

Note

Once Upon the Bench: Rule Under the Fairy Tale

Katherine J. Roberts*

Deeper meaning resides in the fairy tales told to me in childhood than in the truth that is taught by life.

—Schiller, *The Piccolomini*, III, 4.

And Snow-White was kind and went with him, and their wedding was held with pomp and great splendor. But Snow-White's wicked stepmother was also bidden to the feast. . . . And when she saw her she knew her for Snow-White, and could not stir from the place for anger and terror. For they had ready red-hot iron shoes, in which she had to dance until she fell down dead.

— Brothers Grimm, *Snow White*

The idea that the fairy tale is worthy of study by legal scholars may seem uncomfortable to many. Even the strongest supporters of the law and

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literature movement may be given pause by this contention. It may be one thing for Kafka to give lessons in law, but the Brothers Grimm? After all, it was not until relatively recently that the fairy tale was even accepted as a legitimate subject of study by literature departments, and it is still disdained by many in the university.¹ How could the childish world of fantasy stories have anything to do with the sophisticated study of law? This Note seeks to answer this question by investigating the unexplored relationship between the fairy-tale genre and law.

The work of law and literature scholarship typically falls within two broad categories: law “in” literature, the study of representations of law and lawyers in literary texts, and law “as” literature, the study of legal texts using literary theory and criticism.² This Note falls into the first category because it examines law “in” the fairy tale. However, this Note also follows others who have sought to expand the direction of law and literature scholarship by considering the ways in which literature, like law, has a coercive, or disciplinary function.³ In addition to reflecting on the theme of law in the fairy tale, this requires an examination of the narrative rules of the fairy-tale genre. In much the same way that a sonnet must follow a certain structure of rhyme and meter, the fairy-tale genre has a set of narrative particularities that constrain, or shape, expression. Such conventions are of special interest in the case of the coercion of the fairy tale, for as we will see, it has a distinctively legal structure.

It is my argument that certain rules must be obeyed within the fairy tale, the law *in* the fairy tale, and without, the law *of* the fairy tale. In short, the genre demands that good characters are duly rewarded and evil ones justly punished, thus guiding a young audience’s conception of justice. Stories that subvert this thematic core have been banished from the genre. This is a highly coercive process, which allows us to draw further links between the genre and our legal system. Moreover, in examining the narrative conventions of the fairy tale, striking similarities between this culture of literature and the story-telling of case law are uncovered. Given that the readership of the fairy tale far exceeds that of any legal treatise, and that the fairy tale typically addresses itself to younger minds, one might say that the fairy tale plays a greater role in shaping lawful behavior than the recorded law.

Any such inquiry into literature’s coercive function, let alone its

1. Maria Tatar, *Introduction* to *THE CLASSIC FAIRY TALES* at xi (Maria Tatar ed., 1999); JACK ZIPES, *HAPPILY EVER AFTER* 8 (1997).

2. Paul Gerwitz, *Introduction* to *LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 2, 3-4 (Peter Brooks & Paul Gerwitz eds., 1996); IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* 3 (1995).

3. *E.g.*, JOHN BENDER, *IMAGINING THE PENITENTIARY: FICTION AND THE ARCHITECTURE OF THE MIND IN EIGHTEENTH-CENTURY ENGLAND* (1987); D.A. MILLER, *THE NOVEL AND THE POLICE* (1988); Richard Brodhead, *Sparing the Rod: Discipline and Fiction in Antebellum America*, 21 *REPRESENTATIONS* 67 (1988).

disciplinary superiority, should begin by addressing Robert Cover's keen articulation of the distinction between literature and law, namely, that "legal interpretive acts signal and occasion the imposition of violence upon others."⁴ Though Cover acknowledges the persuasive and narrative dimensions of law, in his view, law's violence—a violence that can be seen and felt in the flesh—frees law from the need to rely on persuasive narratives in order to coerce its subjects.⁵ To the extent that law does rely on narrative, it does so to provide itself with meaning, and hence, to legitimate its violence. That is, because legal narratives make their mark upon the body, they must be self-justifying in addition to being hermeneutically sound.⁶ They must consistently persuade readers—and, more importantly, implementers of the ensuing violence—that the law's violence is legitimate, whereas extralegal violence is not. In contrast, literature need not, and typically does not, attempt to persuade us to accept certain violent acts as legitimate, let alone commit such acts.

This Note seeks to introduce the genre of the fairy tale as an intriguing, albeit limited, exception to this rule. While it is true that the fairy tale has neither the strong arm of the law behind it nor the necessity of persuading us to commit specific acts of violence, the genre nonetheless consistently seeks to uphold legal distinctions between legitimate and illegitimate acts of violence. In short, the fairy tale seeks to raise us as obedient social and legal subjects. It is the mission of this Note, then, to call into question even this most plausible distinction between law and literature.

I have divided my Note into four parts. In Part I, I confront the resistance to the analogy between fairy tales and the law more thoroughly. I engage Cover's objections to such an analogy, and compare and contrast this analogy with other literary scholarship that takes up literature's disciplinary function. While the fairy tale may never be able to rival the coercive violence of the law, its signature thematic mission and method put the genre in a unique position to link the disciplines of law and literature. Fairy tales are "legal" because they seek to internalize norms of good behavior in readers and concern themselves with the legitimacy of violent punishments. Too, the fairy tale has special powers of persuasion that make it a particularly fruitful subject of study in law and literature scholarship. These powers can be traced in part to the fairy tale's canonicity, audience, and status as an archetypal story. In Part II, I introduce the law "in" fairy tales, focusing on fairy-tale jurisprudence generally. That is, I will discuss the way early fairy-tale collectors, namely Charles Perrault and the Brothers Grimm, instituted a system of consistently rewarding the good and punishing the bad, and of retributive

4. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

5. *Id.* at 1607-08.

6. *Id.* at 1611.

justice. It is this system that serves to legitimate the violent portrayals of the fairy tale. In Part III, I will turn to the narrative rules of fairy tales and attempt to illuminate the ways in which these rules shape and are shaped by the expression of the law discussed in Part II. I pay special attention to the ways in which the fairy tale mirrors the structure of certain legal texts, specifically case law. What emerges from these analyses is a literary genre with unparalleled influence in shaping its subjects.

I. LAW AND THE FAIRY TALE: FAIRY TALES AS OBJECTS OF LEGAL ANALYSIS

A. Literature as Law?

A fairy tale is a story. Stories have a certain influence on us: They touch, move, change, and entrance us. Upon hearing a tale, our minds demand, “what happens next?” This ability of the tale to engross is best depicted in the frame narrative of *A Thousand and One Arabian Nights*.⁷ Scheherazade, the wise daughter of the King intercedes in his jealous scheme to sleep with virgin maidens by night and slay them at dawn. She offers herself to the King, but each night outwits his murderous plot by beginning to tell a tale. She suspends the tale just before dawn to say her prayers for death. The King cannot bear to leave the tale unfinished, and she thus entices him into granting her an extended reprieve, a thousand and one nights, and an eventual pardon. This hold the tales have on us gives the tale an awesome power.

Of course, even those most willing to acknowledge the power of stories must admit that it is a fundamentally different power than that of law. To return to Cover’s argument, the power of law derives from its violent force. As Cover forcefully puts it, judges must be distinguished from poets:

[J]udges deal in pain and death. . . . In this they are different from poets, from critics, from artists. It will not do to insist on the violence of strong poetry and strong poets. Even the violence of a weak judge is utterly real—a naïve but immediate reality, in need of no interpretation, no critic to reveal it.⁸

Herein lies the problem with treating literature as law: Every act of judicial interpretation sets into motion a string of institutional actors to

7. TALES FROM THE ARABIAN NIGHTS SELECTED FROM THE BOOK OF THE THOUSAND NIGHTS AND A NIGHT (David Schumaker ed., Richard F. Burton trans., 1978). I got the idea to use this story as an illustration of the power of tales from a lecture by author A.S. Byatt. A.S. Byatt, *Old Tales and New Forms*, Finzi-Contini Lecture (Apr. 5, 1999).

8. Cover, *supra* note 4, at 1609.

turn word into deed.⁹ It is not the inherent power of the judge's words that convince a sentenced convict that he should march into prison, but rather his recognition of the "overwhelming array of violence ranged against him."¹⁰ Conversely, with literature, whether or not word will be turned into deed is a matter of personal will.

The fairy tale, then, relies on its powers of persuasion, on forging a shared understanding, a common meaning between itself and its readers that will lead to a reader's commitment to the tale. A judge's use of coercive violence renders any shared meaning between the judge, the implementing actors, and the defendant unnecessary, if not impossible.¹¹ Yet in another way, law's violence does derive from, and depend on, stories and shared meanings. The judge's pronouncement is the triumph of one community's system of rules, one community's laws, over the laws of another individual or community. And as Cover himself notes in his visionary essay *Nomos and Narrative*,¹² a rule of law is always the manifestation of a system of shared meaning, which can only be expressed through a culture's stories. He trenchantly articulates:

No set of legal institutions or prescriptions exists apart from the narratives that locate and give it meaning. . . . Every prescription is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose. And every narrative is insistent in its demand for its prescriptive point, its moral.¹³

Put differently, the legal tradition "includes not only a corpus juris, but also a language and a mythos. . . . These myths establish the paradigms for behavior."¹⁴ Cover was not alone in so believing: Legal scholar Friedrich

9. *Id.* at 1611.

10. *Id.* at 1607.

11. *Id.* at 1608-09, 1615 & 1628-29.

12. Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

13. *Id.* at 4-5; see also JEROME BRUNER, *ACTS OF MEANING* 97 (1990) ("Our capacity to render experience in terms of narratives is not just child's play, but an instrument for making meaning that dominates much of life in culture—from soliloquies at bedtime to the weighing of our testimony in our legal system."); Roger C. Cramton & Susan P. Koniak, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 155, 177, 183 (1996) ("[A] rule by itself tells us very little about the 'law' or the normative understanding of the community that professes to have such a rule. . . . One must understand the stories attached to this rule—the stories constituting the community's understanding of what the rule means—to grasp the meaning of this bit of 'law' [S]tories put some flesh on the bare bones of rules. . . . Commitment grows out of narratives that inspire us and give meaning to our lives."). For the related view that judicial law making is really about telling stories that define society's notions of right and wrong, see Larry Cata Backer, *Tweaking Facts, Speaking Judgment*, 6 S. CAL. INTERDISCIPLINARY L.J. 611, 613-14 (1998) ("[S]tories told by the courts illustrate for us what is good and bad, what works and what doesn't. . ."); and Mark L. Walters, Note, *American Dreammasters v. The Cocaine Cowboys* 69 TEX. L. REV. 159 (1990).

14. Cover, *supra* note 12, at 9.

Karl von Savigny had earlier emphasized the idea that “the spirit of law,” a society’s shared conception of law and justice, defied codification in legal volumes and was instead reflected in a culture’s rituals and tales. This he called “living law.” For him, stories, not legal treatises, were home to the law.¹⁵ For Cover, the rules that shape who we are and who we ultimately want to become are found and embraced in our culture’s stories. Stories define a society’s commitment to the law, the world in which we live,¹⁶ and the world that we hope to create through law.¹⁷ In this piece, then, Cover links law with narrative. Cover returns to this point in a footnote in *Violence and the Word*, where he “acknowledges the rhetorical, interpretive, meaning-making quality of the law,”¹⁸ which again might be called its “narrative” dimension. Cover thus openly admits that law persuades us with storytelling. And indeed, in these pieces, Cover explains how it is the very sense of interpretive commitment that one has to these cultural stories that gives rise to the need for law’s violence; the use of violence is legitimate because normative worlds are at stake.¹⁹ Law must have meaning before law can have power, and it is in this former sense that “law and narrative are inseparably related.”²⁰

Thus, although law and literature are in one sense fundamentally different, they are in another sense fundamentally interconnected. But the resolution of Cover’s articulated difference between law and literature is not so simple. As Austin Sarat and Thomas Kearns observe, “Because of law’s inexorable tie to violence, because its interpretations and meanings are inscribed on bodies, law, Cover claimed, could never be just another domain of meaning making and interpretation.”²¹ In one sense, this contention speaks to the meaning-defying side of law, alluded to above; but in another sense, it has a direct implication on law’s narrative side. That is, law’s meaning-making function must be understood in the context

15. Gerhard O. Mueller, *The Criminological Significance of the Grimms’ Fairy Tales*, in FAIRY TALES AND SOCIETY 217, 218 (Ruth B. Bottingheimer ed., 1986); C. Lewis Holton, *Once Upon a Time Served*, 39 INT’L J. OF OFFENDER THERAPY 210, 212 (Fall 1995) (reviewing Mueller’s work, *supra*). Of course, the unique ability of literature to communicate has also been recognized by writers. Flannery O’Connor once said, “A story is a way to say something that can’t be said any other way” (as quoted in VIGEN GUROIAN, *TENDING THE HEART OF VIRTUE* 17 (1998)).

16. Cover, *supra* note 12, at 4-5 (“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 we live.”).

17. *Id.* at 9-10 (“Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative—that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative.”).

18. Austin Sarat & Thomas Kearns, *Making Peace with Violence: Robert Cover on Law and Legal Theory*, in LAW’S VIOLENCE 211, 218 n.36 (Austin Sarat & Thomas Kearns eds., 1992) (commenting on footnote 2 to Cover’s *Violence and the Word*, Cover, *supra* note 4, at 1601 n.2).

19. Cover, *supra* note 12, at 40, 53; Cover, *supra* note 4, at 1605, 1624-29.

20. Cover, *supra* note 12, at 5.

21. Sarat & Kearns, *supra* note 18, at 218 n.36; see also Cover, *supra* note 4, at 1601 n.2 (observing the “essential tension in law . . . between the elaboration of legal meaning and the exercise of or resistance to the violence of social control”); Cover *supra* note 12, at 18 (“[T]here is a radical dichotomy between the social organization of law as power and the organization of law as meaning.”).

of “the organized social practice of violence,”²² a context of “institutional behavior in which others, occupying preexisting roles, can be expected to act, to implement, or otherwise to respond in a specified way to the judge’s interpretation.”²³ Legal narrative, then, as opposed to literary narrative, must address itself to the task of implementation, the task of turning word into practice. It must successfully inspire officials to accept and/or carry out violent deeds.²⁴ Thus, as Sarat and Kearns write:

[W]hen judges confront an interpretive problem, they really confront two problems, not one. The first is, of course, the problem of meaning itself, namely, how to identify and justify a hermeneutically satisfactory, if not superior, rendering of a text. The second is the problem of implementation, namely, how to ensure that others act on the basis of, and in the ways prescribed by, an interpretive act.²⁵

As a result, legal narrative must play a role in suppressing the “psychological, cultural, and moral considerations [that] inhibit the infliction of pain on other people.”²⁶

Part of the judicial task, then, is to authorize and legitimate law’s violence, as opposed to the extralegal violence it addresses, through narrative. This is not the task of the typical poet. Most literature does not address itself to the problem of when it is legitimate to act violently, and certainly does not labor under the shadow of implementation. Admittedly, we might identify some individual works of literature that defend the legitimacy of law’s violence, and in still rarer cases, even attempt to inspire violent action. But, as a general rule, literature is not in the violence-justifying business.

As literary genres go, however, the fairy-tale genre comes the closest to eliding this persistent distinction between law and literature. True, fairy tales do not need to trigger violent action; nor do they exist in a system of social cooperation to carry out violence. Fairy tales *do*, however, consistently seek to create spheres of legitimate and illegitimate acts of violence.²⁷ In doing so, the genre—much like law—persuades us to accept certain violence as “punishments” that are just and legitimate, and reject

22. Cover, *supra* note 4, at 1601 n.2.

23. *Id.* at 1611.

24. *Id.* at 1612, 1627-29. To be sure, and as Cover himself acknowledges, our legal system does not wholly rely on the rhetorical force of every judicial utterance to sustain the social cooperation necessary to implement law’s violence. Rather, there is also a hierarchical structure that ensures more automatic compliance with juridical authority. *Id.* at 1613-14, 1625. This, however, should not undermine the impact that violence has on legal narrative, for this narrative must play a crucial role in authorizing and legitimating the hierarchy itself.

25. Sarat & Kearns, *supra* note 18, at 235.

26. Cover, *supra* note 4, at 1613. On this note, Cover elaborates: “Were the inhibition against violence perfect, law would not be necessary; were it not capable of being overcome through social signals, law would not be possible.” *Id.*

27. See *infra* Section II.B for an elaboration of this project and its processes.

other violence as unjust “crimes.” For example, in *Little Red Riding Hood*, when the wolf devours grandma, he is bad, his act is a crime; when the hunter kills the wolf, he is good, his act is justice. Law and fairy tales are thus uniquely linked in a program of social control.²⁸

My introduction of the fairy tale as an instrument of social control allies this Note with other literary scholarship that has taken up literature’s disciplinary function. I refer here in particular to the work of D.A. Miller,²⁹ John Bender,³⁰ and Richard Brodhead.³¹

Drawing upon and extending Michel Foucault’s argument in *Discipline and Punish*,³² Miller, Bender, and Brodhead all argue that, in different times and places,³³ the novel has functioned very much like law,³⁴ that the novel has conditioned its subjects. In the main, their argument relates to the ways in which the realist novel, with its “massive thematization of social discipline,”³⁵ its formal construction and selective accounting of reality and consciousness, and its reception by private, absorbed readers, helped to create “liberal subjects”³⁶ receptive to the pervasive forms of

28. Interestingly, this notion is supported linguistically. Mueller, *supra* note 15, at 218. The German word for tales is “Marchen,” a derivative of “Maere,” denoting messages that are important and are to be remembered. This root can also be translated as “precedent,” denoting a consistent and legitimate guide of conduct, which both the tales and the formal body of law purport to be.

29. MILLER, *supra* note 3.

30. BENDER, *supra* note 3.

31. Brodhead, *supra* note 3.

32. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* (Alan Sheridan trans., 1977). In this seminal work, Foucault uncovers the transition and diffusion of power into various forms of extralegal, invisible systems of discipline. Henceforth, as Sarat and Kearns note, followers of Foucault know that “hierarchies of power proliferate in all meaning-generating activities.” Sarat & Kearns, *supra* note 18, at 228.

33. Miller focuses on the Victorian novel, Bender on the mid-eighteenth century novel, and Brodhead on the antebellum novel.

34. By contrast, Wai Chee Dimock argues that the novel veered away from the law in the course of the nineteenth century and came to represent an “alternative realm of justice.” WAI CHEE DIMOCK, *RESIDUES OF JUSTICE: LITERATURE, LAW, PHILOSOPHY* 24 (1996). She argues that as the definitions of crime and criminal were narrowed and focused, as the canon of strict construction limited punishment, and as the justificatory rhetoric turned from retribution to deterrence, the novel swept up the “residue” left behind, namely, a diffuse definition of crime, broad punishment, and punitive justice. *Id.* at 19, 24-26. While a nuanced engagement with Dimock’s proposed distinction between law and literature is beyond the scope of this Note, I offer this brief reaction with regard to the fairy tale. First, fairy tales were collected and popularized at a time before there was such a residue: the category of crime had yet to be extricated from the broader category of sin, and justice was retributive. By our standards, we do find a number of questionable “crimes” being punished in the fairy tale and a lot of retributive justice, *see infra* Section II.B. That the tales still resonate with us today may suggest that they provide an alternative to our legal system (though notably, most fairy-tale crimes qualify as crimes today, and retribution is still alive and well in our legal system). But at the heart of Dimock’s argument is her claim that crime and criminal in the novel are ambiguous and elastic categories with multiple referents. *Id.* at 24-25. In crucial contrast, as this Note elaborates, the crimes in the fairy tale, while at times illiberal, are always clearly defined, and the criminal, the target of the discrete and specified punishment, always singular. It is in this sense that fairy tales inherently tend more toward the legal, versus Dimock’s novelistic, realm of justice.

35. MILLER, *supra* note 3, at ix.

36. *Id.* at x.

social regulation exposed by Foucault. For Miller, this “disciplinary imagining”³⁷ of the novel focused on the displacement of the police by the hidden surveillance of the private sphere; for Bender, it centered on the then-new idea of the rehabilitative penitentiary; for Brodhead, it was the replacement of corporal punishment with intimate, and consequent self-, discipline.

What becomes apparent in this brief review, however, is that my argument must also be distinguished from theirs. To be sure, like the novel, the fairy tale’s theme, form, and mode of reception are central to its disciplinary exercise. But while the discipline of and within the novel takes the Foucauldian form of an extralegal micro-power, whose efficacy depends on its disavowal of its “functional implication in a system of carceral restraints,”³⁸ this Note will show fairy-tale discipline to be remarkably similar to that of a sovereign macro-power, which is ceremonious and explicit.³⁹ In short, the fairy tale’s exclusively legal theme of crime and corporal punishment,⁴⁰ its legal structure, and its self-avowed function as an educative tool for children, casts it definitively within the category of a disciplinary script, even without Foucauldian insight, and gives it a different role to play. This role is nothing less than the raising of obedient subjects.

In addition, fairy tales may have powers of persuasion unrivaled by other forms of literature, thus situating it in a unique position to be at the center of the matrix of literary discipline. Folklorists have noted the way fairy tales in particular have a powerful influence on the people who we become, on the worlds we build. Jack Zipes points out that it is “uncanny how much we turn to this genre in all its forms to pursue our identities and the happy fulfillment of our goals. . . . In this pursuit we use fairy tales as markers to determine where we are in our journey.”⁴¹ Zipes also notes that the “manner in which [modern writers] return to [the fairy tale] to reformulate it to conceive new worlds or to reinforce our belief in the present one, indicates that we attribute great moral and ideological power

37. Brodhead, *supra* note 3, at 77-78.

38. MILLER, *supra* note 3, at x.

³⁹ See FOUCAULT, *supra* note 32, at 47-49, 53-59 (explaining his conception of sovereign forms of power).

40. By this I mean that, in contrast to the novel as conceived by Miller, Miller, *supra* note 3, at 2-8, there is no separate representation of control in the legal world of criminals and the police and control in the extralegal private world of middle-class subjects. Rather, in the fairy tale, the private realm collapses entirely into the legal realm. Not only is there an undisguised congruence of purpose, then, between these two worlds in the fairy tale, but a congruence of method.

41. ZIPES, *supra* note 1, at 9; see also Stephen Greenblatt, *Introduction* to REPRESENTING THE ENGLISH RENAISSANCE at vii (Stephen Greenblatt ed., 1988) (“[T]he work of art is not the passive surface on which . . . historical experience leaves its stamp but one of the creative agents in the fashioning and refashioning of this experience”), quoted in Tatar, *supra* note 1, at xii. For an interesting account of the ability of the transformative theme of fairy tales to guide a transsexual’s pre-operative experience, see Ronald R. Garet, *Self-Transformability*, 65 S. CAL. L. REV. 121 (1991).

to it.”⁴² Feminist literary critics Sandra M. Gilbert and Susan Gubar may have summed it up most accurately when they stated that “[m]yths and fairy tales often both state and enforce culture’s sentences with greater accuracy than more sophisticated literary texts.”⁴³ Fairy tales then, are a sort of warehouse for a society’s shared meanings and value systems; these tales both constitute and reflect a society’s mores and are a rich source of society’s commitments to ideologies generally, and specifically, to law. As such, the persuasive fairy tale may indeed approximate or even exceed the coercive power of law’s violence in shaping behavior.

Why are fairy tales so compelling? How do they exert such “force”? The next two sections delineate the primary reasons why the subgenre of fairy tales are particularly persuasive.

B. Canonicity

In order to persuade, one must be heard. As much as the canonical Tolstoy or Dickens may be able to teach us lessons, it remains the case that many people have never read these highbrow texts. The children’s canon can sustain a much greater claim to universality of influence. And surely the classic fairy tales lie at the heart of the children’s canon.⁴⁴ I daresay there are not many children or adults in the Western world who have never heard of Cinderella, Snow White, or Little Red Riding Hood.⁴⁵ To be sure, the fairy tale is a historical entity, and these stories have changed over time,⁴⁶ but the evolutionary versions retain the canonical aspects of the tales, the basic storylines and imagery. One folklorist goes as far to say that one can hardly conceive of a childhood without fairy tales and that growing up without tales implies spiritual impoverishment.⁴⁷

42. Jack Zipes, *Preface* to DON’T BET ON THE PRINCE at xi, xiv (Jack Zipes ed., 1986).

43. Sandra M. Gilbert & Susan Gubar, *Snow White and Her Wicked Stepmother*, in THE CLASSIC FAIRY TALES, *supra* note 1, at 291, 291.

44. The children’s canon did not always seem as “open” as it may today. By the end of the nineteenth century, the literary fairy-tale genre gave rise to notions of elitism by creating a canon of white, Western texts aimed at white, Western classes that knew how to read. Jack Zipes, *Breaking the Disney Spell*, in THE CLASSIC FAIRY TALES, *supra* note 1, at 332, 337. This genre has since been popularized across different cultures, classes, and races. Of course, it is important to note that although it may now be said that fairy tales fully pervade American culture, the tales may evoke different reactions from different audiences, which might track some religious, ethnic, racial, and/or social lines within our society. The nature of the influence of the fairy tale may vary across these audiences. But whether various audiences accept or reject the ideology of the fairy tale, it is clear that the tales have become a part of our collective cultural language.

45. Although this is nearly impossible to prove, I am not alone in this conviction: “One of the most striking things about children’s books is how widely they are known by adults. Probably almost everyone in America and Britain is familiar with Cinderella and Alice’s Adventures in Wonderland; not one in ten will have read James Joyce.” ALISON LURIE, DON’T TELL THE GROWN-UPS: SUBVERSIVE CHILDREN’S LITERATURE 189 (1990). Too, we know that in Germany, the Grimms’ collection of tales has been the second most widely circulated book for over a century, second only to the Bible. JACK ZIPES, FAIRY TALES AND THE ART OF SUBVERSION 53-54 (1983).

46. See *infra* notes 90, 95, 97, & 102 and accompanying text.

47. MARIA TATAR, THE HARD FACTS OF THE GRIMMS’ FAIRY TALES at xiv (1987). Consider also

Ironically, it is just this universality of influence that may lead us to overlook the tales' power in shaping our society, our truths, ourselves. As Zipes describes:

The commonplace is too often bypassed as insignificant in our daily endeavor to endow our lives with uncommon meaning. Yet the essence of our lives has been prescribed and circumscribed by common cultural discourses and filled with artifacts that we can never really bypass. For instance, we all pass through fairy tales, which inscribe indelible marks on our imagination and affect our behavior and role playing. . . . [T]heir discourse on manners and norms has contributed more to the creation of social norms than we realize.⁴⁸

When we take a moment to reflect on the tales' staying power, the way we remember them and return to them, it becomes clear that the tales of our childhood maintain a stronghold on our imaginative minds. The deep-rooted response that the canonical tales evoke are the reason their characters and narrative bits are so often found in songs, films, advertisements, jokes, and everyday speech.⁴⁹ Living up to its canonical status, the fairy tale is revered for the window it provides into human experience and its "ability to speak to the human heart."⁵⁰ The "truths" the tales provide have been deemed to be sociological,⁵¹ psychological,⁵² even spiritual,⁵³ depending on the disciplinary bent of the critic, but no one seems to dispute that fairy tales deal in fundamentals.

The canonicity of the tales is doubly relevant to the power of fairy tales. First, the presence of fairy tales in the canon means that they are widely read. Second, the acceptance of fairy tales into the canon indicates that

the comment made by Charles Lamb to Samuel Coleridge: "Think what you would have been now, if instead of being fed with tales and old wives' fables in childhood, you had been crammed with geography and natural history!" *quoted in* THE CLASSIC FAIRY TALES 8 (Iona & Peter Opie eds., 1974).

48. JACK ZIPES, THE TRIALS AND TRIBULATIONS OF LITTLE RED RIDING HOOD at xi (1983).

49. CRISTINA BACCHILEGA, POSTMODERN FAIRY TALES: GENDER AND NARRATIVE STRATEGIES 2 (1997); Alison Lurie, *Introduction* to THE OXFORD BOOK OF MODERN FAIRY TALES at xi (Alison Lurie ed., 1993).

50. STEVEN SWANN JONES, THE FAIRY TALE: THE MAGIC MIRROR OF IMAGINATION 5 (1995).

51. See Tatar, *supra* note 1, at xi ("[The tales] must be addressing issues that have a significant social function—whether critical, compensatory, or therapeutic."); JACK ZIPES, BREAKING THE MAGIC SPELL: RADICAL THEORIES OF FOLK AND FAIRY TALES 169-174 (1979); ZIPES, *supra* note 45.

52. For a classic Freudian reading of the way the fairy tale speaks to the unconscious, see BRUNO BETTELHEIM, THE USES OF ENCHANTMENT (1977). For a refutation of Bettelheim see ZIPES, *supra* note 51, at 160-65. For a critique of Freudian readings generally, see Richard Jekyns, *Phallus in Wonderland*, THE NEW REPUBLIC, October 26, 1998, at 38. For a Jungian reading of the archetypal features of the fairy tale, see MARIE-LOUISE VON FRANZ, AN INTRODUCTION TO THE PSYCHOLOGY OF FAIRY TALES (1973).

53. See Donald Haase, *Yours, Mine, or Ours? Perrault, the Brothers Grimm, and the Ownership of Fairy Tales*, in THE CLASSIC FAIRY TALES, *supra* note 1, at 353, 353.

their themes resonate with many of us and are not easily challenged. Any expression of the law that the tales promulgate thus affects us, and affects us deeply.

C. Audience

Another reason that the fairy tale may rival the power of law is that its intended audience is young children. This is not to say that the fairy tale does not speak directly to adults. Indeed it must speak to adults, if it is ever to reach young audiences: Parents, publishers, educators, and librarians must continue to be impressed by the tales before they can be passed on to children. And, truth be told, fairy tales were not always meant for children's ears alone, or even at all. The genre's roots in the oral tradition, in which women told stories to one another around the campfire or in spinning circles, remind us that no single age group has a monopoly on the fairy tale.⁵⁴ Indeed, it was not until the eighteenth century that the fairy tale became a genre for children, a move that followed the cultural emergence of the concept of "childhood" as a distinct and important developmental phase.⁵⁵ In the twentieth century, however, our society has become well aware, if not obsessed, with the childhood phase, and children are the primary audience of the fairy tale.⁵⁶ As a culture, we believe that children are unique in ways that make them especially receptive to the messages in fairy tales.

First, children are particularly impressionable. They are without the critical faculties necessary to challenge the "truth" offered by a text.⁵⁷ Thus, childhood experiences permanently shape the adults that children become.⁵⁸ Society is careful about what it prescribes for children's eyes (or ears) for many believe that the things children see affect the way they see. We believe that the stories we tell our children form their ideologies.⁵⁹ Even a few legal scholars have begun to note that "lifetime impressions of law, equity, justice, and fairness of most citizens are formed by the

54. TATAR, *supra* note 47, at xiv; ZIPES, *supra* note 51, at 176; ZIPES, *supra* note 1, at 3; Jack Zipes, *Introduction to SPELLS OF ENCHANTMENT* at xi, xi (Jack Zipes ed., 1991).

55. Zohar Shavit, *The Concept of Childhood and Children's Folktales*, in *THE CLASSIC FAIRY TALES*, *supra* note 1, at 317, 317. One folklorist suggests that the fairy tale was banished from the adult world due to the swing in literary taste toward stories of social realism and due to the association of the oral tales with the peasant class. Terri Windling, *Introduction to SNOW WHITE, BLOOD RED* 1, 3 (Ellen Datlow & Terri Windling eds., 1993).

56. Shavit, *supra* note 55, at 318.

57. Barbara Anne Murphy, *Education: An Illusion for Women*, 3 S. CAL. REV. L. & WOMEN'S STUD. 19, 29 (1993).

58. *Id.*

59. Although perhaps everyone may not believe this, it is a belief widely shared. *E.g.*, MARIA TATAR, *OFF WITH THEIR HEADS!* 192 (1987); WARD, *supra* note 2, at 90-93; Jekyns, *supra* note 52, at 38; Robin West, *Constitutional Fictions and Meritocratic Success Stories*, 53 WASH. & LEE L. REV. 995, 1004 (1996); Zipes, *supra* note 42, at xii-xiv.

jurisprudence of children's literature."⁶⁰ As Ian Ward notes,

[L]ong before arriving at law school . . . the student will already have learned from literature, and of course from life, what the essential questions are, and have already decided what the answers should be. Moreover, for the overwhelming majority of the community who never engage in the immediate study of law, these early encounters with legal literature may well be the only occasion when these issues are even seriously considered and when decisions might be reached. Only a tiny minority of the community will ever study law after the ages of around 18 or 19, but the vast majority who encounter a reasonably wide spectrum of children's literature will already have engaged in the jurisprudential debate.⁶¹

Thus, the study of the jurisprudence of fairy tales, which are very likely among a child's first encounter with law,⁶² begins to take on an added importance when we consider the malleability of children and the enduring effects of the childhood experience.

Because children are particularly vulnerable and in need of moral guidance, parents are invested in providing their children with a moral education. Books are considered to be an important tool in this regard.⁶³ We expect children's stories to teach lessons and we usually are not disappointed. A parent, whose messages typically come with the threat of enforcement, typically reads the tale and enforces the lesson.⁶⁴ The stories deemed appropriate for this purpose are those that society considers capable of instilling the "proper" values.⁶⁵ That is, unlike literature for adults, in which subversion of social constraints is celebrated, children's literature stands in service of productive socialization.⁶⁶ These books guide the child not only psychologically or spiritually, but also socially. It is this "interdisciplinary" disciplinary quality of children's literature that makes these stories especially relevant to law and literature studies. If these books teach us who we should become, shouldn't we, as legal scholars, figure out what they say and how they say it?

In addition to their impressionable audience, another reason that fairy tales have such an impact on their young readers is that their jurisprudence maps onto a child's phase of moral reasoning. Child psychologists Jean

60. Bruce L. Rockwood, *The Good, The Bad, and the Ironic: Two Views of Law and Literature*, 8 YALE J.L. & HUMAN. 533, 551 (1996) (book review).

61. WARD, *supra* note 2, at 117.

62. That fairy tales can be viewed as a type of law will be demonstrated in Part II, *infra*.

63. Shavit, *supra* note 55, at 321.

64. This hierarchical relationship between the authoritative parent and obedient child mirrors the aforementioned hierarchy of the legal system, and could be seen as effecting automatic reception to the tale. See *supra* note 24.

65. ZIPES, *supra* note 45, at 9.

66. TATAR, *supra* note 59, at xvi.

Piaget and Lawrence Kohlberg have charted a child's development in the ability to make moral judgments.⁶⁷ Nicholas Tucker and Andre Faat have adapted Piaget's theory to explain children's reception of, and response to, children's texts.⁶⁸ First, between the ages of five and ten, children's thinking is still animistic, which allows them to relate well with the fairy-tale conception of the world. For children in this age group, morality is a system of sacred rules that should be unquestionably obeyed. Goodness and badness are as clear as black and white. Children are oriented toward punishments and rewards as motivators for good behavior, and they take "intense interest in the way things 'turn out.'"⁶⁹ They believe that expiatory punishments follow transgressions and believe strongly in retributive justice. The fairy tale, with its moral absolutes and system of consistent rewards and punishments, comports well with a child's notion of justice and boldly instructs the child on the consequences of behavioral patterns. Children are able to see which behavior gets them the rewards they seek, and which behavior results in the punishments they fear. The fairy tale thus speaks directly to the minds of children.

Even as adults, the familiarity of the story, the belief that the tales are sacred, the evocative words "once upon a time," all lull the mind of the reader such that the fairy tale can continue to work its power.⁷⁰ That we allow ourselves to become entranced in the story, letting down our guard because we believe we are simply hearing a story, is precisely what allows the story to work its power of persuasion.⁷¹ And the happy endings fairy tales promise make us willing to go wherever the tales take us.⁷² Indeed, although fairy tales cannot conclude with the authority of the last sentence of a judicial opinion, "It is so ordered," they do end with the protagonist living "happily ever after," an arguably more compelling and influential

67. For a good introduction to Piaget's and Kohlberg's work on moral judgments, see HILGARD'S INTRODUCTION TO PSYCHOLOGY 81-83 (Rita L. Atkinson, Richard C. Atkinson, Edward E. Smith, Daryl J. Bem, & Susan Nolen-Hoeksema eds., 1996).

68. Nicholas Tucker's work is discussed by Ian Ward in WARD, *supra* note 2, at 94-98. Andre Faat's work is discussed by Jack Zipes in ZIPES, *supra* note 45, at 177-78.

69. Marcia K. Lieberman, *Some Day My Prince Will Come*, in DON'T BET ON THE PRINCE, *supra* note 42, at 185, 187.

70. This "relaxing" of intellectual vigor is described by Harlon L. Dalton, *Storytelling on Its Own Terms*, in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW, *supra* note 2, at 57, 57. Folklore critics also lament this tendency. Tatar, *supra* note 1, at xii ("[T]he overvaluation of fairy tales promotes a suspension of critical faculties and prevents us from taking a good hard look at the stories that are so obviously instrumental in shaping our values, moral codes, and aspirations."); ZIPES, *supra* note 45, at 11 ("[Fairy tales] are historical prescriptions, internalized, potent, explosive, and we acknowledge the power they hold over our lives by mystifying them.").

71. Cf. Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943 (1995) (arguing that the most successful attempts to coerce acculturation are those that are not recognized as a coercion).

72. See GUROIAN, *supra* note 15, at 20 (arguing that providing a compelling vision of goodness in the form of story is far more persuasive than an exhortative lesson in rules of morality).

ending.⁷³ Since all of us want a happy ending, might we not emulate what has worked for our favorite protagonist?

The fairy tale, then, is not only a desirable subject of study for legal scholars, but a necessary subject. Given its unparalleled exposure and its ability to speak to impressionable minds, the fairy tale is a most influential genre. It is time that we return once more to the tales to examine the lessons they teach.

II. LAW IN THE FAIRY TALE: POETIC JUSTICE

A. *The Fairy Tale as a Legal Text*

It may surprise my readers that I have been referring to fairy tales as a source for an education in law. After all, aren't fairy tales about magic spells, wicked witches, and faraway kingdoms? While it is true that they traffic in the fantastic, it is also true that fairy tales make it their primary business to punish the bad and reward the good, and to teach readers the boundary between the two. In this sense, the goals of the criminal justice system and of the fairy tale are quite in accordance: find the truth, convict the guilty, and acquit the innocent. The tales simply rely more on magic than due process to get the job done.⁷⁴ German literary critic Gerhard Mueller points out that "virtually every tale in the Grimm collection contains a message of law—of justice, of punishment, or of pardon."⁷⁵ This statement resonates with all of the classical tales.

Perhaps it should come as no surprise then, that the legal world has had quite an influence on fairy tales. Both Charles Perrault and the Brothers Grimm, the authors of the best-known tales, had degrees in law before turning to collecting tales.⁷⁶ Turning from the practice of law to the writing of children's tales may seem like quite a career change, but not so to the Brothers Grimm. For one thing, Jacob Grimm studied under

73. Both Peter Brooks and Paul Gerwitz, in their introductory notes to *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW*, *supra* note 2, at 10, 20, note that this ending of the judicial opinion is the epitome of the coercion/persuasion dichotomy. I cannot help but recall the childhood fable in which the sun and wind are in a contest to remove a man's coat. The wind first tries to force the coat off, which only causes the man to wrap the coat tighter around himself. The sun then shines gently upon him, which soon results in the man stripping off the coat. The moral: Persuasion is stronger than force.

74. At times, however, the Supreme Court's faith in the powers of due process may seem to approach the level of mystical belief. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Miranda v. Arizona*, 384 U.S. 436 (1966). For a comical account of fairy-tale characters turning to the legal systems to right wrongs, see DAVID FISHER, *LEGALLY CORRECT FAIRY TALES* (1996) (featuring "cases" such as Jack "Doe" and Jill "Doe" v. Imperial Bucket Corporation, *Re Snow White: Notice to Cure under Penalty of Law*, *Frog Prince v. Wicked Witch: Request for Immediate Injunctive Relief*, and *Tailor v. Emperor: Motion for Summary Judgment*).

75. Mueller, *supra* note 15, at 217.

76. Angela Carter, *Foreword to THE FAIRY TALES OF CHARLES PERRAULT* 10 (Angela Carter trans., 1977); Tony Weir, *Friendships in the Law*, 6 & 7 TUL. CIV. L.F. 61, 81-82. Also of note, the Grimms' father was a local judge. *Id.* at 81.

Friedrich Karl von Savigny, the founder of the concept of “living law” discussed above, and considered his work with fairy tales to be heavily influenced by his legal background.⁷⁷ The tales the Grimms preserved for us were historically accurate in terms of the punishment meted out for various crimes in the Middle Ages, the period of origin of the classic tales.⁷⁸ For example, in *Hansel and Gretel*, the witch meets her end in a fiery oven, mimicking the historically dominant form of punishment for witchcraft. Consequently, in collecting and distributing fairy tales, the Brothers Grimm may have found a natural outlet for their own understandings of law.

So, fairy tales and law are not strange bedfellows after all. In fact, more and more professionals are coming to realize the link between fairy tales and law. For example, the fairy tale has been recognized as a useful tool in opening and closing statements.⁷⁹ One lawyer even considered donating a book of Grimms’ fairy tales to her law school library after realizing that lawyers and judges rely on fairy tales to argue and settle complex legal disputes.⁸⁰ Educators see the fairy tale as a way to teach law-related concepts;⁸¹ law and literature scholars are beginning to include fairy tales in their curriculums;⁸² criminologists are even considering turning to fairy tales as rehabilitative tools in offender therapy.⁸³

The bridge between fairy tales and law has thus been built from both sides. Law has made an imprint on the fairy tales, and fairy tales have, in turn, become one of law’s tools.

B. Rewarding the Good and Punishing the Bad

Charles Perrault, one of the first authors to gather the classic fairy tales in a written collection, said of his tales, “Virtue is rewarded everywhere and vice is always punished.”⁸⁴ A brief cataloging of our favorite tales

77. Mueller, *supra* note 15, at 218; Weir, *supra* note 76, at 81 (“What can I say of Savigny’s lectures but that they had the most profound effect on me and constituted the most decisive influence on my whole life and study?”) (quoting I J. GRIMM, *KLEINERE SCHRIFTEN* 6 (1864)).

78. *Id.* at 220-25 (cataloging the range of fairy-tale crimes and punishments and finding historical precedents).

79. Robert L. Hollingshead & John C. Maloney, Jr., *The Opening Statement*, 194 N.J. LAW. 16, 18 (Dec. 1998); Gerald P. Shea, et al., *The Closing Argument*, MASSACHUSETTS SUPERIOR COURT CRIMINAL PRACTICE MANUAL § 19.3.4 (1999).

80. Colleen M. Ball, *Happily Ever After, Ruled by Law*, USA TODAY, Jan. 5, 1999, at 17A.

81. Lynda Campbell Clark, *Educators Focus on Thinking Critically and Acting Responsibly*, 40 ADVOCATE (Idaho) 22, 22 (Sept. 1997); Hon. Ronald W. Lowe, *Law-Related Education – One Judge’s Perspective*, 77 MICH. B.J. 792, 793 (1998) (suggesting the use of fairy-tale characters in mock trials, such as the prosecution of Gold E. Locks for trespass).

82. Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665 (1995) (surveying different texts used in law school classes across the nation).

83. C. Lewis Holton, *Once Upon a Time Served: Therapeutic Application of Fairy Tales within a Correctional Environment*, 39 INT’L J. OF OFFENDER THERAPY 210, 210 (Fall 1995) (“Should we not at least try a bit of magic?”).

84. CHARLES PERRAULT, *Preface* to *CONTES DE PERRAULT* 3 (Gilbert Rouger ed., Garnier, 1967)

proves this statement to be a cardinal rule of fairy-tale jurisprudence.⁸⁵ In Perrault's *Little Red Riding Hood*, the disobedient child is eaten by a wolf. In his *Sleeping Beauty*, snakes, reptiles, and vipers have their way with the murderous mother-in-law. In Madame de Beaumont's *Beauty and the Beast*, the compassionate Beauty is rewarded with a handsome prince, while her pretentious sisters are turned to stone. In *Bluebeard*, a curious wife is sentenced to death by her husband, who is in turn killed for his murderous plotting. In the Grimms' version of *Little Red Riding Hood*, the child is ultimately saved, but not before being swallowed by the wolf, who in turn is killed by hunters. In the Grimms' *Cinderella*, the humble protagonist is rewarded with marriage to a prince. Her evil stepsisters do not fare nearly as well: doves peck out their eyes. In the Grimms' *Snow White*, innocent and industrious Snow White is again rewarded by marriage to a prince, while her envious and wicked stepmother is forced to dance in red-hot iron shoes until she burns to death at Snow White's wedding ceremony. Finally, in *Hansel and Gretel*, the resourceful children are rewarded with riches, while the cannibalistic witch burns in the fiery oven.

The fairy tale culminates in the dispersal of these deserved fates. The final scene of the fairy tale juxtaposes the rise of the heroine with the fall of the villain such that it seems that the two are interdependent. The heroine can only live happily ever after if the villain is forever extinguished, and the happiness of the heroine is like salt in the villain's wound.⁸⁶ Forgiveness is a rare event in fairy tales; revenge is much more common, and the justice in the fairy tale is primarily retributive in nature. The punishments meted out serve well in this regard, for they are often the very tortures that the villains hoped to use on the hero. Thus, the ruling order of the day is an eye for an eye. For example, the witch in *Hansel and Gretel* is put in the oven that she had been warming for Hansel. The envious mother-in-law in *Sleeping Beauty* is devoured in a pit of snakes and vipers that she had intended for the heroine. A particularly artful example of this comes in the lesser known Grimm tale, *The Goose Girl*.⁸⁷ There the false bride is asked by the savvy King what punishment should be given to an impersonator. The unsuspecting villain answers that the perpetrator should be stripped naked, put in a barrel studded with nails, and dragged to death by two white horses. The villain thus seals her own

(1695), quoted in and translated by ZIPES, *supra* note 45, at 16.

85. All of these tales, except for Grimms' *Cinderella*, are collected in THE CLASSIC FAIRY TALES, *supra* note 47. Grimms' *Cinderella* can be found in BROTHERS GRIMM, *Cinderella*, in GRIMMS' FAIRY TALES 155 (E.V. Lucas & Marian Edwardes trans., 1945).

86. This notion is underscored in *Snow White*, in which the death dance is performed at Snow White's wedding and functions as a sort of wedding present. Too, the stone sisters in *Beauty and the Beast* are stationed at Beauty's gate and are explicitly sentenced to behold her happiness for the rest of her days.

87. BROTHERS GRIMM, *supra* note 85, at 67.

fate as the King punishes her with her own invention. This justice is not simply retributive; it is also poetic. The wicked get *exactly* what they deserve. It is not just that the bad people lose and lose big; rather, they lose in the way they had intended to win. Even though *Cinderella* does not follow this rule, physical mutilation by birds may be seen as the logical just deserts for Cinderella's vain sisters, who were willing to chop off their toes and heels to fit into the glass slipper in their efforts to defraud Cinderella.⁸⁸ This jurisprudence is particularly satisfying and comforting to the child and adult, and both take delight in the graphic depictions of vindictive punishment.⁸⁹ Indeed, in the economy of the fairy tale, much narrative energy is invested in describing inventive acts of vengeance, dwarfing the less sensational descriptions of reward. And as Maria Tatar asks, "Who can help but be more fascinated by punishment? How can a happy return home rival the depiction of decapitation?"⁹⁰ One version of *Snow White* said it best: "revenge can be as sweet as love."⁹¹

The fairy tale's tendency to comfort its audience by satisfying our expectations for happy and just endings is another basis for drawing analogies to law. Law is also a source of comfort, for it too attempts to sustain the fiction that the law gets everything right in the end. One might imagine congruence between the pleasure in reading a fairy-tale ending and the smug satisfaction in that old legal proverb, "The wheels of justice grind slow, but exceedingly fine." Our susceptibility to the fiction of the tale in childhood and the fiction of the law in adulthood derives from our desire to believe in a just world. This desire is so strong that it prevents the latter from being framed as fiction, thus leaving open the possibility of manipulation. The promise of a just world is also what allows us to overcome our inhibitions to violence and revel in the depictions of punishment.

The harsh endings of fairy tales, in addition to providing comfort, teach a simple lesson: Misbehave, and you will be sorry. This is the law "in" fairy tales. Every trace of the malignant force is destroyed in the tale—a powerful message for any child who is thinking of breaking the rules. The pedagogy of fear was an important tool for Perrault and Grimm, who

88. This logic was noted by MAX LUTHI, *ONCE UPON A TIME* 62 (1970). Mueller notes that blindness is also the historically prescribed punishment for serious frauds. Mueller, *supra* note 15, at 223.

89. Ellen Datlow, *Introduction to SNOW WHITE, BLOOD RED*, *supra* note 55, at 17-18 (arguing that the tales that touch us most deeply are often the most violent); TATAR, *supra* note 47, at 20-21 (reporting that children "howled with delight" at the grisly episodes); TATAR, *supra* note 59, at 34-35 (arguing that children and adults derive pleasure from seeing the villains punished and recounting a telling anecdote in which a child is disappointed when a villain was rescued from the threat of a terrible death). Children are so mesmerized and entranced by violence that the message of the fairy tale may be that much more compelling.

90. TATAR, *supra* note 59, at 53.

91. J.K.A. Musaus, *Richilde*, in *VOLKSMARCHEN DER DEUTSCHEN* 115 (1976), *quoted in id.* at 175.

consciously designed their fairy tales as guides for personal conduct.⁹² Though Perrault wrote in seventeenth-century France and the Grimms in nineteenth-century Germany, they both sought to use the tale to shape national character, be it French civilité⁹³ or German obedience.⁹⁴ Thus, there was a new “discourse” between these tale collectors and society,⁹⁵ and it was at this point that fairy tales became maps for children, charting the behaviors that would lead to reward, and those that would not. That many of their stories have become classics in children’s literature suggests that they have had made their lessons known.⁹⁶

To rewrite these tales as morally edifying stories suitable for children required some editing.⁹⁷ The collection of oral tales that served as raw material was originally meant for adults, and often contained burlesque violence and flagrant sexuality.⁹⁸ Sexual themes were typically excised altogether,⁹⁹ but violent episodes were often retained and sometimes exaggerated or even added, once they were justified as punishments for transgressions and thus served to socialize children.¹⁰⁰ Though

92. TATAR, *supra* note 47, at 3-38; TATAR, *supra* note 59, at xxi, ZIPES, *supra* note 45, at 16-48. ZIPES, *supra* note 1, at 3-5; Zipes, *supra* note 54, at xix, xxiv. Fairy tales were not always used for this purpose; the meaning and function of the fairy tale changed over time as the socio-political context of the tale shifted. Peasant women were the primary purveyors of the original oral tales, and many suggest the tales were at that time used by women to comment on their times and to provide instructional lessons about troubles women actually faced. TATAR, *supra* note 47, at 49. For example, *Cinderella* is about triumphing over a wicked stepmother, a common figure in the days of high mortality rates during childbirth. Folklorists also suggest that the folk used the tale symbolically to rebel against the inequities of the times, as in the case of stories subverting primogeniture or prizing hard work over birthright. Tatar, *Tests, Tasks, and Trials in the Grimms' Fairy Tales*, in 13 CHILDREN'S LITERATURE 31, 31-36, 45 (1985). When the tales evolved from their oral form into books directed at children, fairy tales took on an altogether new purpose. Rather than subvert or merely reflect the political status quo, Perrault and Grimm sought to affirm and influence it.

93. Zipes, *supra* note 54, at xix.

94. Haase, *supra* note 53, at 355 (“Fairy tales were to provide Germans with a magic mirror in which they could discern and thus reassert their national identity.”).

95. See ZIPES, *supra* note 45, at 3. Zipes describes the process of writing as an intervention in a discourse about power and social relations.

96. See, e.g., ZIPES, *supra* note 1, at 34.

97. TATAR, *supra* note 59, at 38-49. The Grimms inserted scenes to emphasize the virtues of hard work. They made Snow White a dutiful maid to the dwarves so as to justify her attainment of reward. Prohibitions in the tales were recast as general instructions. TATAR, *supra* note 47, at 29, 166. Perrault even ended his tales with short morals. THE FAIRY TALES OF CHARLES PERRAULT, *supra* note 76.

98. For example, the earliest renditions of Little Red Riding Hood feature her doing a striptease for the wolf and eating her grandmother’s flesh and blood. ZIPES, *supra* note 48, at 4-8.

99. The banishment of sexual themes may be seen as another law of fairy tales. Collectors attempted to retain canonical aspects of the oral tales, while making them suitable for children. This meant removing all references to incest, rape, and pregnancy. Early versions of *Sleeping Beauty* feature a not-so-chivalrous prince who, though already married, rapes the sleeping girl and impregnates her. In *The Frog Prince*, the princess once had to have intercourse with the frog before he was transformed into a prince. Early versions of *Cinderella* made her the victim of an incestuous father. These versions are unknown today because Perrault and Grimm “cleaned up” the tales. TATAR, *supra* note 47, at 3-38 (tracing the Grimms’ editing process in terms of sexuality and violence); Iona & Peter Opie, Introduction to THE CLASSIC FAIRY TALES, *supra* note 47, at 13, 81; Tatar, *supra* note 1, at 103.

100. Tatar discusses at length the collectors’ belief that a higher moral purpose demanded (or

unabashedly cruel, these violent scenes intimidate and coerce children into good behavior.¹⁰¹

Despite the socializing and sanitizing efforts of Perrault and the Grimms, some parents and educators still objected to the heavy-handed justice of fairy tales, and the harsh acts of violence they contained.¹⁰² These adults often enlist such gruesome acts as Cinderella's sisters splicing off their own toes and heels and of having their eyes plucked out by doves as evidence that the tales are not for children.¹⁰³ Yet for most readers, there is no punishment too severe for the treacherous acts of fairy-tale villains; Perrault's *Cinderella*, one of the few tales to end in reconciliation, seems too mild to fairy-tale audiences.¹⁰⁴ And any adult who tries to censor fairy-tale punishments risks being discovered by a child who knows the true tale.¹⁰⁵ Most readers would say, as long as the punishment fits the crime, "Let the torture begin!"¹⁰⁶

There are some tales that subvert the cardinal rule that the good will be rewarded and the bad punished. At times, minor infractions are punished too harshly. For example, Little Red Riding Hood is devoured for dilly-dallying in the forest.¹⁰⁷ Indeed, in this case, the punishment was even too

justified?) scenes of savage violence and sadistic impulse. TATAR, *supra* note 59, at 4-47. For the editing changes, see TATAR, *supra* note 47, at 3-38. For example, Tatar reports that the doves' revenge does not appear until the Grimms' second edition. *Id.* at 6. The Grimms did, however, make some of the violence easier to take. For example, they preserved the sacred notion of motherhood by changing Snow White's nemesis from mother to stepmother. *Id.* at 24.

101. The use of scare tactics to socialize children has always been seen as an effective tool of socialization. At the time the tales were collected, children in many societies were still required to watch executions as a lesson in the price of criminal behavior. TATAR, *supra* note 59, at 8, 46-47.

102. LURIE, *supra* note 45, at 16-17; TATAR, *supra* note 47, at 15-17, 185-90; Jack Zipes, *Introduction to DON'T BET ON THE PRINCE*, *supra* note 42, at 1.

103. Tatar, *supra* note 1, at 101. In truth, this tale by the aptly named Brothers Grimm may be considered tame by some standards. Cinderella tales often feature the villains being boiled in oil, torn apart by wild animals, or rolled down hills in barrels spiked with nails. TATAR, *supra* note 59, at 131. Again in Grimms' defense, while their wicked stepmother only demands Snow White's heart, another version has her ordering bottles of Snow White's blood stoppered by her toes! Tatar, *supra* note 1, at 74. *But see, e.g.* David B. Kopel, *Massaging the Medium*, 4 KAN J.L. & PUB. POL'Y 17, 18 (1995) (reporting that a content analysis of Grimms' fairy tales found them to be much more violent than prime-time television).

104. This general reaction is reported by LUTHI, *supra* note 88, at 62-63 and by TATAR, *supra* note 59, at 31; *see also* BETTELHEIM, *supra* note 52, at 147 (arguing that forgiveness of the sisters does not seem fitting to the child's mind). Even Walt Disney, the primary bowdlerizer of the Grimms' tales did not have scenes of reconciliation in his films. Though he excised the red-hot shoe dance of death from his film *Snow White*, he does have the wicked stepmother killed by a rolling bolder that she intended for the dwarves.

105. *See* BETTELHEIM, *supra* note 52, at 147 (giving an account of a seven-year-old child who demanded to hear the episode about the red-hot shoes after an anxious adult tried to skip over this scene). Bettelheim argues that the child needs to hear about the punishment so that he or she can feel secure in the world. *Id.*

106. For the theory that we are all "closet retributivists," *see* MICHAEL S. MOORE, *LAW AND PSYCHIATRY* 241-43 (1984); Michael S. Moore, *The Moral Worth of Retribution*, in *RESPONSIBILITY, CHARACTER AND THE EMOTIONS* 179 (Ferdinand Schoeman ed., 1987).

107. Maria Tatar singles out this tale as an example of a disproportionate punishment. TATAR, *supra* note 59, at 36.

much for the Grimms. They altered Perrault's text so that Little Red Riding Hood is rescued from the wolf's belly by a hunter, who then kills the wolf. The Grimms also emphasized the mother's prohibitions in the opening scene to highlight the child's disobedience and the need for punishment. This tamer version is more widely known today.¹⁰⁸

In other tales, shocking violence is visited randomly upon innocent victims. In *Herr Korbes*,¹⁰⁹ for example, an innocent man is assaulted in his own home. Although the Grimms try to salvage the morality of the tale with the ending "Herr Korbes must have been a very wicked man," we have no evidence of any wrongdoing. In *The Juniper Tree*,¹¹⁰ a stepmother decapitates her stepson, chops him into pieces, and serves him to her husband in a soup. Though she comes to a horrible end herself, the death of the innocent boy is too painful. Over time, we have concluded that these tales are too disturbing, and we have accordingly banished them from the fairy-tale canon.

This sanitization of fairy-tale violence is an important move, which strengthens the analogy between fairy tales and law. Violence is pervasive in fairy tales. Indeed, law may be violent and literature merely persuasive, but literature's persuasiveness here takes a violent cast. In fairy tales, as in law, the spectacle of violence puts power on display in a visibly intense way. In both discourses, the persuasiveness of violence depends upon the expurgation of some violence, namely, unjustified violence. If violence is directed toward those who are undeserving, it loses any claim on shaping behavior, for it is no longer punishment. Even where punishment is clearly deserved, and violence is necessary, an implicit tenet of liberalism requires restraint and proportionality, lest the agent of the punishment seem no different than the object of punishment.¹¹¹ This demands a certain economy of punishment. Thus, the display and the expurgation of violence in the fairy tale is an attempt to find the "right" amount of violence, a necessary quest once fairy tales were co-opted into a disciplinary function.

Interestingly, the "eye for an eye" version of poetic justice settled upon in fairy tales is the same retributive balance found in biblical law, Hammurabi's Code, and other early legal systems. The aesthetic connection between crime and punishment is also reflected in the classic penal practices of cutting off the hands of a thief, or splicing the tongue of a blasphemer. Though modern societies no longer reflect this primitive version of justice, the quest for the proper balance between crime and punishment characterizes the penal reforms of the past few centuries. Capital punishment (often preceded by torture) and other corporal punishments used to be common for a wide range of crimes; such

108. ZIPES, *supra* note 48, at 14-19.

109. This tale is summarized by Tatar. TATAR, *supra* note 59, at 163-64.

110. Tatar summarizes this tale, noting its harshness. TATAR, *supra* note 47, at 3.

111. FOUCAULT, *supra* note 32, at 9, 57-59.

punishments were ceremonious, occasioning a public carnival. Today, corporal punishments are in disfavor; the death penalty has been sanitized and privatized, and largely replaced by imprisonment. This shift from the spectacular, individually-tailored punishments aimed at the body, to non-spectacular, generalized punishment aimed at the soul, can be seen as a move to keep the law in touch with contemporaneous notions of fairness and effective punishment.¹¹² The Supreme Court's Eighth Amendment jurisprudence can be seen as a further attempt to refine this development. The Court has held that the cruel and unusual punishment clause "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."¹¹³ Over time, the clause has been interpreted as prohibiting torture, limiting capital punishment, and proscribing other punishments deemed to be of excessive length or severity.¹¹⁴ Although the fairy-tale punishments have never shifted from the corporal, one can detect a parallel cleansing method in the exclusion of certain stories of violence, and the inclusion of others.

Thus, in the fairy-tale genre, as in law, "bad precedents" get retired as the system works itself pure.¹¹⁵ Stories that fail to reach the proper "outcome," like *Herr Korbes* or *The Juniper Tree*, are left behind, much like cases which are overruled and fall into disfavor, like *Plessy v. Ferguson*¹¹⁶ or *Lochner v. New York*.¹¹⁷ They cannot be relied upon to chart the path of future conduct and indeed, in an important sense, they lose their status as "fairy tales" and "law," respectively. In this sense, both law and literature are discourses that need to exclude competing narratives in order to sustain their claim that the values they advance are inevitable

112. *Id. passim*.

113. *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

114. For a brief history of Eighth Amendment jurisprudence, see *Furman v. Georgia*, 408 U.S. 238 (1972) (Marshall, J., concurring).

115. There is a distinction to be made here between law and the tales in the method of exclusion employed. As Balkin and Levinson remark, bad cases remain a part of the legal canon; they reverberate today because law students still learn about them, academics still comment upon them, and the Supreme Court may still refer to them, if only to disdain their reasoning or interpretation. In contrast, bad literature is eliminated entirely from our literary canon. J.M. Balkin and Sanford Levinson, *The Canons of Constitutional Law*, 111 HARV. L. REV. 963, 981-84 (1998). One might question whether this points to a larger difference between law and literature in terms of how the disciplines deal with their paths through history. Perhaps it demonstrates that law is evolutionary (in that we embrace and constantly refer to the past, even if we reject some aspects of it), while tales are revolutionary and ahistorical (in that there is no reference to a previous version of the story in the present version). But this distinction may not hold true for the modern revisionist tales, discussed *infra* note 164, and accompanying text, many of which either implicitly or explicitly rely upon a reader's familiarity with the classical, canonical tales that they hope to subvert. See, e.g., DONALD BARTHELME, *SNOW WHITE* (1967); A.S. BYATT, *The Eldest Princess*, in *THE DJINN IN THE NIGHTINGALE'S EYE: FIVE FAIRY STORIES* (1994); Robert Coover, *The Dead Queen*, in *SPELLS OF ENCHANTMENT*, *supra* note 54, at 702; Tanith Lee, *When the Clock Strikes*, in *SPELLS OF ENCHANTMENT*, *supra* note 54, at 758; James Thurber, *The Little Girl and the Wolf*, in *THE TRIALS AND TRIBULATIONS OF LITTLE RED RIDING HOOD*, *supra* note 48, at 209.

116. 163 U.S. 537 (1896).

117. 198 U.S. 45 (1904).

and just. *Herr Korbes* and the like have slipped into obscurity because they do not teach redeeming lessons to our children and are thus not fit to be selected as our culture's stories, our children's favorites.¹¹⁸ Through the mechanisms of selection, elimination, and reward, the fairy tale's social order, and our own, become fixed.¹¹⁹

In sum, the work of Charles Perrault and the Grimms set a precedent that has been followed for centuries of fairy-tale jurisprudence. This precedent impacts not only the characters in the tale and the readers who hear their stories, but also the creators of tales. The good *must* always be rewarded and the bad *must* always be punished. If we think of law as a set of institutionally imposed rules that compel certain behavior, we can begin to see the fairy-tale genre as its own institution, promulgating this cardinal rule. This thematic demand on the fairy tale is well-served by the formal narrative rules of the genre. That is, the narrative pattern that is common to all of the classic tales allows the law to be expressed. It also heightens the intensity with which the messages of law reach the reader. It is to these rules of form that we now turn.

III. THE LAW OF THE FAIRY TALE: GENRE RULES

In addition to imposing thematic requirements on works, literary genres also regulate the expression of narrative through the enforcement of genre rules.¹²⁰ The prime example of a rule-bound literary form is poetry. The sonnet and haiku, with their proscribed number of lines, rhyme, and meter, and even more dramatically the sestina, with its constrained word choice and word arrangement, illustrate the rigor of certain poetic laws.¹²¹ But poetry does not have a monopoly on genre rules.¹²² To some extent, all literary genres have rules.¹²³ And the fairy tale is certainly no exception; it is a genre rich in narrative regulation.

118. This is the explanation offered by Maria Tatar in TATAR, *supra* note 59, at 171-89.

119. For a general discussion of these processes see ZIPES, *supra* note 45; ZIPES, *supra* note 48.

120. For an elaboration on these contentions, see ZIPES, *supra* note 45, at 4; Zipes, *supra* note 54, at xxvi.

121. Indeed, Barbara Johnson begins her essay *Anthropomorphism in Lyric and Law* by musing on why law-and-literature scholarship has not focused on lyric poetry, the most law-abiding of the literary genres. Barbara Johnson, *Anthropomorphism in Lyric and Law*, 10 YALE J.L. & HUMAN. 549, 550 (1998). Johnson goes onto note that Wordsworth compared the sonnet to a prison; Keats compared it to a bound woman. *Id.*

122. Indeed, as Derrida rhetorically suggests, quite the opposite is true. "[C]an one identify a work of art . . . especially a work of discursive art, if it does not bear the mark of a genre? . . . [I]f a genre exists, then a code should provide an identifiable trait . . . authorizing us to determine . . . whether a given text belongs to this genre . . ." Jacques Derrida, *The Law of Genre*, in GLYPH 7: TEXTUAL STUDIES 202, 211 (Samuel Weber ed., Avital Ronell trans., 1980).

123. To cite some more examples, in drama, the Greek idea of the three unities (unity of time, place, and action) could fairly be characterized as law. A riddle demands a question to be followed by an answer. In the novel, the requirements of characterization, plot, climax, and denouement give structure to the piece. And, of course, more subtle laws of intelligibility hold in all prose forms. In this sense, literature is riddled with law.

In fairy tales, the narrative rules serve the tale's thematic goals. Substance dictates form and form reinforces substance. This may make fairy tales unique among the other strictly regulated genres.¹²⁴ At any rate, it makes the fairy tales more analogous to case law, where substance and form also, seemingly naturally, shape one another. In this Part, I will draw parallels between the stylistic strategies of law and the fairy tale to reveal the ways in which fairy tales, like case law, are perfectly designed to present absolutist codes of conduct in stories where the outcomes seem inevitable.

A. A Single Message: The Holding

The first rule of the fairy tale is that every tale must have a single message: Obey your parents, or you will be sorry; the lazy and selfish are punished while the industrious and kind are rewarded; curiosity leads to trouble; jealousy gets you burned. As noted previously, Perrault made these messages explicit by ending his tale with short morals.¹²⁵ That an entire story can be distilled to one moral makes fairy tales strikingly similar to judicial opinions, which can be likewise reduced to holdings. As a reader of the fairy tale, just like the reader of a case, you anticipate its single pronouncement, and you recognize it when it arrives. Having read the tale and reached its message, you are led to believe you have learned something about the ways of the world. This simplicity of theme, this primacy of a single moral, plays a central role in guiding conduct: It ensures that the message will be sought, the pronouncement perceived, and the lesson learned.

B. Economy of Prose: Paring Down the Facts

Surrounding the single message is a story marked by a strict concision of narrative, a narrative economy.¹²⁶ Structuralist Vladimir Propp called this a "distinctive poetics";¹²⁷ Angela Carter put it more bluntly: "there is not an ounce of flab on any of the stories."¹²⁸ Of course, part of the beauty of the genre is its ability to speak volumes in only a few carefully worded

124. One could see how the strict requirements of the sestina or even sonnet could trump certain substantive goals. In the fairy tale, by contrast, substance and form exist comfortably with one another.

125. See note 97, *supra*.

126. See TATAR, *supra* note 47, at 66-68 (arguing that the fairy tale is subject to much stricter laws of expression than most other forms of literature due to the censorship exercised by the audience of tales); see also JONES, *supra* note 50, at 8-30 (identifying some of the most salient characteristics of the genre).

127. Vladimir Propp, *Folklore and Literature*, in *THE CLASSIC FAIRY TALES*, *supra* note 1, at 378, 378 ("[F]olklore possesses a most distinct poetics, peculiar to it and different from the poetics of literary works. Study of this poetics will reveal the incomparable artistic beauty of folklore. Like literature, it is a verbal art.")

128. Carter, *supra* note 76, at 17.

passages.¹²⁹ However, this pared down prose is important for more than mere aesthetic tastes. It also ensures that the only story that gets told is the one that supports the tale's moral. Indeed, the pedestrian prose ensures that every word is in service of the message. Plots are kept to simple conflicts, and it is immediately made clear who deserves to be the ultimate victor. This economy of prose is mirrored in legal cases. Here, too, judges tell pared down legal stories, the facts that support the holdings, rather than the full, more multi-faceted and ambiguous story. In both genres, the concision of narrative makes the dispersal of fates to be a matter of course.

By keeping everything in the story tied to the outcome and the moral it embodies, the fairy tale also functions to encourage readers to anticipate these "necessary" fates. No characters are introduced unless and until they are necessary for the story.¹³⁰ Accordingly, in tales of three siblings, we know that we must wait until the youngest meets his or her fate before the tale can end. So too, in legal opinions, we know that any person introduced in the fact-narrative will play an indispensable role in the reasoning or outcome of the case.

Moreover, the sparse fact pattern of the fairy tale dictates that characterizations remain basic. Characters are often named only by their relationship to the protagonist, and even the protagonist may not be named.¹³¹ There is no evolution of character.¹³² A few simple words may describe the character's appearance, or station in life, but most character traits are translated into elements of plot in the fairy tale, which has a distinct inclination for showing rather than telling.¹³³ These conventions, in turn, function in two additional ways to serve the fairy-tale theme. First, the simple characterizations encourage the reader to map her own cast of life's characters onto the nameless fairy-tale figures.¹³⁴ Second, the preference for action ensures that the fairy tale displays acts, which are punished or rewarded in the fairy-tale ending, rather than mere thoughts, which are not. Law shares this emphasis on acts; it does not usually punish

129. Fairy-tale authors admire this aspect of the genre. E.g., Joyce Carol Oates, *In Olden Times When Wishing Was Having*, in *MIRROR, MIRROR ON THE WALL* 247, 256 (Kate Bernheimer ed., 1998).

130. Defense lawyer Alan Dershowitz laments the influence that this narrative rule has on juries as they piece together a trial's story: In life, a gun introduced in Act I is not necessarily used to shoot someone in Act III. Alan Dershowitz, *Life Is Not a Dramatic Narrative*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW*, *supra* note 2, at 99-105.

131. Opie, *supra* note 99, at 15; TATAR, *supra* note 47, at 61.

132. Oates, *supra* note 129, at 252.

133. For example, The Queen in *Snow White* is shown to be vain and envious through her conspiracy to kill Snow White.

134. Cf. LUTHI, *supra* note 88, at 24 (arguing that the simple characterizations signify that the fairy tale is not concerned with individual destinies, but with that of all of mankind) and 126 ("The events and characters in the genuine fairy tale have such strong symbolic appeal. The principal actors in the fairy tale are neither individuals, nor character types, but merely figures, and for just this reason can stand for a great many things.").

the *mens rea* unless it is paired with an *actus reus*.¹³⁵

C. Low Tolerance for Ambiguity

The fairy tale's focus on action over thought is symptomatic of a broader stylistic strategy that is also no stranger to law: a low tolerance for ambiguity. Fairy tales and judges do not seek to multiply possibilities, but rather to speak in absolutes, so that they can arrive at a single, defensible outcome. Actions require no explanation. As such, they can more easily be understood and judged. Through action, the characters in fairy tales are shown to be either wholly good or evil. And both good and evil are personified in nearly every fairy tale.¹³⁶ This clear opposition makes it easy to delegate rewards and punishments at the end of the tale. It also means that there will be no mercy for the enemy. Having no redeeming qualities, the villain fails to command our pity. Unlike other literary works, but very much like law, there is no universalization of guilt, because only the truly evil are guilty.¹³⁷ It is just this dynamic that makes us accept and even delight in the retributive justice of the fairy tale.

The lack of ambiguity in the calculus of the fairy tale also leads to a

135. It may be more thorough to note that there is some room for ambiguity here in both the tales and the law as to whether thoughts themselves are punishable. It is true, for example, that in the tales, the mere fact that a person is said to be envious is a condemnation of that person; yet envy is not an act. By the same token, some types of law do punish thoughts. The thought element of a hate crime, for example, might bring on a greater punishment even if the act itself is indistinguishable from a crime motivated by something else. In general, however, the primary focus of both the law and the tales is on acts. While thoughts may be a reason to dislike a fairy-tale character, the tale never leaves the issue to mere thoughts; it is the actions of that character that occasion and secure the ultimate imposition of reward or punishment. Likewise, in law, while hate-motivated crimes may be cause to further condemn the offender, it is the ensuing act itself that brings the offender into the arena of formal criminalization.

136. Bettelheim argues that since polarization dominates the child's mind, it also dominates the fairy tale. BETTELHEIM, *supra* note 52, at 8-9. Vigen Guroian echoes the notion that children are intensely concerned with distinguishing good from evil. "Is he a bad person or a good person?" is deemed a universal childhood refrain. GUROIAN, *supra* note 15, at 3-4. Guroian also applauds the fairy tale for maintaining the distinction ("Fairy tales say plainly that virtue and vice are opposites and not just a matter of degree. For sure, in the moral realm, most things are not wholly black or wholly white. ... But there is no mistaking the whiteness of white for the blackness of black.") *Id.* at 38, 113. Wilhelm Grimm saw this dichotomy between good and evil as central to the tale's message:

Narratives always end by opening the prospect of boundless happiness. Evil is also neither inconsequential nor something close to home, and not something very bad, to which one could become accustomed, but something terrible, black, and wholly alien that you can not even approach; the punishment of evil is equally terrifying: snakes and poisonous reptiles devour their victims, or the evil person dances to death in red-hot iron shoes. In these features we see the basis for the moral precept or for the relevant object lesson that can be derived so readily from these tales. They are not made up for that reason, but a moral grows out of them, just as good fruit develops from healthy blossoms without help from man.

Wilhelm Grimm, *Preface to NURSERY AND HOUSEHOLD TALES*, reprinted in TATAR, *supra* note 47, app. B at 207-08.

137. See Peter Brooks, *Storytelling Without Fear? Confession in Law and Literature*, in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW, *supra* note 2, at 114 (exposing law's resistance to literature's universalization of guilt). An exception to this fairy-tale tenet is when the protagonists are guilty of "misdemeanors" such as succumbing to temptation. See Section III.E *infra*.

manipulation of reader identification. There is typically one central protagonist who commands the reader's sympathies and with whom the reader strongly identifies.¹³⁸ Charles Dickens' confession of love for Little Red Riding Hood is a testament to the strong loyalties these characters engender.¹³⁹ Folklorist Marina Warner makes the same point as she wisely asks, "Who hasn't tried on the glass slipper, or offered it for trying?"¹⁴⁰ Casting the heroine in the opening scene as the one most deserving of reward and the one least likely to get it facilitates identification.¹⁴¹ This identification ensures that the reader feels the pain of her initial persecution and the joy of her eventual reward.¹⁴² When the law of the land comes down, we are moved by it, and induced to reject villainy and emulate righteousness.¹⁴³

The objective narrator of fairy tale, who speaks in an authoritative tone, also underscores the genre's preference for absolutes. Sentences begin with "there is" or "there are," leading the reader to believe she is receiving unmediated access to uncontested "truths." Law, too, has an objective narration. The judicial opinion "tells it like it is." This technique leads the reader to consider only the perspective presented, without recognizing that there may be other versions of the story that call "the facts" into question.¹⁴⁴ Once the reader stipulates the facts, the jurisprudence becomes more difficult to question.

D. Fixed Structure

Another stylistic tool that both the fairy tale and the law use in their quests to make "justice" seem inevitable is adherence to fixed structures.

138. BETTELHEIM, *supra* note 52, at 9; JONES, *supra* note 50, at 17.

139. "I felt that if I could have married Little Red Riding Hood, I should have known perfect bliss." Charles Dickens, *A Christmas Tree*, in CHRISTMAS STORIES 8 (London: Chaptman and Hall, 1898), *quoted in* Tatar, *supra* note 1, at 3.

140. Marina Warner, *The Old Wives' Tale*, in THE CLASSIC FAIRY TALES, *supra* note 1, at 313, 316.

141. Typically, for example, the youngest in a trio of siblings is singled out as the protagonist. Lieberman, *supra* note 69, at 188; Tatar, *supra* note 92, at 31. Bettelheim's analysis suggests that children typically relate to the third child because in the basic family constellation, the child is third after mother and father, irrespective of siblings. BETTELHEIM, *supra* note 52, at 106. If not the youngest, the heroine is the most oppressed, the most naïve, the most innocent, etc. ZIPES, *supra* note 45, at 57.

142. When we speak colloquially of fairy tale endings, we mean perfect happiness, notwithstanding that fairy tales end with horrific scenes of the downfall of the villain. What we are referring to is the ending for the protagonist, which we, as sympathizers of the protagonist, have come to see as our ending.

143. Charles Perrault saw this to be an admirable tactic of the fairy tale: "[I]t is certain that [the tales] arouse a desire in children to resemble those whom they see become happy and at the same time a fear of the misfortunes which befall wicked characters because of their wickedness." Perrault, *supra* note 84, at 5-6.

144. This is the argument of feminist critic Cristina Bacchilega. BACCHILEGA, *supra* note 49, at 34.

Fairy tales begin with “once upon a time”¹⁴⁵ and inexorably make their way to “happily ever after.” Judicial opinions begin with a recitation of the facts and inexorably make their way to “It is so ordered.” Folklorists of the structural school have noted a remarkable stability in the narrative patterns of fairy tales that serve to drive the plot onward.¹⁴⁶ These narrative rules shape our expectations about how a tale will progress, ensuring an ease of movement through the tale. One such rule has already been noted, that which requires everyone introduced at the tale’s outset to meet his or her fate before the tale will end. Another technique is repetition.¹⁴⁷ For example, in *Snow White*, the pattern of jealousy and persecution begins at home, but then is repeated on a greater scale three more times in the forest before the wicked queen is successful in “killing” Snow White. *Snow White* is a paradigm of the fairy-tale style, which is characterized by a preference for trio sequences, order, balance, repetition, and symmetry. This style encourages the reader to anticipate the story’s path, increasing dramatic tension and inspiring audience engagement. Perhaps most importantly, these techniques ensure that the reader reaches the paradigmatic “happily ever after” finale, which gives the tale its meaning.¹⁴⁸ Additionally, the happy ending makes it all the more likely that the tale’s messages will be taken to heart and remembered. Again, this promise may be as powerful as another paradigmatic ending: “It is so ordered.”

E. Prohibitions: Statutory Violations

One specific plot sequence that helps both fairy tales and judicial opinions move from beginning to end is the prohibition/violation pattern.¹⁴⁹ The rules of the fairy-tale genre demand that any stated prohibition must be violated. Thus, when the King orders that all spindles be banished from the kingdom, we know that Sleeping Beauty will find the one remaining spindle on which to prick her finger. Similarly, when Bluebeard hands his new wife a set of keys, we know she will use the

145. This rule is so compelling that I could not resist beginning my Note about fairy tales with this phrase!

146. For a comprehensive study of the structure of fairy-tale plots, see V. PROPP, *MORPHOLOGY OF THE FOLKTALE* (1986). Propp argues that all fairy-tale plots are constructed from a set of 31 “functions” and that the functions have a fixed sequence. *Id.*

147. This discussion on repetition is from Steven Swann Jones, *The Structure of Snow White*, in *FAIRY TALES AND SOCIETY*, *supra* note 15, at 165, 168-80.

148. For an interesting discussion of how the ending of a story supplies a story with meaning, see Ronald R. Garet, *Meaning and Ending*, 96 *YALE L.J.* 1801, 1822-23 (1987) (“What a story means pivots on its end. . . . Hence for the narrative, the cruelty of the ending—the fact that the ending sets a term to the story—is redeemed by the breath of life that the ending breathes into the story’s meaning.”).

149. Prohibition and violation are two of V. Propp’s “functions” that come in a pair. PROPP, *supra* note 146, at 64; see also TATAR, *supra* note 59, at 35-36 (describing the pattern at work in *Red Riding Hood* and *Sleeping Beauty*).

forbidden key to enter his secret chamber. And when the dwarves warn Snow White not to open the door to strangers, we are not at all surprised when she succumbs to the beckoning of the disguised queen. While legal cases may not follow this course with the same regularity, it is likewise expected that if a statute is mentioned at the beginning of a case, it is quite likely to be breached (at least allegedly), or in some way challenged, in the facts that follow. In the fairy tale, the prohibition itself breeds the curiosity that drives the transgression. Like the tempted protagonists, the reader cannot bear not knowing what will happen if the order is disobeyed. In this sense, the protagonist is compelled to commit the act in order to satisfy the reader, so that the reader becomes implicated in the act. The economy of the tale and the desires of the audience work together to ensure that the rules are broken, setting the stage for a lesson in obedience.

F. Transformative Force

A final link between stylistic strategies of fairy tales and law is that both genres appeal self-consciously to their own transformative force. Magic in fairy tales allows the narrator to make things so just by describing them as such, even if they would otherwise violate laws of verisimilitude. Spells, potions, and magic wands defy worldly limitations in the blink of an eye, transforming apples into poison, frog into prince, peasant into princess. Similarly, the illocutionary force of law operates as its own kind of logic, with judges flaunting their ability to transform fictions into facts. Through recourse to law, defendants are made criminals or tortfeasors, plaintiffs become compensated victors, statutes are voided. Admittedly, in fairy tales, the full effect of the transformation is contained within the text itself, whereas in law, the full effects follow from the completed text. However, the two genres resort to their transformative role with a similar ease.

By creating the sense that reality can be transformed so easily, both genres invite audiences to believe that all will be made right in the end. Nothing is left to chance or consequence; everything happens because it should. This reinforces the reader's belief in a moral universe, in which people will get what they deserve.¹⁵⁰ Moreover, with the force of magic or law at work, one does not need to wait for heaven and hell; in law and the fairy tale, scores are settled in the here and now. In this way, both fairy-tale narrators and judges purport to be divine tribunals of law.

G. Fairy-tale Narrative at Work: Grimms' Cinderella

It is enlightening to see these narrative strategies at work in an actual tale. Though any canonical tale would suffice, I have selected the

150. This function of fantasy is offered in JONES, *supra* note 50, at 12-13.

Grimms' *Cinderella*¹⁵¹ to be exemplary. Though the Brothers Grimm did not follow Perrault in labeling the tale's moral, it would be impossible to miss its "holding." Indeed, the tale ends with the pronouncement of a final judgment and sentence for her "false sisters": "[T]he doves picked out the . . . eye[s] of each of them. And so for their wickedness and falseness they were punished with blindness for the rest of their days."¹⁵² Meanwhile, Cinderella marries and rides off with her Prince.

This holding is the logical conclusion to the rest of tale, which determinedly leads up to it. The reader is not yet two paragraphs into the tale before the fateful conflict arises. We learn that Cinderella's father had remarried, bringing Cinderella two stepsisters who were "base and black at heart,"¹⁵³ which began a sad time for the unfortunate stepchild. The ensuing lines recount the taunting and maltreatment that the sisters visit upon her: "They took away her pretty clothes" and ordered her "to do hard work from morning 'till night. . . . [T]he sisters inflicted on her every vexation they could think of. They made fun of her, and tossed the peas and lentils among the ashes, so that she had to sit down and pick them out again."¹⁵⁴ This is a case of sibling rivalry of the worst kind. We are then told that Cinderella seeks solace at her mother's grave, where she grows a hazel tree and meets magical birds (the Grimms' version of the fairy godmother).¹⁵⁵ Directly thereafter, we learn of the Prince, who hopes to find his bride at the upcoming King's ball.¹⁵⁶ In just a few passages, then, all of the dramatis personae are introduced. In typical fairy-tale fashion, each of these characters has a crucial and utterly unambiguous role to play, as protagonist, antagonist, helper, or rescuer. The characterization remains as flat as the role's label. They do not evolve; they are simply presented, primarily through their actions, as we saw with the stepsisters above. Cinderella herself is shown to be humble by her willingness to do lowly work,¹⁵⁷ and pious and loyal by her visits to her mother's grave. These evidentiary portrayals tie directly to the already indisputable ending.

Such portrayals also contribute to the clarity of the facts. Again, we have the objective narrator who confidently reports an uncontested story, making this version axiomatic and its outcome a corollary. In this tale, Cinderella is a golden child: obedient, industrious, kind, and beautiful. Her sisters are monsters: envious, devious, and cruel. It is obvious that the

151. BROTHERS GRIMM, *supra* note 85.

152. *Id.* at 165.

153. *Id.* at 155.

154. *Id.* at 155-56.

155. *Id.* at 156.

156. *Id.* at 157.

157. Others have observed this as well. LUTHI, *supra* note 88, at 28, 124-25; TATAR, *supra* note 92, at 36-37.

reader would choose to identify with the lovely Cinderella, and feel no pain for the conniving sisters as they bloody their own feet in an attempt to trick the Prince. Indeed, this last act of treachery ensures that the final sanction seems legitimate, if not a matter of routine. It is perhaps most accurate to say that the fairy-tale policy is not just one of low tolerance for ambiguity, but of no tolerance for it at all.

The movement through this story is momentous and manipulative. Soon after the familial conflict is portrayed, the invitation to the King's ball is issued. The contest to become the Prince's bride excites postulation in the household and in the reader's mind. Anticipation builds during the familiar trio sequence, in which Cinderella repeatedly asks if she can join them for the ball, and each time is disdained and given the task of picking lentils from the ashes. This sequence ends with the stepmother forbidding her from attending the ball: "You can't go with us, for you've got no clothes and you can't dance. We should be quite ashamed of you."¹⁵⁸ The reader is thus intrigued to see how Cinderella will violate this prohibition, an imperative in such fairy tales. Once again there is a trio sequence in which the magical tree and birds help with her chores and provide a dress and slippers for the three consecutive nights of the ball. The last of these nights ends with the Prince securing Cinderella's slipper, beginning his quest for his chosen bride, another structural plot sequence that drives the story forward. Of course the two evil stepsisters must try the slipper first and fail, but it is the third foot that fits, Cinderella's. And with that, the tale moves directly to the remedial phase: misery for the sisters, and a royal wedding for Cinderella.

To reach this moral fate, the fairy tale relies on magic, its transformative force. The enchanted tree and birds defy apparent limitations in producing a gown and shoes for Cinderella, which, as the narrator tells us, transforms her into a beautiful princess who steals the heart of the prince. The narrator also relates that these birds execute the punitive gouging of the sisters' eyes. With such powerful birds on "our" side, we can rest assured that all can be made right in the realm of the fairy tale.

Thus, we see all of the common strategies at work in *Cinderella*. Together they demonstrate the fairy tale's inevitability, which Victoria Sanchez calls the "anything could happen but we know what has to happen quality" of the fairy tale.¹⁵⁹ The fairy tale is defined by a set of rules that support its moral lesson. Importantly, all of these confinements foster a reader's ability to encode, store, and recall the tales for later retellings. By delineating them here, I do not mean to be reductive, but rather to illuminate the intricate feedback loop of the fairy-tale genre—in which meaning determines form, and form satisfies meaning—and to

158. BROTHERS GRIMM, *supra* note 85, at 158.

159. Victoria Sanchez, *A.S. Byatt's Possession*, SOUTHERN FOLKLORE, April 1995, at 33, 49.

draw parallels to the congruent relationships in case law.

CONCLUSION

The interdependence and complementarity between the legal themes and legal forms of the fairy tale beget a highly effective medium for indoctrinating society, particularly children, to conform to its dictates. Indeed, the effectiveness of fairy tales might lead some readers to question my attempt to fuse law and literature, by claiming that the fairy tale is not properly considered literature at all. My definition of literature encompasses all stories, fantastical, fictional, or historical, that readers, and collectively society, value as written texts. But the definition of literature has never been very definite.¹⁶⁰ For some, a text must be non-pragmatic in order to qualify as literature; its primary purpose must be to use language playfully and self-referentially, rather than using it to convey information, or having some other practical relevance.¹⁶¹ On this view, fairy tales are not literature because they are too didactic and demanding. Indeed, under such a definition, it seems doubtful that Perrault or the Grimms would even want these stories to be considered literature.

There is also the reflection of John Keats, that great men of literature must have Negative Capability, the ability to cherish ambiguities, to be content with contradictory truths.¹⁶² We have seen that fairy tales lack this nuance; for the fairy tale, there is only “systematic certainty.”¹⁶³ The definition of literature remains open, and resolving the question of whether fairy tales qualify as literature is beyond the scope of this Note. What is interesting, though, is that the very things that make the fairy tales less like literature make them even more like legal texts. The tales exist at the crossroads between the two disciplines, as a missing link, if you will.

The notion that the fairy tale has a more practical role to play in societal indoctrination than most other forms of literature is underscored by the fact that fairy tales, like the law, have been seen as a worthy site for social reform and contention. Realizing that fairy tales, like law, can reflect and change society, a multitude of revisionist scholars have become alarmed at the supposedly objective “good” and “bad” of the fairy tale world and the supposedly legitimate justice therein.¹⁶⁴ One major focus of the revisionist

160. TERRY EAGLETON, LITERARY THEORY: AN INTRODUCTION 1-14 (1983). Eagleton's introductory chapter, *What is Literature?*, alerted me to the unresolved nature of the definition of literature and helped me to formulate my own tentative definition.

161. *Id.* at 7.

162. JOHN KEATS, Negative Capability Letter, in THE SELECTED LETTERS OF JOHN KEATS 92 (Lionel Trilling ed., 1951); Lionel Trilling, *Introduction to KEATS*, *supra*, at 28-29.

163. Trilling uses this phrase as the opposite of Negative Capability. *Id.* at 29.

164. Exploring their concerns is beyond the scope of this Note, but I direct the interested reader to the enlightening (and entertaining!) stories of A.S. Byatt, James Thurber, Tanith Lee, Robert Coover, Donald Barthelme, Anne Sexton, Angela Carter, and Margaret Atwood. For the theoretical side of the debate, see the works of Jack Zipes and Maria Tatar, cited herein.

effort has been to overthrow the entrenched patriarchal order of the fairy tale, which male collectors like Perrault and the Grimms worked so hard to affirm.¹⁶⁵ Discontent with the links found in the classical tales between “goodness” and feminine beauty,¹⁶⁶ chastity,¹⁶⁷ and obedient passivity,¹⁶⁸ between villainy and womanhood,¹⁶⁹ between rescuer and manhood,¹⁷⁰ and between happiness and traditional marriages,¹⁷¹ these authors have attempted to reclaim the fairy tales in order to repaint and resuscitate the protagonists, explore more emancipatory arrangements, and put alternatives on display. The fight for women’s agency, equality, and liberation is thus not only waged in law, but in the fairy tale as well.

In exposing such concerns in both scholarship and revisionary tales, these authors have campaigned to “overrule” fairy-tale doctrine and forge new precedents. The fairy tale, then, is an arena for the contestation among world views, much like Cover’s vision of law.¹⁷² As such, it is a potential site for multiplying possibilities and creating new communities of commitment;¹⁷³ it can embody Cover’s aspiration for law to “invite new worlds.”¹⁷⁴ As Carolyn Heilbrun puts it, “Let us agree on this: that we live our lives through texts. . . . [T]hese stories are what have formed us all, they are what we must use to make our new fictions. . . . Out of new tales, we must make new lives.”¹⁷⁵ The successes and failures of such modern works in reforming the fairy tale, and thus society, is a matter for future reflection and debate. What this Note suggests is that such authors will need their own magic spell to overcome the formidable obstacles they face in challenging the entrenched rules of the classical fairy tale regime.

In any event, the plausibility of a relationship between fairy tales and law is no longer open to question. Fairy tales have a charismatic hold on our society. This is their charm. Fairy tales use this hold to dictate norms and shape subjects, both within the fairy tale and without. This is their power. Like law, they compel. And like law, they are thus contested terrain. Whether the traditional fairy-tale laws will prevail, or whether the ensuing rebellion will bring revolution, is yet to be decided. But one thing is certain: our future will be shaped by the result.

165. ZIPES, *supra* note 1, at 33-60; ZIPES, *supra* note 45, at 18-31.

166. Meg Gehrke, *Is Beauty the Beast?*, 4 S. CAL. L. & WOMEN’S STUD. 221, 231 (1994).

167. Kimberly J. Lau, *Structure, Society, and Symbolism*, WESTERN FOLKLORE, Summer 1996, at 233.

168. JONES, *supra* note 50, at 27; ZIPES, *supra* note 45, at 57; Zipes, *supra* note 102, at 3.

169. TATAR, *supra* note 47, at 139-48; TATAR, *supra* note 59, at 137.

170. Lieberman, *supra* note 69, at 195.

171. TATAR, *supra* note 47, at 123-24; Oates, *supra* note 129, at 89.

172. *See* Cover, *supra* note 12.

173. *See id.* at 44-60.

174. *Id.* at 68.

175. Carolyn Heilbrun, *What was Penelope Unweaving?*, in *HAMLET’S MOTHER AND OTHER WOMEN* 109 (1990), *quoted in* Tatar, *supra* note 1, at xii.

