

The Rhetoric of Constitutional Narratives: A Response to Elaine Scarry

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Elaine Scarry, in the paper prepared for this Conference, presented a most interesting argument concerning the control of nuclear arms in relation to the social contract, and the way in which a notion of “distribution” of the authorization over our nation’s arms belongs to the Second Amendment. I won’t in this comment address directly the crucial constitutional and moral issues raised in Elaine Scarry’s paper. Rather than responding to the substance of her argument, I will try to say a word about its form, in the light of the putative topic of this session: Constitutional Narratives. That is, I’ll offer a brief meta-commentary attempting to relate Professor Scarry’s argument to the narrative forms that it, and other constitutional arguments, tend to activate and to deploy. Yet this may in the end work to an understanding of the substance of her claim.

Professor Scarry’s argument immediately takes us back to the ratification debates, to what she at one point calls the “early writings” on the subject of the distribution of arms throughout the population. Her argument is not “intentionalist” in a narrow sense, it might be better described as “contextualist.” But both intentionalist and contextualist arguments about the meaning of constitutional provisions necessarily make the same general initial gesture: a return to origins, to the moment of the emergence or creation of meaning—in short, a return to the beginning, to the moment the story starts. No doubt one finds some version of this gesture at the outset of any constitutional argument, in any Supreme Court opinion, for instance, where it is vital to establish that the present ruling is in fact the product of a coherent narrative line of connected precedents rooted in correctly identified constitutional origins. (And a dissenting opinion will contend that the majority has misderived the narrative, got its origins wrong, written new law rather than building on the old.) Like the mythological Anteus, everyone arguing about constitutional interpretation must touch the ground of the Constitution, and its own grounding, in order to gain strength for the coming battle.

Not only is this gesture typical of constitutional narratives, however, it is also typical of narrative as a whole, as a genre, as one of our principal ways of ordering discourse about the world. Narratives are constantly seeking to ground outcomes in origins, taking us back to primal moments

that determine the future: which is one reason why, as Aristotle pointed out, memory is a vital faculty in the understanding of narrative—narrative makes no sense unless one is able to connect ends to beginnings. What is curious about this gesture is that it may in some sense be a cover-up, a masking of the true mechanism of narrative, which really starts from the desired or presumed end, and works backwards, deriving beginnings, origins, and the events of the middle, from the end. At least, that is a theory about the procedures of narrative proposed by such diverse commentators as J.-P. Sartre, Frank Kermode, and Walter Benjamin, and, in a certain reading, Aristotle himself. As Roland Barthes once suggested, narrative plays on a certain willed confusion of the *post hoc ergo propter hoc*, ostensibly claiming that subsequent events are entailed by prior events, but in fact operating by a reverse logic, postulating prior events in terms of outcomes. Telling a story—as opposed to living it—is always retrospective, delivered from the point of view of the end to which it tends.

Since Professor Scarry is in large terms evoking the origins of the American social contract, one might in this context think of Jean-Jacques Rousseau's characteristically perverse and daring use of this narrative logic: his postulation of radical fictional genealogies as necessary explanations of existing states of affairs. There is that famous phrase near the start of his *Second Discourse*, where he says: "Let's get rid of all facts," in order to go back to a scenario concerning the origins of civil society—a scenario which is both self-consciously fictional (one can never know the origins of society) and necessary (it is the only postulate that explains what that society was to become). I mention Rousseau's gesture because it exposes ("deconstructs," if you like) what goes on in most narratives, at least of the etiological kind: you need the beginning in order to justify the end. And we might note in passing that Professor Scarry, like Rousseau, shows that claims about "original intent," or the reconstruction of original context, can be used for radical as much as for conservative ends.

To notice this is not to argue that Professor Scarry's origins are fictional or that her narrative is untrue. It is rather to say that an argument in opposition to hers would also take the same form. One can easily imagine the counter-argument constructed by a legal scholar hired by the National Rifle Association, which would tend to the conclusion that everyone should have a nuke in his backyard. The point is that the narrative gesture of return to origins, however sophisticated and convincing—Professor Scarry's is both—will never convince the opposition, since it can make the same gesture in support of the conclusion that it desires to make prevail. On both sides, the gesture of the return to origins is determined by the end it desires to promote, and the claim that the story it tells derives with logical necessity from the origin is at the same time true and a cover-up of the real logic at work, which, once again, derives those origins from the desired ends.

What I am describing, then, is a problem in the rhetoric of narrative. Like all issues in rhetoric, it can be resolved only in terms of its persuasive effects: in terms of what it does to those who must interpret and act upon it. In other words, the resolution of this problem in narrative rhetoric has more to do, in the final instance, with listeners than tellers, with readers rather than writers: with how the story is understood, and how it takes effect. Consider, in this context, my putative hired legal gun of the NRA. He would be speaking on behalf of what Stanley Fish would call "an interpretive community." On the question of the right to bear arms, the NRA is clearly an interpretive community, indeed it has formed as a community in good part because of a consensus of interpretation. Now, what I think Professor Scarry really is attempting to do in her forceful paper is to create a new interpretative community around the Second Amendment and its application to the question of nuclear control. Her constitutional narrative, with all its extraordinarily interesting material about the original context of the right to bear arms, is generated toward the creation of a new interpretive consensus that will allow us—that is, we who join that interpretive community—to envisage new possibilities of citizen control of nuclear arms. More than that: it is not simply the story told, but the *telling* of the story that creates the interpretive community.

In saying this, I intend to rescue narrative from the aspersions I may have seemed to cast on it. I don't for a minute believe that Professor Scarry's return to origins, or all the research she has done on original context, or the story she spins from them, are dispensable. On the contrary, her ends can only be achieved by an effective narrative, with each event both consecutively and logically connected to the next. "Thus have you reasoned it all out beautifully in one long chain," says Watson to Sherlock Holmes at the end of one of their cases. The chain, with its strong causal links, is absolutely necessary, and it will not produce conviction—conviction in the reader as much as conviction of the criminal—unless it carries the mark of authenticity, that "effect of the real" in which narrative typically deals. Yet the existence of the causal chain should not be allowed to cover up the point from which it starts, which so clearly in the detective story is the end: the dead body, which requires a reconstruction of past events leading up to the scene of the crime.

Let me end, then, by paying tribute to Professor Scarry's narrative and the particular authenticity that it creates, the kind of conviction that it produces. Her subject is in part contract as materialization, the bringing of bodies into a compact. In this context, she has a wonderful capacity to revive the materiality of language which has become abstract and dead, as in her meditation on the connotations of the verb "to bear." It's in a way like the revival of dead metaphors that can occur from a pun, even when it's not very clever, as in the bumper sticker, "Support Your Right to Arm Bears." Narrative is a major component in legal argument in part because

it can put us in touch with a materiality of language that allows us to feel that we are dealing with experience rather than abstract syllogism. Since all judicial discourse at some moment or other has recourse to narrative, one may urge that here is a juncture between law and the humanities that can profitably be attended to. One does not have to be a deconstructionist to recognize that we never wholly control the materiality of language, that it can perform switches and reversals—as in puns—and that these can suddenly open new perspectives that ironize accepted master narratives. As when, for instance, we consider the arming of bears. Elaine Scarry has in her narrative twisted our whole way of thinking about the Second Amendment, and the results of that twist or turn—the results of her new trope—may turn out to be immensely powerful.