Digital Media and Legal Narrative,
Three Teaching Ideas:

– Non-linearity
– Memes
– Emergence

Professor Lucy Jewel
Applied Legal Storytelling Conference
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Non-Linear Approaches to Narrative

• Digital Narrative
  – Interactivity
  – Procedural authorship
  – Agency for the User
  – Non-linear
Non-Linear Approaches to Narrative: Analog Progenitors

The Garden of Forking Paths by Jorge Borges

Groundhog Day

Rashomon
Non-Linear Approaches to Narrative

Inherent stories in computer games:

• Heroes on a quest
• Solving Puzzles
Non-Linear Approaches to Narrative

Digital Narrative Approaches

• **Evoked Narrative** – how the game world looks and “feels”

• **Enacted Narrative** – the story of maneuvering from point A to point B in the game

• **Emergent Narrative** – characters drive the story; user controls some aspects of characters, computer controls others
Non-Linear Approaches to Narrative

Digital Narrative Approaches

- Embedded Narrative
  - Detective/Mystery Stories
    - Plot – Immutable, what happened
    - Story – Interactive, how player uncovers what happened
Non-Linear Approaches to Narrative

Conflict Between Narrative and Interactivity

- Top-down storytelling vs. interactive agenic input from user
- Too many choices, not enough linear narrative
- Too much top-down storytelling, not enough game play
Non-Linear Approaches to Narrative: Persuasive Games

• **Procedural rhetoric** – using computer programming code to create a game that makes an argument

• **How it works** – the player fills in an enthymeme by playing the game

• **Structural/systemic critiques** – Because they can easily replicate systems, computer games can make compelling arguments about systems
Non-Linear Approaches to Narrative: Persuasive Games Take Back Illinois!
Non-Linear Approaches to Narrative: Persuasive Games

• Take Back Illinois!
  – Object of the game: get sick patients to the doctor’s office.
  – Enthymeme – Lowering the cap for non-economic damages in medical malpractice cases together with increased funding for medical research will result in greater access to health care.
  – The player “wins” the game by lowering the cap for non-economic damages and raising the funding for medical research. Manipulating the controls in this manner causes more hospitals to open, making it easier to get sick patients to the doctor’s office.
Non-Linear Approaches to Narrative: Persuasive Games - Limits

- Does not work well for arguing smaller issues
Non-Linear Approaches to Narrative

• Applications to Legal Thinking:
  – Many legal texts are already non-linear!
  • Annotations
  • Treatises
  • WL/Lexis Online data structures
Non-Linear Approaches to Narrative

• Effective legal arguments are interactive because they invoke audience participation and agency.

• Thorough legal analysis is non-linear.
  – Forks in the path
  – Must go down each path and embrace the do-over mentality
Non-Linear Approaches to Narrative

• Embedded
  – Plot – legal rules, undisputed facts
  – Story – interactive analysis
    • Inferences?
    • Policy?
    • How we work within the rules to achieve the best results for our client.
Non-Linear Approaches to Narrative: Why?

- Digital approaches foster more explorative, curious, and immersive approaches to legal problem solving.
Memes

- A meme is a cultural unit that is reproduced by non-genetic means such as imitation.
- Analogue to natural selection – the best memes survive.
- Memes are selfish and competitive:
  - Memes ‘want’ to be replicated
  - “If a meme is to dominate the attention of the human brain, it must do so at the expense of rival memes.” – Richard Dawkins
  - Memes are not altruistic. E.g., chain letters and antisemitism.
- The Internet enables rapid meme propagation.
Memes

How Memes Work

• Replication – other people adopt and use
• Variation – the meme is replicated, but not as a carbon copy
• Popularity – psychological appeal
Memes

• Popular Songs

• Fads

• Ways of doing things
Memes

Internet Memes

• Accelerated viral transmission
• Jokey
• Ephemeral
Memes – Internet Memes
Legal Memes

• Structure of an argument
  – Introduction
  – Statement of facts
  – Definition of Issues
  – Outline of Arguments
  – Argument
  – Counterargument
  – Conclusion

• Rules
  – Rules are “imitated” in subsequent cases
  – Rules are also varied, based on differing facts.
  – Best legal idea wins

• Trial Memes – “If the Glove Does Not Fit, You Must Acquit”
Legal Memes on the Internet:
So You Want to Go to Law School?
Memes – Practical Thoughts

• Think about legal advocacy memetically:
  – Vary the meme, i.e., the rule statement
  – Memes can be discarded
    • “We are built as gene machines and cultured as meme machines, but we have the power to turn against our creators.” - Richard Dawkins
  – Effective memes: catchy, easy to remember, contains psychological resonance
  – Avoid too much cheekiness. Rickrolling does not work in a formal legal argument
Emergence

• Internet technology fosters emergent production processes.
• What emerges from collective wisdom and action is sometimes more valuable than what can be produced by a single individual.
• Things that are produced organically in a bottom up fashion are sometimes better than things planned from the top-down.
• Examples – open source operating systems, ant colonies, and unplanned neighborhoods.
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<thead>
<tr>
<th>Planned Neighborhood</th>
<th>Emergent Neighborhood</th>
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Emergence

• A challenge to individual craftsman model of production
  – Emergence: Collective, organic
  – Craftsman Model: individual, top-down
Related Concepts: Cognitive Surplus

• As a society, technology allows us to pool our resources and produce good things.

• Examples:
  – SETI
  – Wikipedia
  – Reverse outsourcing as a way to solve legal problems?
Related Concepts: Knowledge Management

• Business philosophy originating in Japan:
  – Knowledge is more valuable in a collective form
  – Knowledge is not produced in a vacuum, but in the context of sharing and working with others
  – Not “I Think, Therefore I am” but “I Love, Therefore I am”
Related Concepts

Is Individual Legal Authorship a Myth?

• Peter Ben Friedman, What Is a Judicial Author? (Mercer Law Review, forthcoming)
  – Legal writing is inherently a collaborative rather than individual process
  – Judges and lawyers routinely cut and paste without attribution
  – We should recognize, in our teaching, that legal work products are often not the original product of one author in a Romantic sense
Related Concepts
Accepted Pedagogy for Online Education

• *From the Sage on the Stage to Guide on the Side*

• Communities of Learning

• Collaborative models of education foster adaptive expertise by encouraging collective knowledge production in a bottom-up fashion.
Emergence
Lessons for Legal Skills Education

• Value collaboration, peer editing, and collective work products
• Create shambolic simulations where students can experiment, switch gears, change their mind, and learn from their mistakes
• Make contexts less adversarial and more deal oriented
• Employ interdisciplinary approaches to problem solving
• Foster less hierarchical environments (i.e., reconsider partner-to-associate assigning memoranda)
• Consider the model of professor as moderator rather than priest figure
Conflicts with a Collaborative Approach to Legal Education

• Assessment?

• The Bar Exam

• Individual Craftsmanship still necessary in our common law system
  – Rule 11 authorship
  – Just-in-time/fast food style of legal writing doesn’t work in creating a professional work-product
The End

Slides and Bibliography:
ljewel@johnmarshall.edu