The Analysis of Legal Cases: A Narrative Approach

Flora Di Donato (2019)

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Reviewed by Qurrat-ul-ain Mukhtar

In *The Analysis of Legal Cases: A Narrative Approach*, Flora Di Donato has implemented a narrativist approach to critically analysing the transformation of commonplace narrations into legal narrations and the way facts are presented in legal proceedings, thereby bringing a polyphony of voices and numerous social dimensions to animate cases. The book in its essence is an outcome of a series of micro-sociological research projects into labour law and migration cases conducted in different cultural contexts in north-western Switzerland and southern Italy from 2004 to 2018.

Di Donato proposes narrative, in the sense of cultural co-construction of events – and in the case of the law as collaboration among stakeholders such as clients, lawyers and judges – as a means of revealing how judicial facts emerge not only from the normative orientations typically associated with judicial systems, but also from the different perspectives of these stakeholders and the communities and institutions to which they belong. Moreover, she sees a professional focus on narrative as a way of making legal processes more just. Narration offers a culturally contextualised way of organising events that enhances a legal positivist approach, and legal processes, despite their tendency to reduce complex social reality to simpler categories, interact with narrative processes.

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The book is organised into two main parts. Part I is dedicated to the theoretical and methodological foundations upon which the analyses of particular cases are constructed in Part II. The first part (Chapters 1–3) proposes an interdisciplinary analysis of the relationship among language, mind and culture, focusing on the translation of a narrative's central features into legal discourse (Chapter 1). The placement of this discourse within a broader debate on law and humanities posits orientations such as clinical law and lawyering theory as ideal settings for applying case analysis capable of linking theory and practice. The author further recommends the development of pan-European debate about legal narratology in order to find possible common meanings and uses of narration in law (Chapter 2). Chapter 3 lays out the theoretical and methodological grounds that guide case analysis and fact investigation, placing discourse within the context of Civil Law, and particularly the Italian legal order. Di Donato suggests that Civil Law systems are particularly susceptible to claims of being objective and self-referential, and then sets out to show how in practice they operate beyond positivism and are the better for doing so. Part II (Chapters 4–9) is further divided into three subparts comprising the main paths through which the author develops case analysis: a) fact construction (Chapters 4–6), b) narratives in cultural context (Chapters 7 and 8) and c) improving justice for vulnerable people (Chapter 9).

The book starts with a summary of the previous contributions of anthropologists, linguists, literary critics and cultural psychologists in highlighting the connection between mind, culture and narrative, especially since the narrative turn taken by the legal field in the 1980s. Here the author discusses definitions of the term 'story' and its usage in plot analysis in law (Chapter 1). Chapter 2 reviews the interpretive turn that laid the groundwork for this shift in the 1940s and moved the legal field toward the espousal of paradigms such as Law and Humanities, Lawyering Theory, and Clinical Legal Education. At the end of the chapter, the author outlines some uses of 'narrative in law' based on her own experiences in various legal fields in various cultural contexts. In Chapter 3, entitled 'Fact Construction', Di Donato then describes her experience of the methodological tools typical of the social sciences that may be applied in the analysis of legal cases and the interactions between the various legal actors: clients, lawyers and judges. She offers theoretical and methodological underpinning for case analysis and fact investigation while placing discourse within the context of Civil Law and the Italian legal order. The chapter represents the author's attempt to plan a probable course towards combining theory and practice in the analysis of fact construction. On the basis of the stories told by clients, lawyers and judges, Di Donato proposes an interdisciplinary approach to the reconstruction of events and hence the resolution of cases that includes perspectives that risk being left out of the official narrative, focusing on how behaviour and emotional positioning towards central characters in a plot may rework a story's basic meanings.

Chapter 4, 'Rediscovering the Role of the Client,' provides a description of the role played by laypeople in the resolution of their own legal disputes by reconstructing three cases in Italian labour law: those of Laura, Franco and Luciano. Unfolding from the stories told by clients, the chapter consists of three types of analysis. The first is plot analysis, which identifies the story's content and determines the degree to which it can be considered generically distinctive or recurrent across other stories. Re-analysis of the same stories is done to understand how a client names, blames and makes claims, and how everyday incidents come to take the shape of legal stories. Lastly, in a theoretical context reflecting developments in client–lawyer relationships that frame them more in terms of collaboration than asymmetry, the analysis focuses on the client's initiative in reconstructing facts and developing strategies agreed upon with the lawyer to resolve the case, most crucially at the outset of this legal reframing. In contrast to the more vulnerable clients discussed later in the context of Swiss migration law, these Italian clients bring insights into their local legal and also social culture to their stories. Laura, for example, is able to reflect on the way other parties in the dispute perceive events, offering institutional rationales for different perspectives and gaining sufficient confidence to suggest to her attorney how parts of her story might be rephrased for greater legal effect. Franco, a school principal wishing to rescind his resignation, comes across as well informed not only about relevant employment law, but also about the institutional orientations of the educational authorities who, in his view, are refusing to admit the deeper reasons underlying his resignation, and he also understands that his lawyer's role is to translate his experiences into a story commanding legal force.

Chapter 5 revisits the stories in the previous chapter, this time putting the lawyer at the centre of narrative construction in developing the idea of 'collaborative lawyering'. In some case analyses lawyers demonstrate their creative capacity, often honed through collaboration with clients, to identify key causal and temporal connections that contribute contextual meanings to the legal narrative. While the attorney's story inevitably consists primarily of the legal foundations and descriptions that enable the client's narrative to be perceived as a legal event rather than a personal one, the 'client and the attorney work together to construct a "new reality" for which they then apply for an "official legitimation"' (p. 124). Di Donato reflects on how lawyers' contributions to the narrative may have a subversive impact on a legal order's pre-defined claims of abstract objectivity, and she emphasises how attorneys may add socially contextualised as well as legal meanings. Hence, Laura's attorney goes beyond her legal right to pursue fertility treatment to a cultural construction that focuses on how a female negotiates time off work in order to exercise these rights, in the process reframing the timeline of events in a way that implies a retaliatory attitude on the part of her employers. Similarly, Luciano's lawyer goes beyond his client's rights in employment law to a

construction of the business culture in which he is employed and its detrimental effects on his client's health. While Di Donato suggests that the strategic creativity demonstrated by the lawyers in her cases reveals typical practice in the profession, she also discusses the individual creativity that attorneys demonstrate in light of the details particular to each case.

Chapter 6 then turns to the judge's creative role in decision making through a hermeneutic constructivist perspective from which the whole legal process emerges as an interpretive community. Di Donato demonstrates how the judge's narration is decisive in filtering through the factual meanings proposed by stakeholders such as clients, lawyers and witnesses in the phases prior to a decision being handed down, and in establishing temporal and causal links between events. The chapter concludes that judges' decisions can also be defined as 'creative' in the way they build on the creative role that clients and lawyers seem to play in the reconstruction of facts. A further dimension at play is revealed in the way the lawyers in the three cases appear mindful of the particular characters of the judges assigned to their cases when framing the narratives to put before the court.

Chapters 7 and 8 are devoted to comparison of cases that took place in two different cultural and legal contexts: the south of Italy and north-western Switzerland. The author tests the culturalist hypothesis that a certain degree of 'cultural consciousness' on the part of ordinary people – whether locals or migrants – makes a decisive difference to the successful outcome of legal actions. Chapter 7 highlights the ability of clients living in southern Italy to negotiate local legal culture in the resolution of their cases. Chapter 8 focuses on the cases of foreigners negotiating naturalisation procedures in north-western Switzerland and shows how their growing command of local customs and practices, as well as of the country's legal culture, enables them to develop successful 'legal agentivity'. One client's agentivity, for example, evolves into a persuasive legal strategy developed through her reworking of emotional and cultural, as well as legal, arguments during the course of a series of appeal processes before the federal court.

In the last chapter, Di Donato focuses on two cases of asylum seekers in situations of vulnerability. She describes the anxiety of clients who come from cultural and sociopolitical contexts that are very far from guaranteeing their human rights or gender identity. The more general aim of the analysis is to understand the extent to which these clients' conditions of vulnerability – due to their origins, their level of education and their personal stories – can be redressed by permitting them to be 'legal actresses' on a par with other clients who, as 'natives' or 'foreigners' with a less fragile status than that of asylum seekers, have already started to assimilate into the majority culture and the institutions of their host countries.

While the beginning of the book, Chapter 1 and 2 in particular, offers an excellent and easy-to-read overview and theoretical account, in some of the later parts

of the book dealing with actual cases from multiple perspectives it is easy to get lost in the complex stories and their multifunctional analyses, although readers can turn to the summaries and conclusions provided at the end of each chapter if they do not need such a level of detail. Given the amount of data the author has gathered on legal discourse, I would have liked a broader discussion of narrativity as a tool for interpreting legal cases, particularly with regard to the way legal actors interpret local cultural meanings during the resolution of cases. Besides these minor flaws, the book is an extraordinary collection of legal cases and stories and constitutes a valuable guide for researchers in the fields of legal communication and discourse analysis.