

# Book Note: Creating Legal Worlds: Story And Style In A Culture Of Argument, by Greig Henderson

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## Book Note: Creating Legal Worlds: Story And Style In A Culture Of Argument, by Greig Henderson

### **Abstract**

WHILE THERE HAS BEEN AMPLE SCHOLARSHIP devoted to examining the legal assumptions, reasons, and analyses underlying judicial decision-making, the narrative aspect of judicial decision-making remains an area less often examined. Drawing on the increasingly popular law and literature movement, in *Creating Legal Worlds: Story and Style in a Culture of Argument*, Greig Henderson presents the provocative argument that narrative is crucial to legal decision-making. Through the exploration of a number of leading cases from Canada, the United States, and the United Kingdom, Henderson seeks to establish that the rhetoric of storytelling carries as much argumentative weight as the formal logic of legal distinctions and classifications. Henderson's book is divided into seven short chapters, each of which draws on leading cases from Canada, the United States, and the United Kingdom. However, Henderson repeatedly returns to a few key cases that serve as ongoing examples of judgments as narratives. By examining jurisprudence from different countries, Henderson's book easily maintains relevance across jurisdictional boundaries. Further, given its unique interdisciplinary focus, *Creating Legal Worlds* has an audience that clearly transcends the legal community.

## Book Note

***Creating Legal Worlds: Story And Style  
In A Culture Of Argument*, by Greig  
Henderson<sup>1</sup>**

RACHEL DEVON

WHILE THERE HAS BEEN AMPLE SCHOLARSHIP devoted to examining the legal assumptions, reasons, and analyses underlying judicial decision-making, the narrative aspect of judicial decision-making remains an area less often examined. Drawing on the increasingly popular law and literature movement, in *Creating Legal Worlds: Story and Style in a Culture of Argument*, Greig Henderson presents the provocative argument that narrative is crucial to legal decision-making. Through the exploration of a number of leading cases from Canada, the United States, and the United Kingdom, Henderson seeks to establish that the rhetoric of storytelling carries as much argumentative weight as the formal logic of legal distinctions and classifications.

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1. (Toronto: University of Toronto Press, 2015) 180 pages.

Chapter one lays the groundwork for the rest of the book by describing how the literary function of language enters into judicial discourse.<sup>2</sup> It is in this chapter that the author engages with the normative aspect of his argument; Henderson opines that there is nothing intrinsically good about narrative.<sup>3</sup> Rather, Henderson suggests that rhetorical strategies “may be directed towards noble or ignoble ends, with just or unjust results.”<sup>4</sup> In chapter two, Henderson contrasts the legal writing of Lord Denning, a deceased English appellate judge, and Justice David Watt, an Ontario appellate judge, to illustrate that style is an integral aspect of legal decisions. Henderson argues that in Denning’s judgments, style and substance are united, whereas in Watt’s judgments, style is “something added to substance as a mere protuberant adornment.”<sup>5</sup> In this chapter, Henderson examines the famous English case of *Lloyds Bank v Bundy*,<sup>6</sup> arguing for its rhetorical efficacy due to Denning’s seamless fusion of substance and style. In chapter three, Henderson analyzes law as a branch of rhetoric—and more specifically—as “the use of language to inform, persuade, or motivate an audience.”<sup>7</sup> This is primarily examined through the famous American tort law case, *Palsgraf v Long Island Railroad*.<sup>8</sup> Drawing on the example of *Palsgraf*, Henderson boldly suggests that because many legal questions cannot be answered through empirical evidence and legal reasoning alone, rhetoric becomes an indispensable aspect of judicial decision-making.

In chapter four, through the exploration of two leading Canadian criminal law cases—*R v Harbottle*<sup>9</sup> and *R v Nette*<sup>10</sup>—the author discusses the critical role that narrative plays in defining legal causation; indeed, Henderson contends that narrative carries as much argumentative weight as the logical force of causal distinctions.<sup>11</sup> Chapter five takes a conceptually broader approach. In this chapter, Henderson argues that because judges are constantly tasked with trying to construct a plausible and coherent narrative by making sense of competing facts and views, “the compositional task of a judge ... is not altogether unlike

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2. *Ibid* at 17-26.

3. *Ibid* at 37.

4. *Ibid*.

5. *Ibid* at 39.

6. [1974] EWCA Civ 8, [1975] QB 326.

7. *Supra* note 1 at 58.

8. 248 NY 339, 162 NE 99 (Ct App 1928).

9. [1993] 3 SCR 306, 24 CR (4th) 137.

10. 2001 SCC 78, [2001] 3 SCR 488.

11. *Supra* note 1 at 75.

that of a novelist.”<sup>12</sup> This chapter focuses on the leading Canadian case of *R v Ewanchuk*<sup>13</sup> to demonstrate that in arriving at a decision, judges are constantly making what the author refers to as narratological choices.<sup>14</sup> Chapter six builds on the argument presented in the previous chapter through examining the narrative and rhetorical strategizing of different judges in *Rusk v State*,<sup>15</sup> an American sexual assault case that features “multiple and sometimes conflicting discourses.”<sup>16</sup> This case serves to reinforce Henderson’s general conclusion that storytelling is at the core of legal decision-making. Finally, chapter seven looks at law and rhetoric in the context of classical philosophy.

Ultimately, the reader is left with the resounding message that a judgment “is first and foremost a story.”<sup>17</sup> In this sense, *Creating Legal Worlds* makes a welcome contribution to the law and literature movement by effectively presenting the compelling argument that storytelling is an indispensable aspect of judicial decision-making.

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12. *Ibid* at 90.

13. [1999] 1 SCR 330, 68 Alta LR (3d) 1.

14. *Supra* note 1 at 118.

15. 406 A 2d 624, 43 Md App 476 (Ct Spec App 1979).

16. *Supra* note 1 at 119.

17. *Ibid* at 8.