

## **Draft -- Not for Citation or Publication**

### **Achieving Justice:**

#### **The Limitations of Law and the Legal Potential of Literature**

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### **I. The Essential Difference Between Law and Literature**

In considering the question of what use can be made of narrative texts that touch on law, I have argued that we must hesitate in using them to reconstruct legal practice. The accuracy of literary accounts in recording legal practice is questionable. Narrative is not a transcript of legal process: it is not a mirror of reality but a shaping of reality.

Narrative reveals how the legal system is perceived to operate: is it thought to fulfill its mandate of ensuring justice or is it considered as furthering injustice. Narrative offers us access to the flaws in the legal system. Literary accounts can demonstrate how power corrupts the legal process and how offenders make use of loopholes to avoid culpability. Narratives can show how the legal realm serves as an unbalanced playing field, manipulated by those with resources, financial and political. Offenders may go unpunished because they exploit or luckily fall into a technicality that allows them to evade the law. Narrative can reveal how hapless human beings are caught in the gears of a legal system and how human beings crush others with injustice. This is the contribution of literary accounts to the study of law..<sup>1</sup>

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<sup>1</sup> For a more detailed analysis of other approaches to law and narrative, see my article "The Narrative Quandary", *Vetus Testamentum* 54 (2004): 1-16. My article, "Law and Narrative in Genesis," *ZAR* 16 (2010): 211-223, applies my methodology to other texts in Genesis, analyzing whether their setting in the patriarchal period erroneously allows us to assume that they reflect earlier law and how to address legal matters for which we have only narrative texts as evidence.

But there are more profound differences between law and narrative, differences that originate in their nature and character. Narrative goes beyond displaying the flaws and corruption in the legal system. It exposes what the law lacks: it goes beyond just revealing the obstructions in the system. Law deals with the external appearance of actions, while narrative accounts draw us into the backstory, into what lies behind the scene, the emotions, grievances, hurts, disappointments.<sup>2</sup> Narrative reveals the internal workings behind actions.

This is the critical difference between law and literature. Law simplifies, while literature urges complication. Law organizes human actions into a limited number of pathways, while literature refuses to confine human beings into a fixed set of patterns. Law aims for the predictable, for the achievable, for repeatable results. It has to make order out of a morass of events. It has to reduce the complexity of a situation to fit categories, principles, and remedies. It organizes behavior into patterns and classifications. It provides prescriptions and proscriptions. It fits actions into boundaries. It tries to produce predictable outcomes.

By contrast, narrative embodies the human drama. It portrays the messy, sometimes incoherent and oftentimes unpredictable side of human nature. It is populated by human beings with grievances who hope that the law will relieve them of the harm they have experienced and the resentment that festers within. Narrative exposes the mitigating and extenuating circumstances that the law strains to recognize. It unveils emotional texture and focuses on moral dimensions. It reveals (revels in) the fragility and strength of the human spirit.

Narrative illuminates the moral dimensions of people engulfed by the law. Narrative explores the emotional complexity of human actions, while law reduces human emotions and

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This (current) essay addresses the issue of how to approach a narrative text that contradicts a legal text and whether we can presume that one text reflects earlier practice and another text reflects later practice.

<sup>2</sup> A significant part of my analysis of the differences between law and narrative was inspired by Thane Rosenbaum, *The Myth of Moral Justice* (New York: HarperCollins, 2004).

behavior into a limited number of set patterns. Narrative opens vistas into human nature, in sharp contrast to the monochrome vision of legal norms.

## **II. An Alternate Paradigm of Justice**

Justice provided by law can be inadequate, and it can fail outright. There is a fissure between the legally correct and the ethically correct. By contrast, narrative offers another paradigm of justice: by exploring the back-story, it takes into account the emotional and personal dimensions of a dispute. This allows it to break the narrowness and rigidity of legal procedures and institutions/conventions. It can provide vindication and emotional satisfaction to the victim.

The court case is focused on what happens in front of it, on the testimony, evidence, and arguments and claims of each party to the law suit. Narrative reveals the entire plot, the totality of events, what brought the parties before the court, their grievances, motivations, hopes, and yearning for justice and relief.

Law protects tangible matters, whether an individual's body or property, and it evaluates human actions and determining their innocence or faultiness. Law prescribes remedies that are financial or punitive, damages paid to the victim or physical punishment for the guilty. Law operates in the concrete and tangible, visible and external, when the victim may want something far less tangible and concrete.

The purpose of a court is to adjudicate, to offer a process to resolve grievances efficiently but not necessarily completely. Disrupted lives, the harm experienced by the victims, are often left still damaged. The compensation and punishment provide some satisfaction, but the emotional wound remains. Courts see the physical harm, not the broken spirits.

Once narrative reflects how law was perceived to function, it proceeds to show how the flaw in the legal system can be overcome. Human beings can create maneuvers and schemes to

heal the crushed human spirit. And even when the flaw/lapse in the legal system is so great that it cannot be fixed, narrative affirms the victim.

Narrative exposes emotional truths that are not explored during legal proceedings. What is morally and legally correct may be leagues apart. Narrative embodies the yearning that legal decisions should feel wise, right, and just, both to the victims and to the community. A court offers a chance at some relief, but it can produce an outcome that is wrong, even if legally correct. Narrative affirms that injustice can be redeemed when the truth of actions and emotions is eventually revealed.

Narrative aspires to moral justice, a justice in which hurts are acknowledged, offenders apologize, and relationships are restored. The goal of narrative is ethical and spiritual relief, and the concern is with the victim, rather than the offender. Narrative seeks a remedy for the indignity inflicted: the victim wants more than the punishment of the offender. The victim wants vindication.

### **III. Consequences for the Study of Biblical Narrative**

In this essay, I wish to apply the ramifications of the differences between law and narrative to the book of Ruth.

The biblical book of Ruth contrasts a formal and distant recounting of the tragic move to Moab by Elimelech, Naomi, and their two sons with the emotional interactions between the women. The famine in Judah is offered as the motive for their move, but the names of the sons, Mahlon and Kilion, “illness” and “wasting away”, lend an ominous portent to the situation. Their death seems predestined, and even though there was food in Moab, the men die anyway. The narrative contrast between the bleak situation of the family with the emotions of the bereft mother-in-law and daughters-in-law is great. Innermost thoughts and feelings are revealed at length. The tenderness between the women is also in stark contrast to the formal and self-

centered action of the anonymous closest relative. The narrative exposes what the law lacks. Narrative has drawn us into the back-story, the emotions and the grievances.

A number of scenes end in tension, reflecting the uncertainties of human behavior. The harvest continues to its end without any resolution occurring. When Ruth reports back to Naomi after the night encounter with Boaz, we are left wondering how it will all come about to a conclusion in the morning (partially because Ruth and Naomi are the subject of the legal action but are not the actors).

The depth of Naomi's misery is exposed by the astonishment and dismay of the townspeople of Bethlehem and by the word-play on her name, "pleasantness", the opposite of what she feels. Although Naomi does not realize that while she feels that she has returned empty, she has returned with Ruth. (Perhaps this is a sign of the seeming legal helplessness of the foreign woman). The conclusion of the story must include her vindication.

Ruth goes out to the fields to glean in accordance with the law, but there is more to the reality of the process. The law may have prescribed that the gleanings were to be left behind for the poor but the reality was that women gleaning might be harassed. At the very least, this made gleaning/taking advantage of the opportunity to glean by the needy unpleasant, and perhaps at times the harassment was great enough to stop the needy from gleaning altogether. Yet while the rule is that the harvester may not pick up the grain he has left behind, a compassionate harvester will intentionally leave more behind.

While the nearest kinsman should be the one to help Naomi, the narrative conveys/tells a different story. The near kinsman is resistant. Naomi does not even approach him. He should have been the first person Naomi approached for relief, not Boaz. The shortcomings of the near kinsman become the impetus behind the story, but the reader/listener does not learn about him until the third chapter, when Ruth approaches Boaz at night.

Naomi blesses the man who has helped Ruth even before she know that he is a relative. Once she learns of his identity, she interprets his kindness as an expression of God's *hesed*. Yet even then the vagaries of human intentions and actions remain. Naomi informs Ruth of Boaz's identity as a go'el after the first day of her going out to glean, but then nothing happens. She continues to glean through to the end of the barley and wheat harvests, but no initiative is undertaken to start the process.(Murphy, 91) A straightforward request to Boaz immediately would make rational sense, but life is messy. A different, more round-about approach to Boaz will be undertaken. We can speculate as to the reason, but the reasons are left murky. Perhaps Ruth's loyalty and industriousness need to be confirmed over a longer period of time. Perhaps Naomi seeks to wait until the harvest is done and Boaz has the time to take care of this immediately. And indeed, another man might have been less determined and more to let the matter slide, perhaps even ignoring the matter, hoping that it would fade away. But the narrative portrays Boaz in completely different terms. Indeed, Boaz does not let her leave in the morning without seeing her off. He declares that he does not wish her to return to Naomi empty-handed, perhaps a hidden message to Naomi, who declared upon her return to Bethlehem that she was empty-handed.(Wurthwein)

Boaz is vividly contrasted to the near kinsman. At first glance, Boaz's query to the near kinsman that if he redeemed his relative's property, he must also acquire Ruth in levirate marriage is puzzling: elsewhere in biblical texts, levirate marriage and the redemption of property by a relative were two separate and independent legal actions. There is no statute that requires the go'el to marry a childless widow. The levir marrying a childless widow would not be involved in redeeming land: he would have guardianship of the deceased husband's property until the child was of age. Eryl Davies argues that Boaz could not have required the go'el to marry the widow on his own authority because the near kinsman could have appealed to the elders and insisted on his right to redeem the land without being forced to marry the widow and the elders could have

objected to the change in the law. But this assumes that the narrative presents the law as it actually was, as an acting out of the statutes, as an actualization of the statutes/an enactment of the statutes. Rather, the narrative is realization of justice as it should be, whether it is based on actual events or not. The narrative is an articulation of what justice should be, rather than what it may actually be/have been. In the case of a dispirited widow, the ultimate end of the narrative trajectory is her vindication. With this consideration, it is understandable that the narrator has connected the two laws. Naomi's predicament will not be solved by the redemption of land alone: her vindication will come with the birth of a child to continue the family line. The narrative concludes with the healing of the broken spirit of Naomi.