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At the Lectern

The Three-Act Argument: How to Write a Law Article That Reads Like a Good Story

Shari Motro

Why do so many law articles—my own included—leave readers cold? One reason may be that they lack fundamental elements that make up a good story. They lack tension. They lack narrative arc. Over my years teaching seminars and exchanging drafts with colleagues, I've developed a recipe that helps me organize ideas into a form that better engages the reader. I've also found it to be conducive to a richer, more generative writing process.

The recipe is inspired by guides on dramatic plot.[1] It has three parts: exposition, confrontation, and resolution. The exposition introduces the conflict. In many instances, this conflict is personified through a hero and a villain. We learn about the stakes, and we appreciate the formidable obstacles that our hero must overcome to reach his goal.[2] Of course, what appear as obstacles to our hero are advantages to our villain, so the exposition can also be thought of as the villain's day in the sun.

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1.   Including Aristotle, Poetics (Malcolm Heath ed., 1997); Robert McKee, Story: Substance, Structure, Style and the Principles of Screenwriting (1st ed. 1997); Syd Field, Screenplay: The Foundations of Screenwriting (rev. ed. 2005); Blake Snyder, Save the Cat!: The Last Book on Screenwriting You'll Ever Need (2005); Janet Burroway et al., Writing Fiction: A Guide to Narrative Craft (8th ed. 2010); and John Gardner, The Art of Fiction: Notes on Craft for Young Writers (reissue ed. 1991). Another influence is the dialectic triad (thesis, anti-thesis, synthesis) commonly attributed to Georg Wilhelm Friedrich Hegel or Johann Gottlieb Fichte.

2.   I've chosen to use the male pronoun because the classic story structure tends to revolve around a male protagonist. Indeed, some argue that the dialectical, conflict-centered way we tell stories and explore ideas itself reflects a masculine sensibility. Others view conflict or duality as a necessary universal component of good storytelling and rigorous thinking. I'm unresolved on these questions. What does seem clear to me is that the prevailing mode in which we—Americans in the early 21st century—tell stories and make arguments relies on conflict. For better or for worse, this is the instrument we have at our disposal. My aim is not to endorse this mode, but to offer a few suggestions for those who wish to use it more effectively.

The second part of the dramatic plot—the confrontation—is the showdown, the battle of the titans. In increasingly dramatic skirmishes, suffering setbacks and recovering from them by the skin of his neck, our hero claws his way to the climax, the mother of all battles, from which he emerges victorious.

Finally, in the resolution, loose ends are tied, subplots are completed (lovers embrace, helpers are rewarded, troublemakers get their comeuppance), and we meet our new hero—a man who represents the integration of all we have learned, a radiant manifestation of conflict transformed.

Here's how this structure helps me when I'm writing a law article. I think of my Introduction and my Part I together as my "exposition." The introduction sets up the conflict between the "idea" and the "counter idea," the "hero," and the "villain." The introduction also defines the stakes—it answers the question "why should the reader care?" Unlike the dramatic plot structure, the introduction of a law article gives away the ending. (The introduction should include every important element of your paper. Don't hide your thunder. Assume that many readers will read only your introduction.) But this doesn't mean the article won't have tension—the reader who continues reading beyond the introduction is looking to learn *how* the author is going to prove the claim, and building tension into the narrative from the start, in the form of a clear "idea" and "counter idea"/"hero" and "villain" is critical for this purpose.

Then, Part I gives the counter idea/villain the stage. The counter idea/villain can be the status quo, conventional wisdom, or a thus-far intractable problem. It can be a new trend in scholarship on an issue, or an ill-conceived reform initiative. In what is traditionally called the "background" section I explain the position I am going to argue against *and its rationale*.[3] This second part is key. My main argument, my "hero," doesn't make his entrance (other than briefly in the introduction) until Part II. We start with his nemesis, who at first glance doesn't look so bad. Without a formidable rival (and by formidable I don't mean pure evil; on the contrary, I mean a rival who has some appeal to the audience) my hero's triumph is no big deal. Anybody can tear down a paper tiger. My hero needs a round and nuanced foil in order to shine in his full glory.

Failing to allow the villain to prance around the stage (or even make an appearance) is perhaps the most common weakness in the drafts and published articles I read. This is entirely natural. It's hard to see the world through our opponent's eyes; it's hard to give him airtime; it's hard to tell the eager voice inside us that wants to tell our side of the story to sit quietly and listen.

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3.   As Eugene Volokh puts it, the background section should be used to explain "those items that are *necessary* to understanding the problem" not to "throw[] in as much background as possible . . . obscur[ing] what aspects of the background are most important." Eugene Volokh, Academic Legal Writing 54, 55 (2007).

But this is what is required. It is required not just as a strategic matter, not only so that we can "win" the argument by getting the skeptical reader to trust us. It is required as a matter of integrity in our own process as writers. Listening and working to understand the wisdom and truth in our opponent's views is critical if we hope to engage in a meaningful investigation of our own ideas.

Having introduced the counter idea I plan to knock down (unless in the course of the writing I change my mind), Part II, my argument section, is my battle of the titans, with the stakes rising with each subpart. By the end of Part II, my idea/hero has triumphed. But so far his triumph is defined by the tug of war that his external circumstances have forced him to play, the positive and negative poles defined by the idea and its counter.

Part III gives the hero the opportunity to fly off the tracks.[4] Having defeated his rival, he can now synthesize, build bridges, paint on a blank canvas and imagine a brave new world, unhampered by conventions. People often think of the last part of a law article as the place for the "solution" or "proposal." I think of Part III as the place where our hero can dream big; it's where he can be all that he can be. Correspondingly, this is where we, as legal scholars, can pursue our wildest, most idealistic dreams for society.

The conclusion is the epilogue. This is our opportunity to highlight the most important insights of our piece, to play the theme one last time, to shake hands with our opponent, having won the match honorably.

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An abstract following the three-act argument might look like this:

> *[I] Under current law [counter idea]. The main rationales for this rule/approach/paradigm are… [II] A closer look, however, reveals several problems. For one, the current rule… The current rule also fails to… Finally, it… [III] This article proposes that the current rule be replaced/modified… [Closer].*

This abstract presents one variation.[5] If you are arguing *for* rather than *against* the status quo, you might start with something like "A movement to change the current law of … is underway. Its rationales are… ." Then Part II is a defense of the status quo. Alternatively, Part I might introduce conventional/popular wisdom on an issue or the current approach to a problem (e.g., "Advocates dedicated to addressing X tend to focus on its economic/ social ramifications... ."). In this case Part II would offer the counter (e.g., "The problem with this approach is that it ignores X's root causes… .").

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4.   What Volokh calls going "beyond the basic claim." *Id*. at 61.

5.   For a similar version, see *id*. at 51.

The table of contents to go with the above abstract might look like this:

Many writers create their table of contents toward the end of their process when they are ready to share their work with readers. This is a shame, because when generated using Microsoft Word's "headings," the table of contents along with the navigation pane can be invaluable *thinking* tools throughout the writing process.

You can create your headings as soon as you start writing, as soon as a structure begins to take shape in your mind. Create your headings, write a sentence or two under each one, lay down your subheadings, and generate a table of contents. Then every time you change something structural in the piece, go to the top of the document, right click on the table of contents, click "update entire field" and watch it move. You can also reveal the "navigation pane" (PC) / "document map pane" (Mac) and have a thumbnail sketch of your entire piece visible along the left side of your screen at all times. This allows you to be like a painter who puts a new mark on the canvas, then steps back to see how it changes the picture; it enables you to see the forest *and* the trees simultaneously.

<div align="center">♋</div>

Watching my students' papers before and after they use the three-act structure has led me to believe that thinking of arguments as stories might make us not only more interesting writers but more honest and compassionate human beings. Walking in the shoes of our opponent almost always helps us appreciate his point of view even if we don't ultimately agree with it. Allowing conflict to express itself almost always leads to transformation.

Of course, some ideas will not fit into my recipe. I don't always follow it precisely myself, and there are lots of variations on its theme. Sometimes I don't follow it at all (as in this piece). But I almost always start with it. As I begin to organize my ideas, creating these containers for my themes helps me make sense of the mountain of disparate notes and quotes I've collected. Identifying an idea and counter idea early on helps me build tension into my narrative from the start. Over time, the three-act argument has also made

writing law articles a more joyful experience for me. I hope it does the same for you.