is based on a world of possibilities similar to reality. The world of this possibility is limited only by the verisimilitude. It is also based on reality, but it is aimed at overcoming reality. On the other hand, legal narrative acquires its legitimacy from the past. It evokes and appeals to previous cases of judgment, creating persuasive stories [1].

Literary narrative focuses on similarities with reality from the world of possibility, and legal narrative focuses on the actual record of the past. Literary narrative and legal narrative, apparently contradictory and opposite, share a narrative of their structures. Through these common parts, the two have a contradictory and intimate relationship [1].

What is established and what is possible lies in a constantly dialectical confrontation. How has it persisted from past to present, and how should it continue in the future? How did my life last and how should it last? Why did not the world become a state that should have been accomplished? Is there still a possibility it becomes in the future? The story that arises from a life of tension continues to keep a pair of past and possible in a constantly dialectical confrontation [1].

In a literary narrative, a writer can not imagine without memories of past or present. In the legal narrative, the past case alone can not function perfectly as a solution to the current problem.

To match the current problems with past laws and precedents and to create literary narrative that the author imagine possible world in spite of constraints from the past; that is, to create at the same time the prophecy of custom and ambiguity and antagonism are possible through the structure of narrative. This not easy balance, in which legal narrative and literary narrative coexist between what is established in reality and the possibilities from reality, is possible through the form of narrative. The narrative allows memory and imagination to be combined, and enjoyment from predictability and expectation from possibility to coexist.

5. Implications and conclusions

Human culture has simultaneously created both prophetic customs and ambiguous and anti-objectivities [4]. The narrative structure allows the author to imagine a possible world in spite of the limitations from the past in the literary narrative and make possible to adapt the current problems to past laws and precedents in legal narrative. This not easy balance, in which legal narrative and literary narrative coexist between what is established in reality and the possibilities from reality, is possible through the form of narrative.

The narrative allows memory and imagination to be combined, and enjoyment from predictability and expectation from possibility to coexist. Literary narrative and legal narrative achieve the purpose of existence by attracting to the person whom it is delivered.

Literary narrative makes interesting, new, and likely stories. Legal narrative is diverse, based on the minds of those who follow precedents and decisions.

In order to these narratives are persuasive and relevant so achieve their aims, it is necessary to combine the various elements. They go through a very complex, difficult, and dynamic process because they have to move the minds of those who delivered them beyond simply composing an interesting story.

In particular, the dialectical attributes of the narrative, which serve to draw attraction from the two forms, give implications to various aspects. The use of narrative dialectics as an attribute of persuasive and effective story will provide much coverage and scope.

According to Bruner (1996; Kang et al., 2014), students can reach knowing by understanding the various ways in which the mind performs discourse in their culture, that is, narrative [5][6][7]. He argues that human beings differ from other primates in the areas of 'how to learn', 'how to use the mind', and that the mind uses stories when interpreting the problems we face in our lives.

What is important in education is that students construct cultural meanings through learning, and that is how learning occurs. In other words, the purpose of learning is to apply knowledge to the cultural context. To do so, students must understand the cultural world in which they live and know who they are. And it takes place in narrative, which is an analytic process composing meaning. In short, narrative is a form of awareness that is used extensively in the process of education to incorporate into culture. Thus, narrative can never be considered light when studying education [8].

It is necessary to have a persuasive and effective story in the process of communicating, understanding and acquiring knowledge and function in the classroom situation of classroom where teacher and many learner should communicate with at the level of education. Beyond this situation, it is very important how to construct and secure a story in which validity and legitimacy are acknowledged in a situation where interests between the parties are confronted in the universal life of human beings. It is important to adjust to the eyes of the other person, to criticize and sympathize appropriately, to claim, make concessions, and negotiate. The narrative ability to communicate with others is important in this regard.

It is important to utilize these narrative implications in the future in various human life areas. Use of the legitimacy and validity of narrative will change the quality of our culture. So called the representational aspects of culture are understood as the various genres of narrative, and furthermore, the creation of civilization depends on the use of narrative in the end.

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References

- [1] J.S. Bruner, Editor, "Making stories: Law, literature, life," Farrar, Straus and Giroux, New York, (2002)
- [2] H.S. Kang and K.S. Kim, Translator, "Stories: Law, literature, life," Kyoyook-kwahaksa, Paju, (2010)
- [3] J.S. Bruner and A.G. Amsterdam, Editor, "Minding the law," Harvard University Press, Cambridge, (2000)
- [4] R. Cover, Editor, "Nomos and narrative," Harvard Law Review, vol.97, no.4, pp.68
- [5] I.S. Cho, "In search of curriculum development based on Bruner's narrative theory," Unpublished doctoral dissertation, Kyungpook National University, (2014)
- [6] J.S. Bruner, Editor, "The culture of education, mass," Harvard Univ. Press, Cambridge
- [7] H.S. Kang and J.H. Lee, Translator, "The culture of education," Kyoyook-kwahaksa, Seoul, (2014)
- [8] H.S. Kang, "Bruner's educational theory since structure of knowledge," Narrative turn, ASTL., vol.47, pp.258-269, (2014)
- [9] I.S. Cho and H.S. Kang, "Bruner's narrative and its suggestions," Journal of narrative and Educational Research, vol.1, no.1, pp.5-24, (2013)
- [10] S.K. Jung and H.S. Kang, "In search of diverse concepts of narrative," Journal of Narrative and Educational Studies, vol.3, no.1, pp.23-45, (2015)