

Using Narrative Jurisprudence to Develop a
Narrative Approach to Deliberative Ethical Argument in Composition

by

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To Robert, ineffable,
who, for better for worse,
in sickness and in health,
has reminded nearly daily (even without saying it):

一所懸命

[accompanied by the roar of a lion]

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INTRODUCTION

From my first semester of teaching college-level writing, I have encountered certain students who alternate between curiosity and apprehension about the use of narratives, including narratives of their own and others' experiences, as part of arguments. Often, they have been advised not to narrate, especially not to narrate personally, as part of a more general proscription against using the first-person singular pronoun. And yet the essays that students are asked to read and to discuss often include narratives, narratives frequently associated with the ethical arguments of their writers (e.g., Martin Luther King, Jr.'s "Letter from a Birmingham Jail" or Rachel Carson's "A Fable for Tomorrow").¹ Such narratives are inadequately explained when simply described as engaging or sustaining readers' interest, as they so often are. And it strikes me as hypocritical to ask students to read one kind of argument but to produce another. The disjunct appears even deeper if it is the case, as some theorists argue, that narratives are not only forms of discourse but central to the processes of reasoning.

Student writers' discomfiture with the use of narratives with respect to argument (and ethical argument in particular) has to do with narrative's uneasy place in composition pedagogy. The problem of narrative in composition pedagogy in turn reflects a wider problem of argumentative pedagogy more generally: how argument is conceptualized and the kinds of writing and teaching practices argument's conceptualization implicates. As Patricia Roberts-Miller notes, much of composition pedagogy assumes as its central purpose the preparation of students for academic writing (219). This and similar understandings of composition pedagogy (e.g., pre-professional) tend to perceive the teaching of argument as peripheral to other purposes, at least when argument is understood as a public discourse oriented toward participation beyond the classroom or workplace (Roberts-Miller 9). And when argument is taught, it tends to be

¹ These essays are just two of many that involve narrative and ethical argument, and that are frequently reprinted in first-year composition anthologies (Bloom).

understood as impersonal, dispassionate, and directed to a non-oppositional (and sometimes universal) audience (Roberts-Miller 215). Given the qualities of narrative as often personal, values-oriented, emotional, and favoring the contextual and particular, narrative tends to go against the grain of how argument is thought about and taught as part of composition pedagogy.

Students' perplexity and even nervousness with narrative, then, is a symptom of an all-too-narrow understanding of argument in composition pedagogy. A better understanding of narrative and its functions with respect to argument is likely to expand the current understanding of argument itself and make it more amenable to certain qualities of arguments that narratives also share. This project explores narrative and its roles with respect to that more expansive understanding of argument, what I shall call "deliberative argument" (based on Roberts-Miller's work), especially respecting matters of ethics. "Argument" (or "argumentation," I use the two terms interchangeably) is a procedure by which persons explore and possibly take positions by attempting to persuade others regarding a disputed, controversial, or otherwise complex issue. Deliberative argument is a kind of argument that embraces particulars, values, and emotions, and often employs a different kind of reasoning – one that, as Sharon Crowley describes it, connects various moments of argument in order to compose a system that describes reality, establishes a values hierarchy, and is available for contest (65-6).

"Ethical argument" is also a kind of argument, one that involves persuasion as to what is good or right for others at large as well as the arguer. This definition differs from classical notions of ethical argument, which typically focus on "ethos" or the qualities of the rhetor – her character, habits, and reputation – and the extent to which these can be represented rhetorically.² Specifically, this definition departs from classical definitions' focus on the arguer and her virtues (rhetorically and otherwise) in favor of a broader consideration of the public as well as the personal benefits and obligations relevant to an issue.

One reason I define ethical argument in this manner is to avoid limiting this project's consideration of ethics and ethical argument to a particular ethical framework –

² Aristotle, for example, discusses ethical appeals as persuading audiences of a rhetor's good sense, solid moral character, and good will toward audiences (121; bk. 2, ch. 1, sec. 5). The Roman rhetorician Quintilian equated rhetorical skill with a rhetor's moral goodness (197; bk. 12, ch. 1, l. 1).

that based on virtue (or “virtue ethics”). Virtue ethics offers much for the understanding of ethical argument (e.g., the work of Martha Nussbaum), yet it is often employed very narrowly in contemporary debates. As textbook authors Crowley and Debra Hawhee note, the “character issue” in presidential elections, for example, ordinarily gets reduced to “a candidate’s moral choices on matters having to do with sex,” such as her marital fidelity (199). My aim here is to define ethical argument in such a way as to avoid such narrow moralizing.

By broadening classical rhetoric’s definitions of ethical argument, I also hope to interrogate some of the assumptions endemic to those definitions and carried over to some extent in contemporary composition practice. One assumption concerns writers’ self-representations in their ethical arguments as functioning apart from the substance of such arguments. Another assumption has to do with the focus on the representation of those involved with the argumentative context – i.e., writers and their audiences – to the exclusion of others potentially having stakes in a controversy.

As far as the relationship between deliberative and ethical argument, argument can be deliberative without being especially ethical (as when an ad for a Toyota Prius depicts the car in a natural setting, thereby arguing that the car’s purchase is consistent with certain audiences’ environmental values). Similarly, argument can be ethical but not particularly deliberative (as when someone argues in favor of the death penalty because of statistics suggesting that it deters criminal acts). Some argument, though, is both deliberative and ethical in that it addresses matters of ethics by calling upon particulars, values, and emotions as well as alternative modes of reasoning – what I call “deliberative ethical argument.” Narrative is important to recognizing these arguments and how they work, which is often far from obvious, particularly given the current hegemony of kinds of argumentation according to which deliberative ethical argument is disregarded (Crowley 2-3). I preliminarily define narrative here as “actions arranged in a time sequence and forming a meaningful totality” (Jackson *Narrative Coherence* 2). By exploring narrative’s roles with respect to deliberative ethical argument, composition students and instructors alike can gain greater clarity and confidence respecting such uses of narrative as well as deliberative argument more broadly.

Introductions often set forth not only the project to be undertaken but also how a writer came to the project as well as the stakes involved. In the effort to do this and to begin to make a case for narratives as instantiating and organizing arguments, I offer the following narratives. (I will call my own narratives “stories” so as to avoid confusion.) My aim in doing so is not only that these stories engage, entertain, or reason by illustration or example, but that they begin to accomplish the work that will continue to be advanced by other argumentative means later in the project. In particular, my stories introduce several significant ways in which narrative plays important roles with respect to deliberative ethical argument that will be explored in the course of this project.

The first story concerns a student writer who uses narrative, here a personal narrative, to explicate and navigate complex identifications and emotions as part of an essay on racial and ethnic profiling. As this story suggests, narrative can be an important deliberative argumentative tool *in* ethical arguments, although its potential as such is often overlooked or disregarded. In the second story, a class of college writers and I are stumped by how to make overall sense of various rhetorical moves made and positions taken in the ethical arguments of a legal case. In this instance, narrative is not only an attribute of ethical arguments but has potential for *organizing* the often multiple means by which ethical arguments work deliberatively (including, but not limited to, specific narratives). In addition, narrative might provide a means of *comparing* different positions with respect to an issue, of determining what is significant (and possibly more or less persuasive) with respect to each.

Pronouns

In Winter 2007, I teach an argumentative writing course organized around what is known as the “stases” – the purposes and questions to which arguments are thought to respond. I ask students to select a topic that they are to think on, research, and write about, something that interests them, is complex and relevant. Some students’ topics especially implicate ethics – e.g., racial profiling. In the last part of the semester, I ask students to write an essay on their chosen topic in which they make an “evaluative argument,” considering the value of some aspect of their topic, for example, making a

claim as to what quality it represents (e.g., whether it is right or just) and why, or according to what criteria.

One student, whom I will call Kamal Hasan, writes an essay that claims that racial profiling has “isolated our allies and has hampered efforts to curb terrorism”; it also has violated values such as personal freedom and equality, among other human rights. The essay begins: “While America is living in the shadows of its racist past, racist attitudes and stereotypes still continue to haunt them today” (Hasan Good, Bad, Ugly 1). As I read the essay’s opening, I wonder at the strange disjunct between Hasan’s use of pronouns – his references to “our” allies and the “them” haunted by racist attitudes and stereotypes. I write a comment in the margin of his essay remarking on the pronouns as a stylistic concern.

The comment brings Hasan to my office hours, and we talk about the apparent conflict in the essay’s pronouns. As part of our conversation, Hasan tells me a narrative of his growing-up that in some measure begins to make sense of the pronouns. He is a United States citizen, and yet feels as though he does not belong anywhere in particular. He has spent considerable time abroad, including in Saudi Arabia where his father worked, and with his grandmother in Pakistan, where his family is from originally. The U.S. is his home in a sense – as a citizen and now residing there.

The issue of racial profiling about which he writes, however, has triggered a disunity in his pronouns. His feeling of not belonging is exacerbated by the perceived threat of terrorism on the part of young men who look like him and who travel to and from the countries he regularly visits. In his narrative, then, are the values, passions, and particulars seeking articulation in his writing and finding it, however much suppressed, in the dueling pronouns. That is, is the U.S., in light of its racial profiling practices, an “us” or a “them” for Hasan in the world conceived of in the essay? Furthermore, what kind of resolution should Hasan seek as a writer? Simply “correct” the deeply felt binary of the pronouns by opting for some sort of consistency (e.g., removing them)? Something else?

The next and final essay assignment of the semester is a proposal that raises and answers questions regarding what should be done. For this essay, Hasan employs a very different introduction, one that does in fact correct for the stylistic inconsistency in pronouns by referring to the former “them” as “its [America’s] citizens.” More than this,

though, the introduction employs a personal narrative that constitutes a distinct “us” of persons traveling by air to the U.S. from Pakistan while relaying the experiences of this group:

Every time I enter the United States through O’Hare International Airport in Chicago, my fellow passengers and I have to experience unruly, suspicious, and hawkish eyes which monitor my every move. We’re taken to separate lines, where all of our bags are opened and checked. We’re asked repetitive, intruding questions about why we went to Pakistan and whether or not we stole our American passports. Many times we miss our connecting flights because of intense questioning that prolongs for hours. These condescending attitudes makes [sic] us feel like we are placed in a cage, where any deviation from ‘being normal’ will result in harsh punishment. (Hasan Dragon 1)

The “us” may or may not literally include audiences to the essay; it does not include me. Yet the narrative invites audiences to the experience of being othered on what Hasan goes on to describe as racial grounds: to what it feels like, the particulars of the experience, and the sense of violation of values like privacy and personal security and self-determination. The choice of narrative is risky, as audiences might include immigration agents and others either involved or highly sympathetic with the purposes and demands of national and travel security. At the same time, there is something powerful in Hasan’s narrative as argument. At the very least, Hasan has articulated with some sophistication a narrative possibly suppressed in the earlier conflicting pronouns, redrawing the troubling and shifting boundaries for both himself and many audiences of what it means to be both an “us” and a “them.”

Faced with the need to respond thoughtfully to Hasan’s narrative, I ask myself: What kind of work do narratives such as this one do in ethical arguments? Are they persuasive as ethical argument, and, if so, how?

Russian Revolutionaries

In August 1918, five men print and distribute pamphlets in New York City, that era’s equivalent of today’s Facebook post or tweet. The pamphlets condemn U.S. involvement in Russia – part of its World War I effort against Germany – as threatening

the Russian Revolution. They urge others to halt support of the war. The men are tried for publishing language contemptuous of the government and inciting resistance to the war effort; their convictions are upheld by the U.S. Supreme Court in *Abrams v. United States* (Abrams). In the case's dissenting opinion, Justice Oliver Wendell Holmes, Jr. famously introduces the constitutional doctrine of the First Amendment as ensuring a marketplace of ideas: "the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market" (Abrams 630).

Nearly ninety years later, the case and its judicial opinions are under discussion in my first-year writing course as part of a unit organized largely around primary legal readings concerning First Amendment issues. In arguments like those made in *Abrams*, the First Amendment invokes ethical as well as legal and political concerns, hence Holmes's talk of "ultimate good." Among the course's writing goals is considering what makes for effective arguments, and, in particular, what is accomplished by figurative language – e.g., metaphors such as Holmes's marketplace of ideas.

The case is certainly rich in tropes, and after discussing the case's issues, reasoning, and holding, the class turns to discussing (and ultimately writing about) these. One aspect of apparent significance is how the defendants are described. As one student, whom I will call Tanya Sharapova, puts it in an essay drawing from class discussion:

In the majority opinion of *Abrams v. United States* the judge allows himself to say that the defendants were "intelligent" and had "considerable schooling" (617). Even though a judicial opinion is supposed to represent the U.S. legal system and present only solid facts from the case, Justice Clarke manages to use language and freedom of speech to skillfully build his side of the argument. He does this by creating a very specific picture of the defendants by carefully choosing what language to include in his opinion. After all, it is not really essential to the case whether the defendants were intelligent or not, yet Clarke chooses to include this in his opinion (Sheidt) [sic]. Ultimately, this subtle way of suiting language to the facts of the case plays a vital role in Clarke's argument.

The dissenting opinion of *Abrams v. United States* certainly doesn't let the majority opinion go unhindered. Justice Holmes uses the power of language to his advantage just as skillfully. He describes the act of the defendants as "publishing a silly leaflet by an unknown man" (Abrams 628). Once again, this is not an essential point extracted from the facts of the case, but thanks to the power

of language, it paints a completely opposite image of the defendants. (Sharapova 5)

Significant, too, are how the respective judicial opinions describe the materials distributed by the defendants. The majority describes them as “not an attempt to bring about a change of administration by candid discussion . . . [but] an attempt to defeat the war plans of the Government of the United States” (Abrams 622). By contrast, in addition to calling the pamphlets “silly leaflets,” the dissenting opinion variously refers to them as “pronunciamentos” and “poor and puny anonymities” (Abrams 626, 29). How the pamphlets are characterized is not just of rhetorical interest but key to the case’s legal decision making, which considers whether the materials produce (or are intended to produce) a “clear and imminent danger” (Abrams 627).

These and other rhetorical details of the opinions thus seem somehow central to the arguments and reasoning of *Abrams*. At the same time, it is difficult for students and for me to articulate these connections on anything other than a rather ad hoc basis (e.g., by recourse to the stases). Some details – e.g., the majority opinion’s description of the defendants’ as “intelligent” and “well-educated” – clearly participate in a narrative, one having to do with the facts of the case. And descriptors such as these mark these narratives as not merely descriptive but argumentative (something like Hasan’s airport narrative excerpted above). Yet the kinds of rhetorical details significant to the case – metaphor, descriptions of persons and events, word choices, etc. – occur not just in the parts of the opinions specifically stating the case’s facts and assuming narrative form. They also occur in the sections conventionally referred to as the opinions’ reasoning, the arguments offered on behalf of each opinion’s result and not necessarily narrative in form. Might these details nevertheless make more coherent sense as part of the reasoning and argument of the case if thought of somehow as narrative?

In addition, although both opinions rely on the same set of facts, those facts are being described quite differently, as though there are two distinct factual narratives: one about a dangerous group of intellectuals, another about an obscure collective of immature ranters. Beyond the immediate facts of the case, it is as though each opinion describes a different legal and social world, a different normative universe. For the majority, vigilance requires the protection of a vulnerable and war-preoccupied United States. For

the dissent, the Constitution is “an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge” (Abrams 630). These representations exceed the immediate concern of whether a group of men has violated the Espionage Act. They also appear to collaborate not only with the case’s arguments and reasoning but also with certain rhetorical details, possibly in a way that might be described as narrative. If so, how? In addition, perhaps one such narrative is more persuasive than another, perhaps one more so today than then. How might narratives such as these be described as persuasive? With respect to one another? How do such narratives and their (per)suasions change? How, in other words, can narrative help to understand and to explain how students and other writers (e.g., the justices of *Abrams*) make ethical arguments deliberately?

* * *

This project examines how ethical argument is currently thought about and taught in composition, and how it might be done so more deliberately. I focus on narrative as a cornerstone in this effort: although not the only tactic for deliberative argument, narrative often displays many of the qualities of such argument – embracing particulars, values, and emotions; employing a different kind of reasoning. Considering how ethical argument might be thought of and taught more deliberately, I develop and enrich what I call a “narrative approach” to ethical argument, one that includes strategies for employing narrative and also clarifies why narrative is used, how it functions as part of or contributes to ethical arguments. This narrative approach draws significantly on an area of legal scholarship known as “narrative jurisprudence,” which I find helpful because of its careful attention to narrative’s roles in legal argument and decision making, an attention that I believe can be applied beyond legal argument to the kind of argument at issue here – deliberative ethical argument.

In Chapter One, I examine current theorization and practice regarding ethical argument in composition and rhetoric, finding an inconsistent and partial attention to the deliberative qualities of ethical argument. By way of thinking about deliberative ethical argument and how it works, I preliminarily propose a narrative approach to ethical

argument. This narrative approach differs from existing work in narrative and rhetoric and relies substantially on scholarship concerning the workings of narrative and argument in common law, specifically the narrative jurisprudence of legal philosopher Bernard Jackson.

Chapter Two develops the narrative approach in the context of an analysis of an opinion-editorial – Sydney Hook’s “In Defense of Voluntary Euthanasia.” Informed by Jackson, the narrative approach considers narrative at three “levels”: narrative discourse, narrative structure, and narrative schema. Such a narrative approach is helpful for making more explicit how narratives function with respect to ethical arguments (as with legal arguments). As I show in this chapter, a narrative approach also complements composition textbooks’ current approaches to ethical argument as well as their treatments of narrative.

In Chapter Three, I enhance a narrative approach to ethical arguments in the context of certain U.S. Supreme Court judicial opinions concerning the death penalty. As further developed, this narrative approach considers how narratives represent persons and emotions, reconceptualizes narrative structure, introduces the concept of narrative silence, and builds on narrative persuasion by considering narratives’ relationships to one another. These developments, I argue, have important implications for student writers’ understanding of narrative and deliberative ethical argument.

Chapter Four considers in detail how a narrative approach complements another common approach to ethical argument, one that employs principles and values. Analyzing the value of equality in the U.S. Supreme Court case *Grutter v. Bollinger* and affirmative action jurisprudence more generally, I show how a narrative approach highlights values’ contingency by using narrative to make sense of the disparate rhetorical details that inform the often multiple meaning of values. A narrative approach also can make more evident for student writers what the stakes are when values are employed in ethical arguments – e.g., important persons, events, and emotions. Finally, a narrative approach provides a means of understanding ethical argument as a process of rewriting values (as Crowley calls it), which is helpful when audiences’ values are quite different from a writer’s.

Altogether, this project seeks to provide composition instructors and their students with a more robust understanding of ethical argument, one that uses a narrative approach in order to make sense of how writers reason and argue by means of values, emotions, and particulars, including rhetorical nuances such as specific narratives. It is *not* substantially my aim, however, to consider the efficacy of the deliberative ethical arguments that I examine; to determine when it is best to employ to such arguments; nor to set forth a comprehensive curriculum. As important as these purposes are, the primary focus here is simply on understanding more fully what argument means – deliberative ethical argument, in particular – and how it is (and might be) undertaken.

CHAPTER ONE
Understanding and Explaining Deliberative Ethical Argument
By Means of Narrative and Narrative Jurisprudence

In explaining what prompted this project, I introduced two stories that draw upon my own experiences instructing on ethical arguments. Yet the questions that arise from these experiences – regarding the nature of ethical argument as deliberative, how it works, and what roles narrative plays with respect to it – are shared more widely by researchers of composition and rhetoric. In addition, these conundrums are not attributes of my classroom alone but are reflected more widely in composition practice. The notion that narrative and its theorization have something to offer in better understanding and explaining deliberative ethical argument is informed to an extent by existing scholarship on narrative and rhetoric. And beyond this literature, certain areas of legal scholarship are promising to the project because of how they construe law and legal argument as ethical and the central place they assign to narrative in the law’s functioning.

This chapter provides an overview of the project’s exigency for rhetoric and composition theory and practice as well as the contemporary conversations from which the project draws and in which the project participates. In the first section, I introduce significant recent scholarship having to do with current understandings of argument, especially deliberative argument, and related concepts and terms relevant to the project. The section that follows examines how composition practice instructs on ethical argument, and the extent to which such instruction might be described as deliberative, by reviewing twelve composition textbooks. The third and fourth sections preliminarily define narrative and the degree to which researchers have considered narrative’s potential for understanding and explaining deliberative ethical argument. In the final section, I give an overview of the area of legal scholarship known as “narrative jurisprudence” and suggest what this subfield offers for the study of narrative with respect to deliberative ethical argument.

Situating the Project: Ethical Argument as Deliberative Argument

As Patricia Roberts-Miller acknowledges in her book *Deliberate Conflict: Argument, Political Theory, and Composition Classes*, argument is “not central in our theorizing with one another about the teaching of writing” (2). She states, “There is not raging controversy within composition journals as to whether or not we should be teaching public argument” (227). Certain major resources for composition pedagogy fail to include argument, at least when understood as a public discourse oriented toward participation beyond the classroom or workplace. And yet “argumentation is often central to the *practice* of composition” (2, emphasis added). That is, despite a dearth of scholarly reflection in composition on argumentative pedagogy, argument is central in many composition classrooms, so much so that one popular textbook’s title asserts “*Everything’s an Argument*” (Lunsford, Ruskiewicz and Walters).

There may not be “raging controversy” in composition with respect to the teaching of argument generally, and ethical argument in particular, but there has been some conversation around the issue. Those who resist teaching argument do so for any number of reasons, while those who support it tend to understand it as a preparation for and, in some cases an immersion in, students’ ongoing roles in public and civic life (Roberts-Miller 2-3, 6, 8-9). As for ethical argument in particular, compositionists have debated whether or not it can or should be taught in writing courses (e.g., Brodkey; Hairston), especially the extent to which classrooms constitute public spaces that might facilitate multiple perspectives and engaged debate (e.g., Wells; Cushman; Friend). Other points of disagreement regarding the teaching of ethical argument include the aims of argument (whether consensus (Elbow) or accepting conflict and difference (Jarratt)) and the wisdom of instructors revealing their own position and reasons to students (e.g., Bizzell “Politics”; Hairston; Friend; Roberts-Miller).

Finally, composition scholars have debated whether the teaching of ethical argument in writing courses more concerns the ethics of argument or the argument of ethics. This debate is less a split than a spectrum, with the scholars at one end emphasizing the social and contextual dimensions of ethical argument and those at the other highlighting the processes of writing and its expression. Critical pedagogues and

advocates of politics in the classroom (such as Linda Brodkey and Patricia Bizzell) support what I am referring to as the argument of ethics. Closer to the other end of the spectrum – i.e., concerning the ethics of argument – are scholars such as Jim Porter, who understands what he calls “rhetorical ethics” as providing criteria for knowing procedures (“know-how”) rather than knowledge itself (“know-that”) (Porter 65). Similarly, Dion Cautrell, a scholar of style, emphasizes the importance of readers and writers understanding how ethical interactions are created rather than any specific judgments. At the far end of the spectrum, Sandra Stotsky specifically rejects the teaching of writing as social and political in favor of a “moral dimension” that concerns itself with “our academic manners as well as our academic mores” (e.g., integrity in research and with respect to language, other writers, the subjects of research, and audiences) (Stotsky 795, 98).³

The debate about the teaching of ethical argument most critical to this project, however, is that regarding the meaning of ethical argument itself, in particular the approaches that inform it and its teaching, especially as those approaches address the role of particularity, values, emotion, and alternative kinds of reasoning. For Roberts-Miller, the field’s controversies over argumentative pedagogy are actually about “the place and nature of argument in democratic society” (viii). As she states, “[M]uch of our disagreement about pedagogical practices is disagreement about what it means (or should mean) to participate in a democratic public sphere” (4), including different models of politics, self, and knowledge (2) as well as the nature of public argument (11).

Recently, composition and rhetoric scholars have been working to formulate new understandings of argument that address the challenges associated with a “discourse” of liberalism (Crowley), or argument as it is associated with a liberal “model” of the public sphere (Roberts-Miller), what I shall call “liberalist argument.” Liberalist argument is a product of the Enlightenment, emphasizing rational discourse, individual interests, and the utopian possibility of determining what is in everyone’s best interest (Roberts-Miller

³ The neatness of this conceptual spectrum breaks down, of course, especially when ethics and politics are conceived of as occurring as much within the classroom as outside of it. One example is contemporary work on plagiarism, which has explored the social and contextual dimensions of, as Stotsky would put it, “academic mores” – specifically, rules and conventions regarding students’ use of sources. Another example concerns the critique of certain argument-of-ethics advocates, whose local and contingent understanding of power and politics does not consistently translate to their understanding of authority in writing classrooms (e.g., Friend 559, critiquing Bizzell’s “Beyond Anti-Foundationalism”).

4). Its commonplaces include “individual rights, equality before the law, and personal freedom” (Crowley 3). Those employing liberalist argument eschew beliefs and values as private and thus inappropriate to public contexts. They also value consensus as a significant aim of argument (3, 15).

As a means of adjudicating disagreement, liberalist argument presents any number of challenges. Foremost among these, the significant emphasis it puts on rationality means that liberalist argument has limited power to persuade (or even to speak to) audiences according to those means that might move them most, such as the particulars, values, and emotions associated with an issue (Crowley 36). Another important problem with liberalist argument is that its notion of universality and drive to consensus can disregard the importance of difference and antagonism to argument as part of the political process (Mouffe, ctd. by Crowley 19-20). As Sharon Crowley puts it, “We [postmoderns, liberals, and other skeptics] thus need a more comprehensive approach to argument if Americans are to engage in civil civic discussion” (4).⁴

For Roberts-Miller, the answer to the quandary regarding liberalist argument lies in what she refers to as a “deliberative” model of the public sphere and the kind of argument associated with it, what I defined in the Introduction to this project as “deliberative argument.” Based on the work of political philosopher Iris Marion Young, the admittedly utopian “deliberative democracy” is “an attempt to make the liberal model more agonistic,” that is, more accepting of conflict and disagreement rather than oriented toward consensus. Additional attributes include inclusiveness, a commitment to the processes of argument rather than threat or force, and an orientation toward groups rather than individuals (Roberts-Miller 187-88).

⁴ An earlier rendition of the challenges and promises of different models of ethical argument and writing pedagogy occurred in debates over the efficacy of anti-foundationalism or postmodernism as writing pedagogy. Patricia Bizzell, for example, subscribed to what she called “anti-foundationalism” by understanding knowledge as material, temporal, and constructed. At the same time, she argued that anti-foundational approaches to pedagogy were troubling to the extent they urged students to deconstruct their own values without offering up an alternative grounds for authority – i.e., alternative values that might support political action (“Beyond Anti-Foundationalism” 664, 67, 70). Similarly, while considering postmodernism’s implications for writing pedagogy, Lester Faigley criticized its potential limits for agency, especially political agency: “[Postmodern theory] offers an ongoing critique of discourses that pretend to contain truth and serve to justify practices of domination, but it does not supply a theory of agency or show how a politics is to arise from that critique . . .” (20). A somewhat broader critique involved the concern that certain approaches to ethical argument were focusing more on textual interpretation than on students’ own processes of ethical sense-making (e.g., Friend 556, critiquing Knoblauch).

Of key interest here is that the deliberative model involves a broader notion of argument than that associated with a liberal model: “one that includes narrative, attention to the particular, sensibility, and appeals to emotion” (Roberts-Miller 5). Deliberative argument further requires a different understanding of reasoning – as “ratiocination” – which Roberts-Miller describes as follows:

. . . [not] simply an argument that moves through logically connected syllogisms to proof, but any process of reasoning in which one moves toward a conclusion through a series of connected arguments, whether those arguments are personal narratives, syllogisms, steps in a process of controversy, or even something like explication of complicated evidence. (190)

Without specifically explaining how such arguments are “connected” in deliberative argument, Roberts-Miller nonetheless makes clear that she has in mind a very different kind of argument from liberalist argument as far as its evidence and means.

In *Toward a Civil Discourse: Rhetoric and Fundamentalism*, rhetorician Sharon Crowley considers the failings of liberalist argumentation in the face of the deeply held beliefs and passionate political activism of Christian fundamentalists. In Crowley’s elaboration of a “postmodern sophistic model” of rhetoric, I understand Crowley as building on Roberts-Miller’s notion of deliberative argument and ratiocination. She does so by clarifying the components of such arguments (“moments”) and their logic (“ideologic”). (I will use these two terms and concepts throughout this project.) Crowley describes the model as follows:

While persuasion can of course be effected by means of reasoned argument, I posit that ideology, fantasy, and emotion are primary motivators of belief and action . . . The workings of all of these sources of motivation have their own logics – that is to say, the relations between and among the moments of belief, fantasy, and myth can be traced, and these relations can be shown to make a kind of sense that is not covered by the term *reason*. (59)

That is, Crowley understands what I am referring to as deliberative argument as involving moments, here described as “belief, fantasy, and myth,” elsewhere in the book as “beliefs, symbols, and images” (65). These moments of deliberative argument are consistent with Roberts-Miller’s “personal narratives, syllogisms, steps in a process of

controversy . . . [and] explication of complicated evidence” (190). Similar to Roberts-Miller’s understanding of “ratiocination” as “a series of connected arguments” (190), Crowley also understands deliberative argument as involving the connections among such moments. At times, these connections form an “ideology” – i.e., they “assemble a more or less coherent description of reality and/or establish a hierarchy of values” that is available for contest (unlike “hegemony”) (65-66). When connections participate in ideology, they serve as “a kind of sense that is not covered by the term *reason*,” or “ideologic” (60).

As I explained in the Introduction to this project, deliberative argument is not the same as ethical argument, yet the two kinds of argument overlap when argument addresses matters of ethics by calling upon particulars, values, and emotions as well as alternative modes of reasoning (i.e., ideologic) – what I call “deliberative ethical argument.” Neither Roberts-Miller nor Crowley discusses deliberative argument as specifically having to do with ethical argument; the term referring to the relationship is my own. At the same time, the term grows out of many aspects of these scholars’ treatment of deliberative argument, which I understand as having to do with deliberative ethical argument, especially when they discuss values in argument (e.g., family values) and the role of values with respect to certain issues (e.g., gay marriage) (e.g., Crowley 200).

This project, then, is situated theoretically in certain contemporary debates in rhetoric and composition over the role of argument in composition, especially those having to do with what argument means. In particular, in response to some of the challenges of liberalist argument, the project explores what it means for ethical argument to be deliberative – i.e., to include particularity, values, and emotions in its moments of argument as connected by an alternative kind of reasoning known as ideologic.

Teaching Deliberative Ethical Argument in Composition

Roberts-Miller argues that argumentation is more central to the *practice* of composition than to its theorizing. If this is the case, perhaps composition practice offers insights that composition scholarship does not regarding deliberative ethical argument

and how it works. Roberts-Miller did not find this to be the case with respect to deliberative argument. She briefly reviewed a handful of composition textbooks, specifically their advice for student writers concerning audiences, and found that the textbooks implicitly and partially adopt a liberal model of argument rather than a deliberative one, presupposing the persuasive powers of “rational-critical discourse” with “some kind of hypothetical neutral or mildly skeptical audience” (7). If Roberts-Miller’s findings hold more generally, they would indicate an important need for greater attention in composition instruction to ethical argument as deliberative.

In this section, I consider whether composition instruction on ethical argument addresses such argument as deliberative. In my own review of composition textbooks, I both narrow and extend Roberts-Miller’s research, focusing on textbooks’ instructional materials as they address ethical argument in particular and widening the scope of analysis to twelve composition textbooks, selected on the basis of their popularity and widespread use (see Appendix A). As I use it here, “composition textbook” means a textbook available and intended for use by instructors, typically in a first-year composition course (although not precluding its use in an upper-division writing course), that includes substantial explanatory material on how to write. There are easily several hundred different composition textbooks available for use in undergraduate courses, and these textbooks are significant to composition practice. According to a 1998 study, more than 70% of colleges and universities use a commercial textbook in their first-year writing courses (Moghtader, Cotch and Hague, cited by Gilfus 58). In order to narrow the number of composition textbooks reviewed, and to zero-in on those textbooks most likely to include instruction on ethical argument, I focus in particular on what I call “argument rhetorics” – those composition textbooks that are organized around, focus heavily on, or speak significantly about argumentation.

From highest to lowest sales, the twelve argument rhetorics analyzed are listed in Table I.

Table I. Argument Rhetorics Analyzed

Title & Edition	Authors	Publication Information
<i>Asking the Right Questions: A Guide to Critical Thinking</i> (8 th ed.)	M. Neil Browne and Stuart M. Keeley	Upper Saddle River, N.J.: Pearson/Prentice Hall, 2007
<i>Everything's an Argument: With Readings</i> (4 th ed.)	Andrea A. Lunsford, John J. Ruskiewicz, and Keith Walters	Boston: Bedford/St. Martin's, 2007
<i>Writing Arguments: A Rhetoric with Readings</i> (7 th ed.)	John D. Ramage, John C. Bean, and June Johnson	New York: Pearson/Longman, 2007
<i>Current Issues and Enduring Questions: A Guide to Critical Thinking and Argument, with Readings</i> (8 th ed.)	Sylvan Barnet and Hugo Adam Bedau	Boston: Bedford/St. Martin's, 2008
<i>Thinking Critically</i> (9 th ed.)	John Chaffee	Boston: Houghton Mifflin, 2009
<i>Read, Reason, Write: An Argument Text and Reader</i> (8 th ed.)	Dorothy U. Seyler	Boston: McGraw Hill, 2008
<i>Perspectives on Argument</i> (5 th ed.)	Nancy V. Wood	Upper Saddle River, N.J.: Pearson/Prentice Hall, 2007
<i>Thinking for Yourself: Developing Critical Thinking Skills through Reading and Writing</i> (7 th ed.)	Marlys Mayfield	Boston: Thomson Wadsworth, 2007
<i>Dialogues: An Argument Rhetoric and Reader</i> (5 th ed.)	Gary Goshgarian and Kathleen Krueger	New York: Pearson/Longman, 2006
<i>Classical Rhetoric for the Modern Student</i> (4 th ed.)	Edward P.J. Corbett and Robert J. Connors	New York: Oxford University Press, 1999
<i>The Elements of Reasoning</i> (2 nd ed.)	Edward P.J. Corbett and Rosa A. Eberly	Boston: Allyn and Bacon, 2000
<i>Ancient Rhetorics for Contemporary Students</i> (4 th ed.)	Sharon Crowley and Debra Hawhee	New York: Pearson/Longman, 2009

To date, there has been no systematic analysis of textbooks' instruction on ethical argument as part of argumentative writing pedagogy more broadly. Barry Kroll's "Arguing about Public Issues" examines a handful of composition textbooks for their discussions of ethical argument, finding several that address the topic, often by drawing

on moral philosophy and applied ethics. Kroll cautions that deductive approaches to ethical argument may not serve writing students to the extent such approaches oversimplify complex problems and rely heavily on the authority of experts and rules for their resolution. His exploration of alternative methods of ethical problem solving and argument, such as casuistry and pragmatism, is a unique and thoughtful response to the problems of ethical argument in textbooks as he presents them (Kroll).

Although helpful, Kroll's exploration of methods of instruction in ethical argument among composition textbooks is not systematic. Kroll turns to just four textbooks to demonstrate the problems with such instruction as well as more exemplary instances. Two textbooks – “controversy-oriented anthologies” – serve as examples of textbooks' engagement with “deep conflicts” that tend to have an ethical dimension (105). Another two textbooks demonstrate “efforts to incorporate the methods of practical ethics in courses on argumentative writing” (105-06).⁵ It is unclear how or why Kroll chooses these four textbooks; it must be assumed that the textbooks are somehow representative of other argumentative writing textbooks. In addition, his reading of ethical argument in *Writing Arguments*, a textbook reviewed here, focuses only on certain approaches to ethical argument despite the textbook's presentation of other approaches (at least in a later edition).

Phillip Sipiora's “Ethics and Ideology in the English Classroom” and Rosalind J. Gabin's “*Ethos* and Ethics: Ancient Concepts and Contemporary Writing” are less studies than general observations regarding how ethical argument is addressed by composition textbooks. Sipiora expresses concern with the contemporary “English classroom” in which students interpret and produce texts without considering and articulating their own or others' ethical or ideological assumptions (Sipiora 44). For advanced writing courses, he recommends value theory and pragmatics, “yet no composition textbook, to my knowledge, considers value theory and use in an organized, systematic manner” (48). Gabin's project considers historical and contemporary connections and disjunctions between ethos and ethics, and advocates for such

⁵ An additional two textbooks serve as examples of instruction on argument in general (not ethical argument in particular) that is less deductive and inquiry-based (Kroll 107).

connections in contemporary composition pedagogy. Despite the importance of ethos in rhetorical theory, “contemporary composition instruction gives the ethical argument perfunctory attention at best” because “composition pedagogy has yet to work out a systematic presentation of the ethical proof” (Kinneavy and Warshauer 171, qtd. in Gabin 116). Apparently this shortcoming is reflected in composition textbooks:

If we look at textbooks today we can see that stylistic concerns, along with invention, overshadow ethos, giving rise in composition to the ‘current-traditional paradigm’ in composition in the United States, the paradigm that stresses above all else patterns of arrangement and grammatical correctness. (116)

Both Sipiora and Gabin provocatively assert that composition textbooks inadequately address ethical argument, specifically value theory, pragmatics, and ethos. Yet neither offers support to back up these claims; no specific textbooks are mentioned.

What I find based on my analysis of argument rhetorics is consonant with Roberts-Miller’s findings: textbooks’ approaches to ethical argument generally reflect an orientation toward liberalist argument, or at least they do not widely or consistently reflect deliberative argument. As I use the term here, an “approach” to ethical argument includes strategies and also clarifies why such strategies are used and how they function as part of or contribute to ethical arguments. Textbooks may describe the approach informing a strategy, or signal that approach by reference to a well-known theorist or theory. Individual textbooks may not consistently address the approaches informing the writing strategies they advise, but advice across textbooks nevertheless tends to coalesce around at least four distinguishable approaches.

-- Classificatory Approach to Ethical Argument

One of the most common approaches to ethical argument among the argument rhetorics reviewed has to do with the genres and structures of argument, what I call “classification.” This classificatory approach includes strategies such as identifying the kinds of discourses involved with ethical argument⁶ as well as the purposes and questions

⁶ For example, certain textbooks characterize ethical argument as frequently “epideictic,” or focusing on the present and often celebratory or ceremonial (Lunsford et al. 19; Crowley and Hawhee 209-13).

to which ethical argument responds (sometimes referred to as “stases”).⁷ Another strategy involves identifying and learning to write within genres considered significant to ethical argument – e.g., “position papers” in which writers are said to address and take a stand with respect to controversial topics such as euthanasia, the death penalty, and pornography (Goshgarian and Krueger 135; Seyler 100, 76). A number of the argument rhetorics discuss ethical argument in terms of the recurrent components of such arguments, as with the Toulmin method (see Appendix B, specifically Classification – Toulmin). According to the Toulmin method, the major components of any argument include a “claim,” one or more “reasons” in support of that claim, and “warrants” that justify why the reasons given are considered legitimate support for the claim.⁸

A classificatory approach helps student writers to perceive the routine occasions and circumstances in which ethical arguments are made, in their own and others’ writing, as well as the argumentative moves thereby suggested. The strategies of a classificatory approach are thought to ensure that students’ arguments are rigorous, supported, and conscientious about assumptions made by themselves and others. Furthermore, such strategies assist student writers in being responsive to the topic and conversation at hand (Crowley and Hawhee 82).

As helpful as a classificatory approach can be for student writers, only some of its strategies potentially concern ethical argument as deliberative – i.e., as having to do with particulars, values, and emotions, and as involving ideologic. The notion, for example, that ethical arguments are produced in certain kinds of texts (such as position papers) or that they operate according to propositional logic (e.g., depending on claims, reasons, and warrants) is certainly helpful to an extent. It reflects at best, however, only a partial understanding of ethical argument, one altogether too limiting of the multiplicity of genres in which ethical arguments occur and the structures of their reasoning.

⁷ The stases clarify the question(s) an argument addresses, including conjecture (or whether something exists), definition, cause, resemblance (what something is like), evaluation, and proposal. Ethical argument is explained as most often addressing questions of evaluation, sometimes referred to as “value” or “quality.” When applied in ethical arguments, the stasis of evaluation asks and answers whether something is good or bad, whether it is desirable, right, honorable, or just, or what values are associated with it (Corbett and Eberly 17, 21; Crowley and Hawhee 90).

⁸ More nuanced explanations of the method also include “qualifiers” (which limit the claim), “backing” (supports for warrants), and “rebuttals” in response to other arguments.

-- *Person-Based Approach to Ethical Argument*

A second approach to ethical argument among the argument rhetorics – what I call a “person-based approach” – raises similar concerns about the extent to which composition practice represents ethical argument as deliberative. A person-based approach considers the roles of the writer (sometimes referred to as “ethos”) and her audiences with respect to ethical arguments.

Respecting their roles as writers, students are advised to be virtuous, as writers or more generally, or at least to represent themselves as such within their arguments. The focus is thus on liberalist concerns such as the writer’s credibility as a “rational-critical autonomous individual” and her decorum (cf. Roberts-Miller 210), rather than with more deliberative ones – e.g., how a writer’s self-representation might substantively influence her arguments. The textbook *Classical Rhetoric*, for example, depends heavily on the strategy of ethos and defines ethos as a matter of writerly integrity and virtue. It states:

If a discourse is to reflect a person’s moral character, it must display an abhorrence of unscrupulous tactics and specious reasoning, a respect for the commonly acknowledged virtues, and an adamant integrity. (Corbett and Connors 73)

That textbook also defines the effective arguer as a *vir bonus*, a good person who, as a result of being a good person, speaks well (72). In neither case is a connection made between ethos and the *substance* of what an arguer is arguing.

Classical Rhetoric goes on to advise student writers on the organization of their arguments, and here, too, ethos has less to do with the argument per se than with how an arguer’s self-representation reflects on that argument. The plausibility of an argument’s statement of fact depends on “the ethical image of the writer.” In an argument’s refutation, the writer’s ethical appeal is touted as potentially overcoming an argument’s intrinsic weakness. When advising on conclusions, the textbook suggests that writers reemphasize earlier bases for ethical appeal and cultivate a sense of modesty by confessing an argument’s limitations, acknowledging the strengths of others’ arguments, and being charitable toward opponents (276, 80, 91). While there is certainly nothing

amiss with advice encouraging such argumentative moves, it does not go far enough to explain self-representation's full argumentative potential.

The sense textbooks like *Classical Rhetoric* make of writers' self-representation typically is thus not integrated in any meaningful sense into ethical argument itself. Another case in point is *Classical Rhetoric*'s treatment of two historical ethical arguments – Martin Luther King, Jr.'s "Letter from a Birmingham Jail" (301-14) and Henry David Thoreau's "Civil Disobedience" (320-36). Despite the important substantive ethical concerns of the writings – i.e., the difference between just and unjust laws, the rights of individuals or minority groups not to comply with laws considered unjust, the failures of persons to act ethically – the textbook's textual apparatuses associated with the excerpts do not address these concerns. Instead, the textbook highlights the respective ethos of King and Thoreau to the exclusion of the other arguments those writers are making.⁹ So doing, *Classical Rhetoric*, like other argumentative rhetorics, portrays the most important aspects of these influential ethical arguments as not their positions and supports but the virtuous selves their authors compose within them.

In contrast, a more deliberative orientation to the writer's representation of the self in ethical argument might make the writer's personal experience or attributes as a writer relevant to what is being argued and "something with which people might disagree" (Roberts-Miller 211). An example of the incorporation of a writer's writerly virtues into the argument itself occurs in the textbook *Everything's an Argument*. With respect to a reading on the regulation of hate speech, the textbook describes the writer's "ethical appeal" as having to do with his tolerance. The writer's tolerance, however, is not simply an admirable quality that is helpful to his writing; tolerance is central to the

⁹ The textbook excerpts an article on the style of King's "Letter from Birmingham Jail" by Richard Fulkerson, which says nothing about the ethical argument of the letter aside from describing its "ethical" style as a projection of its writer's integrity. By "ethical," Fulkerson means "enhanc[ing] the rhetor's image and thus the rhetor's credibility" (130, qtd. in Corbett and Connors 478). He gives examples of archetypal metaphors that convey King's confidence in his own moral judgment (132, qtd. in Corbett and Connors 480). Also, with King's parallelisms, "[t]he major effect is ethical, portraying the rhetor as a man who can balance various views and who has his ideas under complete control" (134, qtd. in Corbett and Connors 483).

As for the Thoreau excerpt, the textbook glosses the excerpt's argument as "speaking the truth" and directs the readers' attention instead to the "'ethical appeal' of the man himself" (Corbett and Connors 320).

writer's arguments opposing the regulation of hate speech (168, referring to "Testing Speech Codes" by Alan Dershowitz). Such an example, however, is all too rare among the argument rhetorics, which by and large understand a writer's representation of self or ethos as a matter of virtue or decorum distinct from the argument's substance.¹⁰

Another common strategy that a person-based approach to ethical argument recommends is that writers appeal to their audiences, often by means of values that they already share or can come to share. The textbook *Writing Arguments*, for example, describes Rogerian argument as important to ethical arguments (e.g., regarding abortion). Employing Rogerian argument, an arguer emphasizes values shared with others, regardless of their respective positions (e.g., the importance of neonatal care, condemnation of abortion as birth control) (152; see also Goshgarian and Krueger 13-14). In a particularly acute example of appealing to audiences by means of a sense of shared values, the textbook *Dialogues* advises student writers ("you") to "suggest that any decent and moral readers will share your position" (138). That same textbook also advocates that the student writer adopt a particular "slant" that appeals to audiences' ethics, based as well on the student's own beliefs and values (Goshgarian and Krueger 84, 89).

Such advice for writing emphasizes the relationship between writers and audiences above all other relationships and describes that relationship's objective as consensus. These qualities reflect a liberalist orientation to argument (cf. Roberts-Miller 7).¹¹ By focusing only on the values and positions of those directly involved in the argumentative context – writers and their audiences – such advice overlooks the potentially differing perspectives of those not part of that context. Just two textbooks ask

¹⁰ To be clear, there is significant disagreement over this point – i.e., the question of identity's role in deliberative argument. For example, Crowley's version of deliberative rhetoric – a "postmodern sophistic model" of rhetoric (45) – "does *not* associate the evaluation of arguments with evaluation of a rhetor's 'self'" (57). She describes the related concept of "identity" as cultural and as the product of hegemony and ideology (72), as part of collective fantasies, and as at least partially constructed from "libidinal investments" and "ego attachments" (95-96). As I understand it, Crowley suggests that, understood in this manner, identity is best argumentatively exploited as a means of challenging hegemony, by "subalterns" and those espousing minority ideologies (192-3). Thus, her sense of the appropriate role of the representation of self as part of deliberative argument is far more circumscribed than what I suggest (based on Roberts-Miller).

¹¹ By contrast, Crowley claims that "[t]he argumentative case typically imagined in composition textbooks is an attempt by a rhetor to persuade hostile or uncaring others to accept a position in which the rhetor believes . . ." (195) It is unclear, however, on what evidence Crowley bases this claim.

students to imagine positions other than their own or their audiences' by adopting an "ethics of care" (Chaffee 323) or by "reverse role-play[ing]" (i.e., using empathy to imagine what others think and feel) (Chaffee 325; Browne and Keeley 63). Consistent with textbooks' focus on consensus among those who are part of the argumentative context, liberalism prioritizes reason above possible differences among how writers, audiences, and others think and believe. As Crowley describes it, "liberal pluralism harbors the hope that difference can be erased if only everyone will just be reasonable – which means something like 'think as we do'" (Crowley 41). In other words, liberalism emphasizes consensus, in fact over-values it. Liberalism's concern with consensus is "unrealizable and dangerous to the preservation of democratic practices" in that it effaces recognition of difference and agonism among different positions (Crowley 19).¹² More immediate to the concerns of student writers, advice for ethical argument that prioritizes just one relationship – that between writers and their audiences – and just one understanding of the purposes of that relationship – as achieving consensus – limits opportunities for student writers to consider how best to engage with multiple perspectives, often differing from those of writers themselves and held by passionately committed audiences and others.

-- *Emotion-Based Approach to Ethical Argument*

Less commonly used but still regularly present among argument rhetorics is an approach to ethical argument that emphasizes the use of emotions. The textbook *Dialogues*, for example, acknowledges that position papers about "moral, religious, or personal values" rely on emotion as well as reason (138). At times, emotion in ethical argument is described in terms of the artistic proof of *pathos*, or emotional appeal, as when the textbook *Writing Arguments* explains how values are significant to what it calls "pathetic appeals": "Arguers create pathetic appeals whenever they connect their claims to readers' values, thus triggering positive or negative emotions depending on whether these values are affirmed or transgressed" (Ramage et al. 132; see also Crowley and

¹² Both Crowley and Roberts-Miller understand the project of deliberative democracy (or, as Crowley terms it "agonistic pluralism" (22)) as "an attempt to make the liberal model more agonistic" (Roberts-Miller 187) in the sense of perceiving any agreement as a highly contingent moment of agreement rather than a generalized consensus (Roberts-Miller 201-4).

Hawhee 246-47). As strategies for ethical arguments, the uses of emotions are recommended for sustaining ethical arguments, moving potentially indifferent audiences to action, and building common ground with skeptical audiences (Lunsford et al. 52, 56; Crowley and Hawhee 255-56).

An approach to ethical arguments that embraces emotions initially seems consistent with deliberative argument, which is said to include “appeals to emotion” (Roberts-Miller 5). At least two aspects of textbooks’ advice concerning the use of emotions, however, suggest otherwise. First, textbooks’ descriptions of the use of emotion in order to influence audiences replicates the situation discussed earlier – the assumption that audiences are like-minded, or, alternatively, indifferent or skeptical (in which case the objective is consensus-building). As before, the problem is that such assumptions implicate the eliding of differences among persons, their values, perspectives, and, here, their emotional orientations toward issues.

Second, textbooks’ largely instrumental understanding of the uses of emotion in ethical arguments does not integrate emotion in any meaningful way with respect to those arguments or their reasoning. (This problem is analogous to the earlier one raised concerning textbooks’ advice regarding the representation of self, or ethos, with respect to a person-based approach to ethical argument.) In contrast, as part of deliberative ethical argument, emotions are not only a tool for making arguments but a means of reasoning with respect to such arguments. Turning to Lynn Worsham, Crowley defines emotion as a “tight braid of affect and judgment, socially and historically constructed and bodily lived, through which the symbolic takes hold of and binds the individual, in complex and contradictory ways, to the social order and its structure of meanings” (Worsham 216, qtd. in Crowley 87). Contemporary neuroscience and cognitive psychology have found that emotions are central to what is thought of as reasoning (Crowley 82-85) and certain scholars of feminist ethics argue that emotions provide an “experiential basis for values” (Jaggar 137, qtd. in Crowley 89). As Crowley summarizes it, emotions (among other things) are “primary motivators of belief and action” that have “their own logics” (Crowley 59). As such, emotions have a lot more potential with respect to ethical arguments as deliberative than is evident in textbooks’ advice, as

directly relevant to what is being argued and as something with which people might disagree.

-- *Principles-and-Values Approach and Outcomes Approach*

Additional approaches to ethical argument among the argument rhetorics, somewhat less common but still widely available, include what I call a “principles-and-values approach” and an “outcomes approach.” A principles-and-values approach advises that student writers use as a strategy for ethical argument “principles”: standards, rules, or dictates given as support for ethical judgments (see Barnet and Bedau 389). As one textbook states it, “X is right (wrong) because it follows (violates) principles A, B, and C” (Ramage et al. 298). Student writers also might use the strategy of identifying one or more values at issue in ethical arguments. Regularly cited as a source for a principles-and-values approach is Enlightenment philosopher Immanuel Kant and his categorical imperative, which insists that “everyone should always act as if his acts were the basis of universal law” and that “no one should ever use another person as a means to his own ends” (Ramage et al. 298; see also Barnet and Bedau 389; Chaffee 322). When multiple principles or values are perceived as being at stake, textbooks often advise according to a principles-and-values approach that these principles or values may be in conflict and that writers must compare and prioritize among them, although little advice is given for how to do so (e.g., Browne and Keeley 58-59; Barnet and Bedau 392-402; Crowley and Hawhee 145-46).

About as common among the argument rhetorics is an approach that argues based on the outcomes associated with certain ethical positions. According to one strategy of an outcomes approach, the position a writer takes is considered well-reasoned when it has significant positive outcomes. Textbooks sometimes associate this strategy with “utilitarianism” and philosopher Jeremy Bentham, and it focuses only on one or more outcomes that are good (or bad) (Ramage et al. 297; see also Barnet and Bedau 389 (“greatest good for the greatest number”); Chaffee 328 (“greatest happiness”)). The textbook *Writing Arguments* describes this strategy of an outcomes approach as follows:

“X is right (wrong) because it will lead to consequences A, B, and C, which are good (bad)” (298).

Another strategy of an outcomes approach involves comparing outcomes against one another in order to determine whether the good outcomes outweigh the bad with respect to a particular position (Ramage et al. 298), or which of two or more positions is preferable given their respective outcomes (Chaffee 328). This strategy is sometimes associated with “consequentialism” and philosopher John Stuart Mill. Outcomes can be compared on any number of bases, including whether outcomes appeal to the “higher pleasures” or “lower pleasures” (Chaffee 328), whether they measure up to an individual’s values preferences (Browne and Keeley 61-62), or whether they are probable (Crowley and Hawhee 136-37).

These two approaches – addressing principles, values, and outcomes – do not necessarily preclude a deliberative orientation to argument. As discussed by the argument rhetorics, however, they often reflect a more liberalist orientation to ethical argument. For example, when a principles-and-values approach references Kant, or describes principles and values as universally shared or distinct from the contexts that give rise to them, it is adopting a liberalist understanding of principles and values as categorical and transcendent (Roberts-Miller 4). Furthermore, the notion that principles, values, and outcomes can and should be compared and prioritized risks abstracting those concepts away from their particularity and contexts and separating their ethical significance from their use in reasoning. That is, in order to compare two principles, values, or outcomes, they must be perceived as similar enough, reduced to the extent necessary to the comparison. Even when such a comparison is described as depending on context, the notion that two or more principles, values, or outcomes might be directly compared redirects the focus to the comparison itself rather than the ethical significance of what is being compared. Describing how liberal rhetorical theory separates values in particular from reason, Crowley explains that “arguments or claims based on moral and emotional commitment had to be subjected to reason in order to make them legible and hence useful to others” (37). Here, the processes of comparing and prioritizing, at least as described by the argument rhetorics, is the “reason” to which the moral commitments

represented by the use of principles, values, and outcomes in ethical arguments are subjected.

In their various approaches to ethical argument, the argument rhetorics reviewed do not widely or consistently adopt a deliberative orientation, and often employ a liberalist approach. If composition practice were to more fully embrace deliberative ethical argument, it would embrace a wider multiplicity of genres and structures of reasoning. Composition instruction would more meaningfully integrate representations of persons and their differing interests and emotions with reasoning. Explanations of ethical argument would contextualize principles and values, and, if comparing these (or outcomes), retain a sense of their ethical significance and particularity. It is the purpose of this project to propose an approach to ethical argument that more fully accomplishes these ends.

“Narrative” and Its Potential for Deliberative Ethical Argument

Narrative has special significance to the project of developing what it means to argue deliberatively. Among scholars of deliberative argument, Roberts-Miller includes narrative in her definition of deliberative argument (5). Crowley counts narrative (or “story” as she calls it) among strategies and tactics for changing beliefs by means of deliberative argument (197-98). It is not surprising that narrative is so central to these scholars’ notions of deliberative argument and how it works. Narratives share many of the qualities of deliberative argument: they often address particulars; are oriented to values and emotions; and present a different, less direct kind of reasoning. They also are commonly employed as part of deliberative arguments.

Responsive to the need for better frameworks and tools for understanding and making deliberative ethical arguments, this project proposes to develop a narrative approach to ethical argument in college writing instruction. Analogous to other approaches, a “narrative approach” to ethical argument would include strategies for employing narrative and also would clarify why narrative is used and how it functions as part of or contributes to ethical arguments. A narrative approach would use narrative to make better sense for student writers of ethical argument as deliberative, as extending

argument beyond a liberal model by redefining argument as including particulars, values, and emotions, and by reconsidering the meaning of reasoning with respect to argument – as ideologic.

Despite the significance of narrative to Roberts-Miller and Crowley, their respective understandings of narrative limit the opportunity to realize narrative's full potential, especially in redefining what reasoning means in argumentation. Roberts-Miller's discussion of narrative focuses on personal narrative, which, according to the liberal model, is not argumentative but only evidences a "rational-critical autonomous individual" who operates with more or less decorum (210). She argues that a deliberative model of argument opens up the possibility of composing and receiving personal narratives differently, as a kind of evidence subject to standards applying to arguments from authority or from example (210). She states:

To offer one's personal experience as part of a deliberative process . . . means offering the experience as something with which people might disagree. Particular to oneself, it is not unique; of relevance and accessible to other people, it is not universal; indicative of one's perspective on an issue, it is an experience upon which one has reflected. (211)

Although I appreciate Roberts-Miller's recuperation of narrative as argument, her focus on personal narrative unnecessarily limits narrative's argumentative potential in ways evident in her description of the ends of narrative argument. Roberts-Miller aptly turns to a claim by Iris Marion Young regarding the potential of narrative argument: "Narrative also contributes to political argument by the social knowledge it offers of how social segments view one another's actions and what are the likely effects of policies and actions on people in different social locations" (Young 132, qtd. in Roberts-Miller 213). But summarizing Young's point, Roberts-Miller limits the argumentative role of narrative to making "a certain kind of experience comprehensible to people who have not had it" (213). While this is an accurate account of what narrative argument can achieve, it is partial, as evidenced by the difference between Young's statement and Roberts-Miller's summary of it: Young's description of narrative has to do not only with a narrator conveying her own experience to others, but with the narrativity of social

knowledge itself – perhaps experiential, but also perspectival (“view one another’s actions”).

Toward the end of her book, Crowley generates certain “strategies and tactics” for changing beliefs by means of argument as she has redefined it. Among these is what she calls the “story,” defined according to Aristotle as an “exemplary narrative, historical or fictional, that makes a point by illustration or comparison” (197-98). According to Crowley, stories function to garner attention and to serve as examples in argument. Remarking on the importance of stories, she states, “I think we overlook how often all of us use stories as a means of persuasion” (198).

Narrative’s argumentative potential, however, goes beyond its role as serving as an interesting example, as a moment of argument. There is a sense in which narrative organizes argumentative reasoning. In this sense, narrative serves as ideologic – i.e., constituting the “connections made between and among moments (positions) that occur or are taken up within ideology” (Crowley 60).

Crowley does not recognize narrative’s potential as ideologic, as is evident not only in her definition of “story” but also in her discussion of what narrative means in the context of myth. Crowley defines “myth” as a collective fantasy that “generaliz[es] particular and contingent experiences into the bases of universal rules of understanding and conduct . . . by transforming secular history into a body of sacred and sanctifying legends” (Slotkin 19, qtd. in Crowley 97). Narratives are connected to myths, but, according to Crowley, only insofar as narratives are the historical happenings that instigate myths. Once a myth takes hold, the narrative disappears. As Crowley puts it, “[O]nce an event becomes mythologized, ideologic trumps narrative. It is the moral – the commonplace – that matters” (98). That is, a myth comes to hold a “psychosocial meaning” more important than its originary narrative for “groups of people who may or may not have forgotten the historical event around which it coalesced” (98). In this description of myth, Crowley reduces the meaning of narrative to a historical event and insists that narrative in this sense is overtaken by another kind of meaning-making – the ideologic. So doing, she distinguishes narrative from ideologic, foreclosing narrative’s potential as ideologic.

As Roberts-Miller and Crowley both recognize, narrative has important functions with respect to deliberative argument. Yet, beyond what these scholars envision for narrative, narratives hold significant promise as deliberative argumentative forms for their particularity, their encapsulation of values (“the moral of the story”), and the ways in which they incorporate emotions as part of a more expansive sense of reasoning. Furthermore, there is a sense in which narratives go beyond a kind of argument, instead organizing argument and reasoning, serving as ideologic. To further articulate, then, how narratives function with respect to deliberative ethical argument is to advance the project of better understanding how such argument works, and how it might be taught.

An important implication of such work is that it opens up possibilities for different kinds of arguments to be made. According to Crowley, liberalism exercises hegemony in the United States as a default discourse: “the country’s founding documents, and hence its system of jurisprudence, are saturated with liberal values” (3). As a different kind of discourse, deliberative argument promises to make available those arguments that currently “can be imagined or desired but that cannot be constructed in a given cultural time and place” (Crowley 49). A greater variety of arguments possibly enriches public debate and decision making in the sense that Crowley means in her use of the eponymous concept “civil discourse.” Specifically, this greater variety of arguments might mean that those who currently face impasses in their civic conversations with one another – e.g., liberals and Christian fundamentalists – might be able to discuss issues more meaningfully and with more communicating *with* one another rather than *at* one another. Given the limited instances in which textbooks adopt a deliberative orientation when instructing on ethical argument, the teaching of deliberative ethical argument also might increase student writers’ argumentative agility as they benefit from an expanded understanding of the possible means of persuasion. Furthermore, by reconstruing the meaning of argument, this work enriches the scholarly conversation regarding the meaning and role of argument in composition curricula, making it more central (as Roberts-Miller hopes) to theorizing about the teaching of writing. At the very least, it addresses some of the concerns of those who resist the teaching of argument in composition, especially those who take issue with reductivism in the teaching and learning of argument; students’ neutrality or lack of engagement; the lack of passion and

hyperrationality that sometimes characterize argumentative assignments and student writing; and an understanding of argument as masculinist and aggressive.

Scholarship on Narrative and Rhetoric Is Insufficient to Narrative Approach

There is a substantial and growing literature on narrative and rhetoric that might contribute to the project of understanding and explaining narrative's roles with respect to deliberative ethical argument. Yet the work of each of three significant contributors to this scholarship – Kenneth Burke, Walter Fisher, and James Phelan – poses distinct challenges for developing a narrative approach. There also are two kinds of relationships for which this literature as a whole does not provide sufficient conceptualization: the relationships among the levels at which narrative works and the relationships among models of argument.

In the middle of the twentieth century, rhetorician Kenneth Burke responded to the atrocities of World War II and the ascendancy of behaviorism by considering the processes of reasoning, how persons are persuaded to do what they do by means of language, and the extent of their agency. Specifically, he conceptualized reasoning as having to do with “motive” or “what people are doing and why they are doing it” (*Grammar* xv) and as based in language (*Grammar* 318). Burke used the term “dramatism” to refer to his means of analyzing motives as matters of language and thought, understood in turn as symbolic actions (*Grammar* xxii; *Language* 54).

Burke does not address narrative per se, but at least two of his dramatic methods potentially have important implications for narrative: the pentad and terministic screens. As a means of describing any motive (*Grammar* xv), Burke turns to a “pentad” of five “terms” – Act, Scene, Agent, Agency, and Purpose – and what he calls the “ratios” among certain of these terms (e.g, scene-act) (*Grammar* 18). Although Burke himself is less than transparent on this point, these terms are also elements of narrative.¹³ Another useful Burkean concept is terministic screens, or the notion that terminology directs attention by being not only a “*reflection* of reality” but also a “*selection*” and “*deflection* of reality” (*Language* 45). That is, “we can’t say anything without the use of

¹³ Burke is perhaps most forthright as to his terms having to do with narrative when he compares them to Aristotle's six elements of tragedy (*Grammar* 230-31).

terms” (*Language* 50). Any terminology, intentionally chosen or not, includes implicit ways of understanding something that typically either identify one thing with another (“put things together” (*Language* 49)) or disassociate them (“take things apart” (*Language* 49)). As with the pentad, however, Burke’s discussion of terministic screens does not directly implicate narrative.

Even though Burke himself does not specifically pursue the project, his dramatistic methods might be useful to understanding and explaining narrative’s role with respect to deliberative ethical argument. As a narrative grammar, Burke’s pentad might be helpful to understanding narrative as a means of organizing reasoning in argument, as ideologic. Additionally, narrative might be understood as a kind of terministic screen, selecting and deflecting certain aspects of reality, particularly in its use of terms, in order to represent some understanding.

Yet there are at least two challenges in extending Burke’s work in this way. First, Burke’s dramatism is a philosophy of language that he applies infrequently to specific instances. His primary focus is on the broader understanding of reasoning (e.g., describing how certain schools of philosophy can be anticipated using his method).¹⁴ Second, Burke’s discussions of the pentad and terministic screens are primarily descriptive rather than about argument. He acknowledges that pentad can be used rhetorically, for example “deflect[ing] attention from scenic matters by situating the motives of an act in the agent” (i.e., act-agent ratio), as one U.S. newspaper did in describing the successful Soviet resistance to Nazi invasion as due to the nature of the Soviet people rather than their social and economic structures (*Grammar* 17-18). For the most part, though, Burke sets aside issues of argument, which he associates with rhetoric, focusing instead on the more the pentad’s descriptive qualities (i.e., as a grammar).¹⁵ Prominent examples regarding terministic screens also are more descriptive than

¹⁴ To be fair, Burke does indicate that his method might apply to specific narratives (e.g., a prisoner’s break from confinement) (*Grammar* xx-xxi) as well as linguistic instantiations that are not specifically narrative, embodied “in systematically elaborated metaphysical structures, in legal judgments, in poetry and fiction, in political and scientific works, in news and in bits of gossip offered at random” (*Grammar* xv).

¹⁵ Consistent with this understanding of Burke is Burke’s assertion: “Men may violently disagree about the purposes behind a given act, or about the character of the person who did it, or how he did it, or in what kind of situation he acted; or they may even insist upon totally different words to name the act itself. But be that as it may, any complete statement about motives will offer *some kind* of answer to these five questions . . .” (*Grammar* xv).

argumentative, including the impact of color filters on different photographs of a single object, or various interpretations of a dream according to different schools of psychoanalysis (*Language* 45-46). These challenges are not insurmountable. Burke's work might prove helpful to the project of understanding and explaining narrative's role with respect to deliberative ethical argument if his methods' implications for narrative are made explicit and extended to specific instances and to argument.

In his groundbreaking work on narrative and argument, communications scholar Walter Fisher argues that all forms of human communication can and should be understood fundamentally as "stories" – "symbolic interpretations of aspects of the world occurring in time and shaped by history, culture, and character" (*Human Communication* xi). For Fisher, then, narrative is not a particular "form" but a "paradigm," a kind of reasoning distinct from the "rational-world paradigm" (*Human Communication* 47) that provides "trustworthy, reliable, and desirable guides to belief and to behavior" (*Human Communication* 9). What Fisher calls "narrative rationality" involves two aspects: "probability" (or "coherence"), or whether a narrative hangs together (often based on its formal features); and "fidelity," or a narrative's "truth" based on its correspondence with reality, its ringing true to experience (*Human Communication* 47, 64, 75-76). Fidelity in particular depends on a "logic of good reasons," which Fisher defines as "elements that provide warrants for accepting or adhering to the advice fostered by any form of communication that can be considered rhetorical" (*Human Communication* 107). Stories compete with other stories, offering audiences "moral inducements" based on their respective good reasons (*Human Communication* 58).

Like Burke, what Fisher describes is narrative as ideologic, as organizing reason differently – perhaps incorporating traditional argumentative structures but going beyond them (*Human Communication* 48) and speaking to "specific instances of discourse, regardless of form" (*Human Communication* 9). Fisher's work is in some ways ideally suited to the project of understanding and explaining narrative's role with respect to deliberative ethical argument. For one, his work clearly has to do with ethical argument; he understands the narrative paradigm as contributing to resolution of what he calls "public moral argument" – i.e., inferential structures and good reasons publicized or aimed at "untrained thinkers" and concerning "ultimate questions – of life and death, of

how persons should be defined and treated, of preferred patterns of living” (*Human Communication* 72).¹⁶ Furthermore, Fisher’s narrative paradigm has qualities of deliberative argument in that Fisher describes it as solving the “dualisms of modernism: fact-value, intellect-imagination, reason-emotion, and so on” (*Human Communication* 68) and as more like experience of the world in these respects (*Human Communication* 75).

Despite its potential, Fisher’s work presents certain limitations with respect to this project. As Fisher later clarifies, his scholarship is not a “rhetoric” in the sense that it does not explain the creation, composition, presentation, adaptation, or reception of symbolic messages. Instead, the work’s focus is the assessment of communications, that is, whether audiences should adhere to narratives and other arguments based on the narrative paradigm (“Clarifying” 56). Additionally, Fisher acknowledges that his work on narrative and argument does not involve criticism (“Clarifying” 56). Although apparently applicable to “specific instances of discourse,” Fisher’s application of his understanding of narrative does not attend carefully to the kinds of particulars thought to be significant to deliberative argument – narratives as instances of discourse, or other rhetorical moments contributing to the sense of an argument as narrative (even if not formally such). In his analysis of former president Ronald Reagan’s rhetoric, for example, Fisher’s analysis is broad and slight on particular details.¹⁷ The problem with this limitation in the context of this project is that it impedes the understanding and explanation of specific narratives as arguments as well as their connection with the narrative paradigm (or narrative as ideologic).

More recently, James Phelan has contributed to an understanding of narrative’s deliberative roles by introducing “narrative as rhetoric” in his eponymous *Narrative as Rhetoric: Technique, Audiences, Ethics, Ideology*. Narrative as rhetoric “means something more than that narrative uses rhetoric or has a rhetorical dimension. It means

¹⁶ Another aspect of Fisher’s “public moral argument” is that it involves “status issues” that commit a public to resolving “ultimate questions – of life and death, of how persons should be defined and treated, of preferred patterns of living” (*Human Communication* 71-72). Such issues include nuclear warfare, desegregation, abortion, school prayer (*Human Communication* 72).

¹⁷ Fisher relies on some of Reagan’s policy stances (e.g., military), brief quotes from his nomination and campaign, and his physical and lifestyle attributes (i.e., Western cowboy) (*Human Communication* 146-9). But the connections among these and American individualism are not patently clear.

instead that narrative is not just story but also action, *the telling of a story by someone to someone on some occasion for some purpose*” (7-8). Phelan’s definition and analysis of narratives locates narrative differently, in some ways more narrowly than Burke or Phelan, as beginning (although not ending) with a specific instance of discourse. In his conversation with and critiques of pragmatism and deconstructionism, Phelan insists on careful, formal attention to textual narratives that is responsive to what is there and yet recognizes any conclusions drawn as interpretive. That is, if Burke and Fisher are described as considering narrative as ideologic, Phelan by contrast is more interested in specific, purposeful narratives, or narratives as moments in argumentation (among other purposes). As such, Phelan’s narrative rhetoric often involves the hallmarks of the deliberative in that narrative involves “feelings, values, and beliefs” as well as knowledge (18) and the processes of rhetoric “call upon our cognition, emotions, desires, hopes, values, and beliefs” (19).

Phelan’s work might substantially advance an understanding of how specific narratives – narratives as moments – function as deliberative ethical argument. Phelan’s work especially demonstrates potential when it considers the relationship between narrative as moment and as ideologic with respect to ethical arguments. Such is the case with Phelan’s analysis of Dinesh D’Souza’s *Illiberal Education*. Phelan describes D’Souza’s book according to narrative ideologic: “For out of the book’s welter of statistics, interviews, case studies, and discursive analysis arises D’Souza’s *tale* of the decline and fall of the contemporary American university” (155, emphasis added). In addition to critiquing the book’s specific narratives, Phelan demonstrates how D’Souza’s reasoning and interpretation are “wanting” narratively at one point, concerning the appointment of Lee Atwater as trustee of Howard University. (Atwater was responsible for certain televised political ads during the George Bush-Michael Dukakis presidential campaign, ads regarding Willie Horton – an African American man who assaulted and raped a white woman while on furlough from prison in Massachusetts while Dukakis was governor there.) Phelan says of the analysis: “D’Souza fails to recognize how Atwater’s ad about Willie Horton intersects with a larger cultural narrative of black-white relations, a narrative that is both patriarchal and racist” (166). In his analysis of *Illiberal Education*, then, Phelan demonstrates an understanding of narrative’s significance to

deliberative ethical argument, as ideologic as well as moment. Yet Phelan only infrequently addresses narrative as ideologic in the context of this kind of ethical argument, the kind that preoccupies this project. His primary focus is literary narrative, and his sense of ethics (informed in large part by the work of Wayne Booth) concerns the “relationship between [sic] author, text, and reader” (19).

This scholarship on narrative and rhetoric, then, addresses narrative with respect to ethical argument as deliberative only to an extent. Even when it does so (or might be extrapolated in order to do so), at least two significant challenges remain: First, each scholar favors an understanding of narrative either as ideologic (Burke; Fisher) or as moment (Phelan), with little examination of the relationships among these. One resulting problem for the project of explaining deliberative ethical argument to student writers is that the power of specific narratives may be overlooked as arguments, or not fully understood with respect to wider circulating narratives. For student writers, understanding specific narratives as instantiations of an alternative kind of reasoning and arguing means better understanding narratives as arguments and how narratives argue deliberatively. Another problem is that narrative may not be fully exploited as a sense-making tool for understanding the argumentative work of specific rhetorical details associated with deliberative ethical argument, whether or not these details take shape as narratives. Such arguments seem to make sense deliberatively – that is, not propositionally but according to a different kind of logic, an ideologic that sometimes can be described as narrative.

The second significant challenge is that there is little reflection on the relationship (or even intersection or overlap) between deliberative argument as a whole and other kinds of argument, such as liberalist argument, and what role narrative might play in this. Burke and Phelan each use narrative to make sense of schools of thought and arguments that are not specifically narrative, or even deliberative (e.g., Burke’s dramatic method applied to “systematically elaborated metaphysical structures” (xv); Phelan describing D’Souza’s “welter of statistics, . . .” as a “tale”). But they do not specifically understand these as different yet related kinds of argument. Fisher consistently distinguishes the paradigms of the rational-world and narrative, and understands communication as fundamentally about the latter. As a result, entire systems of argument (e.g., law), kinds

of rhetoric (e.g., what “postmoderns, liberals, and other skeptics” employ (Crowley 196)), or communication itself (Fisher *Human Communication*) are conceptualized as essentially deliberative, or essentially something else. Yet there is considerable overlap, and typically within one kind of argument can be found evidence of another (e.g., the principle or point of a narrative, some rhetorical flourish in the way a principle or claim is stated). The point is a significant one for avoiding the potential condescension that comes of seeing oneself (and students) as taking on the martyr’s “burden of seeking change” (Crowley 196) by arguing differently, like those imagined as impassioned others do (e.g., Christian fundamentalists), when that difference is apiece with certain ways one has argued all along.

“Narrative Jurisprudence” and Its Potential for Deliberative Ethical Argument

Despite its reputation for being “saturated with liberal values” (Crowley 3), the law – U.S. common law in particular – presents an invaluable opportunity for considering and explaining to student writers how deliberative ethical argument works by means of narrative. In this section, I preliminarily explore this opportunity by considering how the law implicates both deliberative ethical argument and narrative. Specifically, I argue that the law depends for its legitimacy on its arguments having wider ethical resonance, and that narrative is one way in which this legitimacy is accomplished. Those who study the roles of narrative in law and legal argument, or “narrative jurisprudence,” argue that narrative legitimates law especially by means of its deliberative qualities: its particularity, its employment of values and emotions, and its alternative ways of reasoning. Providing an overview of narrative jurisprudence, I explain what these scholars mean by narrative with respect to law and legal argument – i.e., legal narratives in the narrow sense (as moments of legal argument) and in a wider sense (as forms of legal reasoning, or ideologic). So doing, I also explain how scholars of narrative jurisprudence understand legal narratives as deliberative as well as how their qualities as such contribute to the law’s legitimacy as ethical. Finally, I turn to Bernard Jackson’s narrative jurisprudence in particular, describing its potential for the project of developing a narrative approach to deliberative ethical argument.

The law is often perceived as a technical realm, preoccupied with legal reasoning and decision making distinct from everyday ethical concerns. This may be true with respect to many cases, but those “hard” landmark cases that do not provide ready resolutions and involve significant issues are a different matter. As education and legal scholar Jerome Bruner describes it:

If many citizens believe that *Roe v. Wade* provides a licence [sic] for the murder of innocents, or that *Furman v. Georgia* [concerning the death penalty] sanctions state murder, the meaning of law changes in the society, and with it the nature of the interpretive commitment to it. ("Psychology" 109-10)

Respecting these cases (among others), the law centrally involves arguments that legitimate the state’s authority based on those arguments’ wider ethical significance and resonance. As such, case law is helpful for studying how deliberative ethical argument works because it depends for its legitimacy on argumentation that is responsive to the passionate commitments of those it governs.

Few would dispute that the law depends on argument.¹⁸ Yet argument is not merely the central practice of those involved with law: it is the basis for law’s legitimacy, the reason why persons submit to the legal process and legal decision making. In this sense, law and legal argument extend beyond the bounds of law itself, and must have, as Anthony Amsterdam and Jerome Bruner put it:

. . . continuities with the ways in which the people of a society conceive of it and of themselves, the ways in which they classify and comprehend, envision and dispute and puzzle out who they are and what they need and want, and why. (4)

¹⁸ Some legal scholarship, however, prioritizes argument above other possible aspects or understandings of law. For example, James Boyd White has defined law as a kind of “constitutive rhetoric,” emphasizing the role of language and argument in the law’s practices and effects:

The law is best regarded not so much as a set of rules and doctrines or as a bureaucratic system or as an instrument for social control but as a culture, for the most part a culture of argument. It is a way of making a world with a life and a value of its own. (*Words Lose* 267)

For Robert Cover, “legal civilizations” more broadly are not just about legal rules and doctrine but are “worlds to be inhabited” (97). David Papke describes U.S. appellate opinions in particular as “a variety of civic rhetoric” (*Narrative* 181). Beyond law as a set of prescripts or as an institution or other kind of social force, such scholars understand law as primarily about argument.

For legal precepts to have meaning, according to legal scholar Robert Cover, they must borrow from social understandings in addition to formal lawmaking (112). And these social understandings are ethical, to the extent that they involve “values, faiths, and beliefs about the way in which human beings should be treated” (Amsterdam and Bruner 6). That is, law is “one of society’s means for maintaining continuity in value judgments across time and changing conditions” (140). The law must be consonant with “how we represent social reality through our beliefs and world views” (Bruner "Psychology" 101); if it does not respect “the moral commitments of those over whom it would hold sway” the legal system threatens to unravel into apathy or vengeance ("Psychology" 111-12). In other words, the law is not only a system of the state but a cultural creation in which various “nomoi” – normative universes (Cover 95) held together by “interpretive commitments” (Cover 98-99) – “provide normative bases for the growth of distinct constitutional worlds” (Cover 113). As argument, then, the law legitimates itself, but only to the extent that it recognizes and responds to wider social and ethical understandings – i.e., “who we become, individually and collectively – who we can become – in our conversations with one another” (J. B. White Heracles' Bow 4).

It might be said, then, that the law’s legitimacy depends on deliberative ethical argument – i.e., argument meaningful beyond legal practice itself and responsive to wider normative and ethical concerns. And certain legal scholars argue that central to this kind of argument (and thus the law’s legitimacy) is narrative. This area of scholarship, known as “narrative jurisprudence,” is a “full-fledged ‘school’ of contemporary jurisprudence” (Elkins 95) and explains how legal actors such as judges enact and justify legal decision making by means of narratives. James Boyd White describes the law as continuous with ordinary language and says of it “[the law] always operates by narrative; it is not conceptual in its structure” (Heracles' Bow 36). Likewise, Cover explains that legal precepts exist within a system of nomoi – normative universes or “complex encodings of commitments” – that are created by narratives (125).¹⁹ While more skeptical of narrative’s legitimating function, Steven Winter explains that his own more cognitive approach to legal reasoning is based on legal “storyteller[s]” using “preexisting cultural

¹⁹ For example, even though “Americans share a national text in the first or thirteenth or fourteenth amendment,” there is no authoritative narrative regarding its significance (Cover 111).

knowledge in ways that will seem natural to those subject to the legal rule because already grounded in social experience and mediated by existing cultural models” (2270). Specifically, narratives help to resolve individual legal cases by making sense and hanging together and being true to what legal decision makers know (Scheppelle 2080). Furthermore, the sense that narratives make of law as a quotidian practice for everyday life is an ethical one. For attorney-scholar Tristan Duncan, narrative jurisprudence is comparable to “everyday common moral reflection . . . it is experiential and highly contextualized and operates by an *ad hoc*, nonsystematic method” (115). And, as stated by Bruner, narratives are “how our system of case law manages to stay in working touch with our traditionalized way of dealing with ethical issues” (“Psychology” 102). Narrative jurisprudence construes narrative as a means of connecting law with wider social – and specifically ethical – understandings, as keeping the law in touch with and responsive to the mores of those subject to it.

Narrative jurisprudence is especially helpful to explaining deliberative ethical argument, and the roles of narrative respecting such argument, because certain scholars of narrative jurisprudence construe narrative as a kind of deliberative argument – one that is important because its qualities as deliberative argument help to legitimize the law on ethical grounds. Recall that deliberative argument is characterized by particularity as well as appeals to values and emotion. These attributes are also central to how certain scholars define legal narratives and their legitimating function in law, particularly among the narrower definitions of narrative as a “story” that presents “particulars” (Tushnet “Degradation” 258).

Narratives in the narrow sense (legal narratives in particular) at minimum relate a set of events over some period of time (Bruner “Psychology” 106; Klinck 291-92; Ewick and Silbey 200; Baron and Epstein “Narrative?” 147; Papke and McManus 449) and are argumentative in that they construct or select for a particular version of how things occurred (Bruner “Psychology” 106; Bruner “Legal and Literary” 46; Klinck 292; Ewick and Silbey 200). They include clients’ narratives of injury or innocence (L. E. White; Baron and Epstein “Narrative?” 141; Rideout 53), shaped by lawyers into narrative

arguments accommodating the requirements and purposes of law.²⁰ Introduced at trial and supplemented by witness testimony, such narratives often present competing arguments as to what happened (Klinck 295; Bruner "Legal and Literary" 42; Rideout 53), and judges and juries must determine which of these narratives (or, perhaps some other narrative) is most credible (Bruner "Psychology" 102). The narrative decided on by the legal decision maker often gets written into a judicial opinion as part of a "statement of fact" (Baron and Epstein "Narrative?" 142), which is again argumentative (Papke and McManus 454).²¹ From a client's initial narrative as told to her attorney, to a court's narrative of the facts of a case, legal narratives narrowly understood are argumentative.

Legal narratives are not only argumentative, however, but deliberately so in that they are inclusive of values, emotions, and contextual particularities. These qualities are not unique to legal narratives, but their role with respect to the law's legitimacy – i.e., the law's resonance with wider ethical sensibilities – makes them particularly important (and highly studied) in this context. Describing the "strategic strand" of scholarship on narrative jurisprudence, Jane Baron and Julia Epstein explain that narratives are thought to involve values as well as to be effective means of persuasion because they connect with widely available cultural competencies by means of particularity and emotion ("Language and Law" 668-70).²² With respect to legal "storytelling," Christopher Rideout describes narrative and logic as a "twisting double helix" that is especially helpful for integrating moral themes (60). According to David Papke and Kathleen McManus narratives reconstruct experience in a way that is "information-rich," particularized, and contextual with "concrete sensory details" linked in "natural associational clusters" rather than with abstract propositions (451). These qualities of narrative make narratives subject to judgment based not on abstract norms but a "situated

²⁰ Summarizing this transformation from a client narrative to a legal narrative, Dennis Klinck asserts: "Now the point to which the story conduces is a cause of action, or a legal issue, rather than the client's sense of having been wronged or hurt" (295).

²¹ Describing judicial opinions' statement of facts, Papke states: "They do not report sociolegal developments in any full or ultimate sense; judges and their clerks may omit or alter pertinent details, recharacterize what happened prior to or at trial, or in various present the 'facts' in a new narrative framework. In certain instances, the restatement of facts may respond more to the opinion that follows than the opinion responds to the fact pattern" ("Discharge" 207).

²² Legal scholar and federal appellate judge Richard Posner rejects the legitimating argument and speaks about law as "literature" rather than narrative. Even so, he also senses that judicial opinions as "literature" persuade by means of emotion and belief, by creating a "dramatic scene that stirs imagination and emotion" and "leaves a residue of insight" (274).

norm that is rooted in the audience's own knowledge of life" (450). That is, by asserting the contextual and particular, narrative gives the sense that law still belongs to the people (Bruner "Legal and Literary" 50-1). Because they are so critical to the law's legitimacy, legal narratives have been studied carefully by scholars of narrative jurisprudence, especially in those aspects thought to contribute to that legitimacy: their inclusion of particulars, values, and emotions. That is, narrative jurisprudence examines legal narratives as deliberative ethical arguments and so might prove helpful to the project of better understanding and explaining how narrative functions more widely as a kind of deliberative ethical argument.

Narrative jurisprudence also might be helpful to explaining deliberative ethical argument in that some of its scholars have thought deeply about the alternative kinds of reasoning characteristic of deliberative argument, specifically about what it means to reason by means of narratives. In this sense, too, narrative's qualities as deliberative argument – here, its value as ideologic – are considered important because they help to legitimize the law on ethical grounds. For these scholars, narrative is a kind of "practical reason, not pristine logic" that is an "application of Aristotelian practical wisdom" (Duncan 122, 24). Among them, Winter describes narratives as combining cognitive processes and social experiences and mores, as "idealized cognitive models" that have multiple, nondeterminate instantiations (2228, 48). And White seems to be referring to something like narrative when he discusses the work of "imagining" that includes not only the real world and its events but also texts and their authors and historical contexts as well as, more specifically, earlier legal cases and the role of courts themselves ("Imagining" 47).

Narrative reasoning is not unique to law, but common law in particular depends on narratives to a greater extent than many other areas of argumentative practice in its understanding, knowledge making, and adjudication. As narrative jurisprudence explains, reasoning in law is inherently narrative at one level because it involves making sense of and deciding something about facts that are typically represented as narratives. In this respect, judicial opinions have been described as "narrative constructions" (Amsterdam and Bruner 144) and, as such, are "one form of reasoning about experience and society" (Papke "Discharge" 207). A judge must narrate "a subsequent story [to

those of lower courts] to justify his holding in a case, particularly if he is overruling the lower court's decision" (Bruner "Legal and Literary" 44). In particular, the opinion's decision or holding has been explained to be narrative, in describing the kind of reasoning that connects an abstract rule with a specific set of circumstances (Papke and McManus 460) and also as the "point" of the case – "an *essential or abstract* story, which is the same abstract story that can be distilled from other 'like' cases" (Klinck 298). Daniel Farber and Suzanna Sherry describe this aspect of legal reasoning as combining the intellectual traditions of pragmatism and practical reason, moving between a general sense of what the law provides as a whole and the concrete circumstances at hand by using "stories" as a mode of informal thinking (821-22). Because facts narratively understood play a crucial role in law and legal reasoning, the law's reasoning with respect to those facts also has been understood as narrative and thus as alternative to other kinds of reasoning and argument.

At another level, narrative jurisprudence understands the law as critically depending on narrative reasoning and argument in its use of precedent and its shaping of legal doctrine. A basic tenet of common law is that like cases must be decided in like ways. Yet judgments as to what is important about a prior case and its facts and whether these aspects are similar enough to the case at hand to be relevant typically are not routine matters. Instead, such judgments involve interpretive work that has been described as narrative. Case law is not only a "collection of relevant stories" (Bruner "Psychology" 102; see also Papke "Discharge" 207; Papke and McManus 459). The use of precedent to argue and decide about cases currently before the courts "formalizes, proceduralizes, and enforces our modes of narrative interpretation" (Bruner "Psychology" 102). Over time, the use of precedent in order to form judgments coalesces around patterns that are thought of as governing in certain areas of law – legal doctrines, which themselves are sometimes described as "master narratives" (Papke Narrative 1) or "stories" (Baron and Epstein "Narrative?" 142).²³ These doctrinal narratives in turn shape what can be narrated and recognized in law ("Narrative?" 142). Thus, narratives are

²³ Baron and Epstein give the example of legal doctrine concerning rape as a story about how persons communicate about sex ("Narrative?" 142).

thought to play a key role in reasoning and argument regarding the uses of precedent and the formulation of legal doctrine.

The narrative reasoning involved in making sense of and drawing legal conclusions from a set of facts, or in interpreting and applying precedent, or in summarizing an area of legal doctrine may seem highly professionalized. At the same time, these activities and their conclusions take place within a kind of narrative reasoning and argument even more broadly understood, according to which the law itself is conceived of as a kind of narrative among narratives, a *nomos* or means of worldmaking that emphasizes certain features and empowers some while deemphasizing and disenfranchising others (Cover; Klinck 300; Papke "Discharge" 207-9; Papke and McManus 460). And it is in this broadest of senses that the interests and concerns of narrative jurisprudence in narrative reasoning and argument take on even wider significance. For at this level, it is not just the law's narratives themselves that are subject to public scrutiny and assessment, but the law's reasoning and argument as narrative – that *Roe v. Wade* might be perceived, for example, not just as a narrative of a young, single woman who is pregnant and seeks to terminate her pregnancy but as a narrative concerning “the murder of innocents” (Bruner "Psychology" 110). At this broadest level, then, narrative jurisprudence's concern with narrative reasoning touches once again on the question of the law's legitimacy, its resonance with wider public understanding and sentiment, also understood as narrative.²⁴ Narrative as a kind of reasoning – as ideologic – assumes vital importance not only to professional practice but to the law's wider legitimacy, so that scholars of narrative jurisprudence are keenly interested in explaining this aspect of narrative as deliberative argument.

Narrative jurisprudence explains the roles of narrative with respect to deliberative argument and its ethical stakes in law, and so might prove helpful to explaining deliberative ethical argument more broadly, especially as a part of college writing instruction. It is the aim of this project to explore and develop this supposition, and, in order to do so, I turn significantly to the work of one scholar of narrative jurisprudence in particular, legal philosopher Bernard Jackson. Jackson is centrally concerned with how

²⁴ Robert Cover points to examples such as martyr tales and stories of conscientious objection as well as the narrative histories of groups that sometimes appear in legal briefs (especially, it seems, regarding civil rights) regarding their separation, suffering, migration, and confrontation with the state (124).

legal decision makers use narratives argumentatively, in thinking about and justifying outcomes in legal cases.

The ways in which Jackson addresses how legal decision makers use narrative argumentatively are especially helpful to this project because they speak to the two challenges raised earlier in the context of existing work on narrative and rhetoric. As noted there, to the extent existing work focuses on narrative (or can be extrapolated in order to do so), it tends to focus predominantly on narrative as a moment of argument or as ideologic with little explicit exploration of the relationships between these. As will be seen, Jackson's narrative jurisprudence combines an understanding of reasoning and argument as narrative with an ongoing attention to the kinds of textual details that are significant to deliberative argument – particular narratives, descriptions, word choices, and so forth that are, as Jackson describes them, “value-laden” (Jackson "Narrative Theories" 25).

Additionally, the scholarship on narrative and rhetoric also tends to distinguish between deliberative argument and other kinds of argument, such as liberalist argument. As with narrative jurisprudence more generally, Jackson's narrative jurisprudence specifically explores the relationships between deliberative and liberalist argument by reconstruing legal argument, conventionally understood as liberalist argument, instead as a kind of deliberative argument by means of narrative. Unique to Jackson's work is the careful way in which Jackson explains the relationship between deliberative and liberalist argument with respect to legal rules and their use in argument and decision making. Legal reasoning and argument traditionally have been understood syllogistically and deductively: a legal rule synthesizing some area of law applies to a set of facts in order to produce a particular outcome. Jackson instead reconstrues legal reasoning and argument as occurring narratively: not only the facts of a case but pertinent legal rules are understood as narratives. Furthermore, the processes of legal reasoning and argument involve interpreting the degree of similarity among these narratives, what Jackson labels “narrative coherence.” Understood narratively, legal reasoning and argument are not just technical or professional matters but rely on the commonly shared sense making characteristic of the use of narratives as well as the normative understandings associated with certain widely-shared narratives. Altogether, then, Jackson's explanation of legal

argument highlights such argument's ethical significance and makes strong connections between how it works both deliberatively (by means of narrative) and liberally (by means of rules).

By turning to Jackson's narrative jurisprudence, I do not mean to overlook the potential contributions of the other sources of scholarship on narrative and rhetoric discussed earlier. Jackson's scholarship significantly relies on and is at times parallel with or complementary to these scholars' work. Although it is far from evident in Jackson's work, Jackson is indirectly indebted to Burke. (Burke's pentad figures significantly in an empirical study of jury sense-making, which Jackson both relies on and critiques as he develops his notion of narrative coherence (see Bennett and Feldman).) Additionally, Jackson and Fisher share similar understandings of argument, narrative, and narrative rationality. And, although Fisher does not develop the idea, Fisher's notion that the narrative paradigm involves narratives in competition points to a potentially productive direction for the development of Jackson's work as well. Given a more extensive project, the relationships among these scholars' work might be developed at greater length. The scope of this project, however, as well as Jackson's well-developed sense of the relationships among kinds of narratives as well as among kinds of arguments motivates my substantial use of his work.

Although Jackson's narrative jurisprudence has its limitations, employing Jackson's narrative jurisprudence, as enhanced by this project, promises to recuperate the meaning and significance of narrative with respect to deliberative ethical argument. That is, beyond personal narratives alone and beyond narratives that serve as interesting examples, narrative is understood as a form of deliberative ethical argument (a moment) and as organizing other forms of such argument (as ideologic). Furthermore, that this work is accomplished largely with respect to an area of argument that many consider a paradigm of liberalist argument – legal argument – suggests that the liberal and the deliberative are not so much distinct spheres or ways of arguing as intricately connected with one another.

CHAPTER TWO
Developing a Narrative Approach
Based on Bernard Jackson's Narrative Jurisprudence

Voluntary euthanasia is one of the most commonly addressed issues having to do with ethical arguments in college writing instruction (see Appendix B). The advance of medical technologies and the resulting ability to sustain life has raised important questions about quality of life, patient autonomy, professional responsibility, who should decide and how. Arguments about voluntary euthanasia often involve “ethical argument” as defined in the Introduction in that writers explore and possibly take positions on whether permitting voluntary euthanasia is a good thing to do with respect to others at large as well as themselves.

One such writer is philosopher Sidney Hook, who in 1987 published an op-ed piece in the *New York Times* entitled “In Defense of Voluntary Euthanasia.” The piece was republished in the textbook *Read, Reason, Write*. Following the reading, the textbook prompts students to consider the strategy Hook uses as an introduction, excerpted here:

A few short years ago, I lay at the point of death. A congestive heart failure was treated for diagnostic purposes by an angiogram that triggered a stroke. Violent and painful hiccups, uninterrupted for several days and nights, prevented the ingestion of food. My left side and one of my vocal cords became paralyzed. Some form of pleurisy set in, and I felt I was drowning in a sea of slime. At one point, my heart stopped beating; just as I lost consciousness, it was thumped back into action again. In one of my lucid intervals during those days of agony, I asked my physician to discontinue all life-supporting services or show me how to do it. He refused and predicted that someday I would appreciate the unwisdom of my request.

A month later, I was discharged from the hospital. In six months, I regained the use of my limbs, and although my voice still lacks its old resonance and carrying power I no longer croak like a frog. There remain some minor disabilities and I am restricted to a rigorous, low sodium diet. I have resumed my writing and research.

My experience can be and has been cited as an argument against honoring requests of stricken patients to be gently eased out of their pain and life. I cannot agree . . . (Hook; qtd. in Seyler 114)

The introduction is clearly a “narrative,” defined as “actions arranged in a time sequence and forming a meaningful totality” (Jackson Narrative Coherence 2), specifically a personal narrative of Hook’s own experiences with trying to opt for voluntary euthanasia.

As powerful as Hook’s opening narrative is, the textbook’s additional questions regarding the piece overlook any further analysis of this narrative other than its service as an introduction. This is a problem because the narrative contributes substantially to the persuasiveness of the piece’s ethical arguments. What I mean by this is that the narrative is not just persuasive in the sense of being arguably well-written and eliciting audiences’ empathy with Hook’s plight. The narrative is part of the op-ed’s persuasion in that it speaks to the substantive concerns of the piece, lends support for why voluntary euthanasia should be permitted. Not to acknowledge that the narrative does so or how it does so is to disserve student writers by obscuring how this and other similar narratives function in ethical arguments and how students might create powerfully argumentative narratives of their own.

The problem extends beyond the understanding and use of narratives such as Hook’s. Narratives are a means by which people reason and argue about matters of ethics, but college writing textbooks generally do not acknowledge or explain this to student writers to the extent that they should. Narratives such as Hook’s that are manifest in a text include features that orient audiences toward the writer’s position on an issue. Such narratives are also thought to share common structures that contribute to audiences’ sense that the narratives are true, or at least plausible. Even texts that are not conventionally identified as narratives – e.g., Hook’s op-ed as a whole – can be thought of as narratives. Considered as narratives, ethical arguments like those Hook offers in support of voluntary euthanasia strike audiences as more plausible and persuasive the more similar they are to other narratives already familiar to audiences.

It would be useful to student writers if college writing instruction better explained how narratives work in ethical arguments. To some extent, textbooks already discuss

narratives as one among many strategies for understanding and making ethical arguments. Such strategies make best sense, however, when they are part of an “approach” to ethical arguments that makes clear not only what a strategy is but also why it is used, how it functions as part of or contributes to ethical arguments.²⁵ As described in Chapter One, textbooks currently employ several approaches when instructing on ethical arguments: classifying ethical arguments; noting how persons such as writers and their audiences are represented; focusing on the emotions evoked; considering the relevant principles and values at stake; and exploring and weighing the outcomes associated with ethical positions.

The approaches to ethical argument adopted by textbooks do not include a narrative approach, problematic because a narrative approach provides altogether different insights into how to make and to understand ethical arguments. A narrative approach values less direct forms of argument and highlights the extent to which ethical arguments are situated in specific contexts. Narratives substantially contribute to the persuasion of ethical arguments, yet they are likely to be overlooked because they persuade indirectly – e.g., through allusions and in ways open to interpretation. Textbooks’ approaches to ethical arguments tend to focus on the propositional content of ethical arguments, overlooking arguments that are less directly stated. For example, the textbook excerpting the Hook op-ed asks further questions about the piece that concern its claims and reasons, perhaps informed by the Toulmin method. Looking for explicitly stated claims and reasons, a student is likely to overlook the piece’s narrative introduction, which makes Hook’s case far less directly. Narratives contribute to persuasion in part by how they are organized, or their structure. Certain approaches to ethical arguments presented by textbooks address structure, but narrative structure looks nothing like the structure of other argumentative prose. A narrative approach also highlights that ethical arguments are often situated in particular contexts. In large part,

²⁵ One example of a “strategy” is considering the outcomes associated with a particular position. Such a strategy makes sense in light of an approach to ethical arguments that explains that the position a writer takes is most well-reasoned when it has significant positive outcomes. Textbooks may describe the approach informing a strategy, or signal it by reference to a well-known theorist (e.g., Jeremy Bentham) or theory (e.g., utilitarianism). Individual textbooks may not consistently address the approaches informing the writing strategies they advise, but advice across textbooks nevertheless tends to coalesce around distinguishable approaches.

ethical arguments about what should be are informed by representations of what already is. These contexts include not only factual details but also representations of persons and emotions that contribute more significantly to the reasoning of ethical arguments than is currently recognized by textbooks.

Particularly helpful for exploring narrative approaches that might better inform college writing instruction on ethical arguments is scholarship on narrative jurisprudence. (Recall that “narrative jurisprudence” explains how legal actors, especially judges, enact and justify legal decision making by means of narratives.) In this chapter, I argue that a narrative approach to *legal* arguments provided by narrative jurisprudence also makes sense of narrative’s roles in *ethical* arguments. This narrative approach in turn enriches current approaches to ethical arguments offered by textbooks by making better sense of narrative strategies for ethical arguments and by providing an alternative approach to persuasion in ethical arguments.

I begin with an overview of the narrative jurisprudence of legal philosopher and semiotician Bernard Jackson, describing his narrative approach to legal arguments and suggesting how it might be used to develop a narrative approach to ethical arguments. In each of the next three sections, I discuss one aspect of how Jackson defines narrative and its importance to understanding how ethical arguments work: narrative discourse, narrative structure, and narrative schema. I demonstrate how Jackson’s narrative approach applies to ethical arguments by applying it to the Hook op-ed. Finally, I examine how such a narrative approach can enrich college writing instruction on ethical argument by comparing the narrative approach with textbooks’ discussions of narrative as a strategy as well as their current approaches to ethical argument. Based on the limitations of Jackson’s narrative approach noted in this chapter, I will be building on Jackson’s narrative approach in later chapters.

Bernard Jackson’s Narrative Jurisprudence: An Overview and Why Relevant

Within the extensive field of narrative jurisprudence, the narrative approach I turn to is that of Bernard Jackson. Like me, Jackson is interested in how persons use narratives in making and making sense of arguments, in his case legal arguments. For

Jackson, “legal arguments” are what support adjudication, or the deciding of legal cases. Legal arguments include not only the explicit justifications that legal decision makers (such as judges) communicate as the bases for their decisions. They also include legal “decision making” – the partially private, often subconscious ways that legal decision makers decide cases. Jackson claims that there is a significant difference between explicit justifications and semi-private decision making in legal arguments (Jackson Narrative Coherence 32-33 (fn 55), 90, 130).

The difference, while important, is I think less significant than Jackson makes it out to be.²⁶ For this reason, I hesitate to adopt Jackson’s terminology, which emphasizes the distinction. Instead, I understand “legal arguments” as including explicit justifications as well as justifications perceived as implicit or even subconscious because of an absence of tools for recognizing and analyzing these justifications. It is inaccurate to refer to these less explicit justifications as “decision making” because both kinds of justifications – more and less explicit ones – play a role in adjudication. To call one “decision making” is to inappropriately suggest that explicit justifications are merely a cover for other, more real or actual bases for adjudication, or to suggest that there can be no relationship between the two.

The difference between more and less explicit justifications is key because how legal arguments work has implications, I argue, for how ethical arguments work as well. Legal and ethical arguments often address the same substantive matters (see Appendix B), and even do so, at times, using some of the same arguments.²⁷ This chapter, though, focuses instead on how ethical arguments are like legal arguments as far as the means by which each are used to arrive at a judgment or position. Ethical arguments, like legal arguments, also involve more or less explicit justifications. Again, the degree to which such justifications are considered explicit depends not on some quality of the arguments

²⁶ As even Jackson himself acknowledges, decision making cannot be accessed directly. What is available for study are the “traces” of decision making left behind in justificatory discourse (“Narrative Theories” 26-27). Additionally, just because legal arguments extend to grounds beyond those that are explicitly justified is not reason enough to reject those explicit grounds.

²⁷ Ethical arguments, though, frequently go beyond or set a higher bar for consideration than do legal arguments. Something may be legal but not moral or ethical, such as saying something unkind in a moment of anger to a friend or colleague, or, as some would argue, abortion. And legal arguments must address issues that ethical arguments need not – e.g., precedent, jurisdiction and other issues of legal process, and so forth. Nevertheless, a relationship between legal and ethical arguments does exist with respect to substantive issues and will be explored in later chapters.

themselves (e.g., their being subconscious) but the tools available to recognize and make sense of them, including, I argue, narrative. Of course, I am not the first to draw such a connection between ethical arguments and legal arguments. Philosopher and ethicist Peter Levine, for example, introduces his book on narrative and ethical arguments – *Living Without Philosophy: On Narrative, Rhetoric, and Morality* – with a court case on sexual harassment (Levine 13-17). Yet the explanatory potential of how legal arguments work narratively, of narrative jurisprudence, is still largely untapped with respect to ethical arguments, especially in the context of college writing instruction.

Despite my disagreements with Jackson, I find his use of narrative useful in this respect: in making what is less explicit in ethical arguments, like legal arguments, more explicitly a part of how writers argue. Jackson is interested in narratives because of how they contribute to a sense of truth, what he calls “veredication,” when the actual truth of things cannot be directly known (as, for example, with respect to the facts of a legal case) (Jackson “Anchored Narratives” 28). Narratives are also helpful to Jackson (and to me) in explaining why persons find some norms more appealing than others in judging certain behaviors, when the issue at stake is less about a sense of truth than a sense of justice or rightness.

Jackson’s narrative approach depends on what he calls “narrative coherence” in order to determine what narratives are accepted as true or relevant. Narrative coherence occurs within and among three distinct but related “levels” of narrative that each play a role in his narrative approach to legal argument: narrative “manifestation,” narrative “structure,” and narrative “schema.” Both legal facts and legal rules can be understood as narrative. Legal facts often manifest as narratives (e.g., in judicial opinions) that display a narrative structure and that can be compared with other, similar narratives concerning typical behavioral patterns (i.e., narrative schema). According to Jackson, legal factual narratives are most likely to be accepted as true when they are “coherent” as far as conforming to certain structural conventions and highly similar to the other circulating narratives that are most deeply internalized. As far as legal rules, they also can be understood as narratives, although not commonly perceived as such, and often not manifesting as such. Legal rules are narratives in the sense that, regardless of how they are stated, they not only set forth routine behavioral patterns but also evaluate them.

According to Jackson, legal decision making is based on “coherence” or pattern-matching between legal facts and legal rules as narratives. Stated somewhat differently, not descriptively but normatively, coherent legal decision making produces decisions that are more likely to be accepted as just or right. Through these several senses of “narrative coherence,” Jackson’s approach to narrative in legal argument provides a means of using narrative to make sense of and evaluate how legal decisions are made and how legal arguments persuade.

So what does all of this have to do with ethical arguments? I argue that Jackson’s narrative approach to legal arguments can serve as a narrative approach to ethical arguments as well. According to such a narrative approach to ethical argument, ethical arguments, like Hook’s op-ed regarding voluntary euthanasia, often include explicit (or manifest) narratives, such as the one Hook uses as an introduction. Extrapolating from Jackson, these ethical factual narratives are more likely to be accepted as true when they are “coherent” as far as conforming to certain structural conventions and highly similar to the other circulating narratives (narrative schema) that are most deeply internalized. Similarly, ethical norms, like legal rules, also can be understood as narratives, though not commonly perceived nor stated as such. Ethical argument is a matter of coherence or pattern matching between ethical facts and ethical norms as narratives, and is likely to be most persuasive when most coherent, or closely matched.

Narrative Discourse in Ethical Arguments

Narratives are perhaps most readily apparent in ethical arguments when they appear like the introduction to Hook’s article excerpted above. In this section, I turn to Jackson in order to define this level of narrative, what Jackson refers to as narrative “manifestation”²⁸ and what I, for simplicity, call “narrative discourse.” Jackson understands narrative discourse as important for what it reveals about the actual bases for legal decision making. I take issue with the stark division that Jackson proposes between the actual and the given bases for legal decisions. Nevertheless, I find Jackson’s notion

²⁸ Jackson also refers to such narratives as “expressions” or “linguistic” (“Anchored Narratives” 30). He describes them as occurring at the “surface level” or “level of manifestation” or as being “sociolinguistic” (*Narrative Coherence* 30; “Narrative Theories” 33).

of narrative discourse useful for how it brings attention to narrative as providing justifications that are independent of and possibly different from those justifications provided elsewhere. By applying Jackson's analysis of narrative discourse to the Hook op-ed, I demonstrate that in ethical arguments, too, narratives need to be attended to because they offer independent reasons for adopting a position, like Hook's in favor of voluntary euthanasia.

The term "discourse" is, of course, hardly a simple one, but I think it better captures what Jackson is up to when he examines narrative at this level. By "narrative discourse" I mean a unit of communication – here, writing, like Hook's introduction – that is identifiable for including actions arranged in time and that, through these and other features, embodies certain beliefs, values, and categories that constitute a way of looking at the world and organizing experience (see Mills 6, 136, drawing here on Fowler). The phrase "narrative discourse" better captures Jackson's orientation to language, which is what he calls "intensional" or skeptical of language's capacities for representation (Jackson "Anchored Narratives" 28).

Jackson offers no explicit definition of narrative discourse, but he describes it as significant for its content and manner of expression, and as socially and culturally contingent (Jackson Narrative Coherence 79; Jackson "Narrative Theories" 33). His examples of narrative discourses in law include a judge's narration of the facts of a British nuisance case and a journalist's narration of the facts associated with a British murder trial as presented, respectively, by the prosecution and the defense.

Narrative discourse is significant for Jackson for two related reasons. These reasons inform his analysis of narrative discourse and are relevant to developing a narrative approach to ethical arguments. First, Jackson examines narrative discourse for its "veredication," for whether legal decision makers are likely to accept a legal narrative as true, or one version as truer than another version. Second, Jackson is skeptical of legal justifications and believes that legal decision making occurs on different grounds than are typically made explicit (e.g., in judicial opinions). Occasionally, these grounds surface in deviant or unconventional legal discourse, and narrative discourse is just the kind of discourse in which, according to Jackson, traces may be found of the actual basis for

legal decision making.²⁹ To state it another way, narrative discourse offers a basis for decision making that is distinct from, and often in conflict with, other justifications. The significance of narrative discourse to Jackson as an independent basis for legal decision making informs his method of analysis. Although Jackson does not offer extensive guidance on method, he focuses on those “value-laden associations” that may not be entirely relevant to the case being made, yet are nevertheless “inextricable” (Jackson "Narrative Theories" 25).³⁰ For Jackson, it is these aspects of narrative discourse that point to the actual bases of legal decision making.

I will be focusing on the second of these reasons in this section, leaving the issue of veredication until later in the chapter, when a few more tools are available. My skepticism of more standard justifications is not as strong as Jackson’s, but I nevertheless find his way of thinking about narrative discourse helpful with respect to ethical arguments. Narrative discourse in ethical arguments, as in legal arguments, offers a basis for position taking that is distinct from certain other justificatory discourses.³¹ The difference is important because it means that narrative discourse is actually arguing something, contributing to ethical argument by providing justifications, not just entertaining, engaging, or offering stylistic nuance. Similar to Jackson, I demonstrate that narrative discourse in ethical argument is distinct by analyzing the Hook article’s

²⁹ Jackson makes the point by analyzing the narrative discourse of a British judge, which appears to be at the root of the judge’s decision, irrespective of relevant British law. The case concerns a plaintiff who moves to a home near an existing cricket field, and wants to shut the field down as a nuisance. The relevant legal rule is that it does not matter whether someone comes to a nuisance as to whether or not it can be shut down as a nuisance. Despite the rule, the judge holds against the plaintiffs. The holding does not make sense as an application of the relevant legal rule. It does, however, make sense in light of the narrative discourse portraying the plaintiff as a “newcomer” who interferes with the “traditional pleasures of the people” thereby threatening social detriment by turning young men away from sport and toward violence (“Narrative Theories” 24-25). Widely considered an “unusual” or “deviant” opinion for its rejection of standing law, the opinion is instead embraced by Jackson for its making public a judge’s actual decision making processes, typically concealed by opinion’s justificatory discourse (*Narrative Coherence* 97).

³⁰ Among his limited advice on analyzing narrative discourses, Jackson generally suggests considering the “acteurs” – the persons mentioned, – the register (e.g., nominalizations), and “rhetorical” features such as what is included and excluded and sentence construction (*Narrative Coherence* 30, 83).

³¹ By “justification” or “justificatory discourse,” Jackson refers to the way courts communicate their decisions – the facts of a case and the relevant law as determinate, the application of law to fact as deductive (*Narrative Coherence* 32-33 (fn 55), 90). By comparison, with respect to ethical arguments, justifications involves strategies for ethical argument and why they are used, how they function as part of or contribute to ethical arguments – in other words, “approaches” to ethical arguments.

narrative discourse and comparing its justification with those offered by the principle and values Hook sets forth as governing the reasoning for his position.

The introduction to the Hook article, excerpted above, is a narrative discourse. Analogous to a judge's recitation of the facts of a legal case, the narrative is made explicit in the text and has to do with the facts informing Hook's ethical arguments. The narrative discourse's inextricable, value-laden associations provide a basis for Hook's support of voluntary euthanasia. The narrative discourse might be summarized as Hook's struggle to die (thwarted by his physician), followed by his mixed record of progress in his physical status and work six months later. But to summarize the narrative in this way does not acknowledge its manner of expression, the ways the narrative conveys the enormity of Hook's suffering and its associated sense of fear and loss of control. Instead of summarizing his medical experience ("I lay at the point of death"), Hook goes on to describe what that means in vivid detail, giving the experience a presence in readers' imaginations: an angiogram leading to a stroke, incessant hiccups that prevent eating, paralyzed vocal cords, pleurisy, a stopped heart, intermittent consciousness. The events alone give a palpable sense of what it means to "lay at the point of death," but Hook also uses certain words and a metaphor to heighten the physicality of the experience and to open his subjective sense of it to readers: his hiccups are "violent and painful" and the pleurisy makes him feel as though he is "drowning in a sea of slime." Hook admits that his hospital experience can be and has been used to argue against permitting voluntary euthanasia. But it is difficult to imagine it being used to support that position given the manner in which Hook relates it. As specifically told by him, the narrative discourse justifies permitting voluntary euthanasia as a means of putting an end to a patient's enormous suffering.

The Hook article's narrative discourse offers support for voluntary euthanasia that is distinct from that indicated by the principle Hook sets forth and the values related to that principle. Approaches to ethical argument based on principles and values explain that such arguments are persuasively reasoned when a position is found to be consistent with a principle – a standard, dictate, or rule (Barnet and Bedau 389)³² – and the one or

³² *Writing Arguments* give the following example of a "Principles-Based Frame": "X is right (wrong) because it follows (violates) principles A, B, and C" (Ramage et al. 298).

more values that principle reflects. Toward the end of his article, Hook states as a principle: “Each one should be permitted to make his own choice – especially when no one else is harmed by it.” The principle establishes relevant values and puts them in relationship with one another: the value of individual autonomy is prioritized, especially when others are secure from harm. Yet Hook’s narrative discourse has to do with his individual autonomy being compromised rather than prioritized. As a result, Hook experiences physical suffering, which has to do with security of *himself* from harm, not others. Hook’s narrative discourse therefore offers justifications distinct from the principle he announces and the values relevant to it.

Unlike Jackson, I have no reason to believe that Hook’s position in support of voluntary euthanasia is based to a greater extent on his narrative discourse and its justifications than on the principle he espouses. Both lend support, though for different reasons. The point is that Hook’s narrative discourse gives justifications for his position that differ from certain of his explicit, propositional justifications and that readers may find very personally compelling. My concern is that college writing instruction regularly overlooks the significance of narrative discourses like Hook’s in ethical arguments.

Granted, textbooks acknowledge any number of what are being called here narrative discourses – certain rhetorical exercises (*progymnasta*) such as fables and tales, parables, and personal narratives like Hook’s.³³ A few textbooks even describe these narrative discourses as strategies for making claims, pointing to morals, or providing examples. Narrative discourses make claims or point to morals by illustrating appropriate behavior (e.g., Corbett and Connors 120, 397, 484; Lunsford et al. 90-93; Wood 168; Barnet and Bedau 381-82; Crowley and Hawhee 33, 36). As one textbook states: “[Narratives] can illustrate values in action, with morals or generalizations noted explicitly or implicitly along the way” (Wood 168). Parables often do this,³⁴ as do

³³ “Fables” are fictitious stories that include a moral and were (and continue to be) used to teach moral behavior to children. “Tales” are historical or fictional story retellings (Crowley and Hawhee 69, 33, 38-42). A “parable” is as an “anecdotal narrative designed to teach a moral lesson” (Corbett and Connors 397).

³⁴ For example, one textbook interprets the New Testament Biblical parable of the Good Samaritan by seeing Jesus as making an implicit evaluation of the conduct of the parable’s characters, based on an unspoken moral principle: “*We ought to help the needy even at some cost or risk to ourselves*” (Barnet and Bedau 381-82). Another understands it as making the claim that “helping one another in such circumstances is valued and desirable behavior” (Wood 168).

fables.³⁵ Narratives are also explained as functioning as examples, or a kind of support or evidence that backs claims (Lunsford et al. 90; Wood 209; Crowley and Hawhee 172-73).³⁶

Generally, though, these references tend to be brief, and have to do with special kinds of narrative discourse not commonly used in contemporary debates. Narrative discourses like Hook's are not recognized as a means of making ethical arguments. Textbooks characterize ethical argument as including genres of argumentative discourse such as position papers and proposals but not narratives (Goshgarian and Krueger 135; Seyler 100, 76).

Instead, textbooks favor approaches and strategies for ethical arguments that seem more clearly determinate, like the use of principles. When textbooks advise student writers to look for or to produce principles, they refer to propositions clearly stated in the texts, something on the order of "Each one should be permitted to make his own choice . . ." The same is true of other popular approaches to ethical argument, such as the claims and reasons of the Toulmin method, or the outcomes associated with consequentialism and utilitarianism. Student writers' attention is directed to that portion of a text that is clearly argumentative in the sense of being propositional.

As a result, the roles that narrative discourses play in ethical arguments are overlooked, trivialized, or otherwise misunderstood. Narrative discourses are understood as important, perhaps, but not to ethical arguments. They engage and entertain as introductions and examples but little more. The problem then is that textbooks are not accurately describing how ethical arguments actually work, and student writers may overlook the work that narrative discourse is doing in ethical arguments. As a result, they may be hoodwinked as to the real basis for why they are persuaded of something, as Jackson claims with respect to legal arguments, or at least one basis. Without a more complete understanding of what narrative discourses do in ethical arguments, student

³⁵ In describing fables, one textbook describes them as most effective when "morals, or generalizations, can be drawn from them." This textbook's authors include "The Fire-Bearing Fox" about a farmer who sets a pesky fox's tale on fire and so damages his field, and suggest that interpretations of tale apply to "unduly harsh and rash punishment, or even torture" (Crowley and Hawhee 36, 177).

³⁶ Even when textbooks caution student writers about the use of narratives potentially being insufficient or nonrepresentative, they are still suggesting that, under certain conditions, narratives can provide supports for claims (e.g., Lunsford et al. 479; Ramage et al. 119).

writers are also not as likely to use narratives effectively in their own ethical arguments. Without understanding that narrative discourses offer justifications of their own, there is no need to wonder how writers use them in concert with other approaches.

Narrative Structure in Ethical Arguments

According to Jackson, part of what defines a narrative is that it conforms to a conventional structure, widely accepted as what a narrative is supposed to look like. Narrative structure is important to understanding how narratives persuade; those narrative discourses that conform more closely to narrative structure are more likely to be accepted as true. In this section, I define “narrative structure” based on Jackson’s use of A. J. Greimas, and explain the connection, as Jackson sees it, between the structure of legal narratives and their acceptance by legal decision makers as true, or at least plausible. Jackson refers to this connection as “internal narrative coherence.” I then argue that internal narrative coherence also governs narrative discourses in ethical arguments. I apply Jackson’s model of narrative structure to Hook’s narrative discourse, demonstrating in what ways the discourse meets conventional expectations regarding narrative structure and how these enhance its plausibility. Finally, I consider the extent to which textbooks address narrative structure and internal narrative coherence as part of their approaches to ethical argument.

In addition to the level of narrative at which narratives manifest (i.e., as narrative discourses), Jackson refers to a second level of narrative as “structural” (Jackson Narrative Coherence 82; Jackson "Narrative Theories" 34).³⁷ According to Jackson, “narrative structures” are “[s]tructures of understanding which allow us to recognize discourse presented to us as an intelligible course of action” (Jackson "Anchored Narratives" 19) or as a “story” (Jackson "Narrative Theories" 29). Although I differ with Jackson on this point, he understands narrative structures as concerning only “intelligibility” – that and how a narrative is perceived as a narrative – not “interpretation” – what a narrative might mean.

³⁷ Other of Jackson’s terms for this level include “deep level” and “grammar” (*Narrative Coherence* 27; “Anchored Narratives” 30).

As a model for narrative structure, Jackson chooses the actantial or semio-narrative model of linguist and semiotician A. J. Greimas. The model involves “syntagmatic” aspects of structure, including what happens (“elements”) and how actors are involved in relationship with one another (“actants”). The elements of narratives, according to this model are: setting goals (“contract”), possibly achieving those goals (“performance”), and acknowledging that accomplishment or failure (“recognition”). Relevant actors are designated according to their roles – as “subjects,” “objects,” “senders,” “receivers,” “helpers,” and “opponents.” These are not just persons, but things like customs and social forces. They are put in relationship with one another by means of actants: sender-receiver, subject-object, and helper-opponent. A *sender* makes a *receiver* into a *subject* by communicating a *goal or object* (i.e., establishing a *contract*). The subject is helped by a *helper* (or impeded by an *opponent*). The subject *performs* the goal (or not). A *sender* gives *recognition* of performance (or not) to a *receiver* (Jackson "Narrative Models" 232; Jackson Narrative Coherence 82; Jackson "Narrative Theories" 34; Jackson "Anchored Narratives" 30).

As complicated as this model might seem, Jackson’s point has to do with its simplicity: narrative discourses are more persuasive when they simply and unambiguously reflect narrative structure. In other words, narrative structure is one tool for assessing narrative discourse’s veredication, for whether legal decision makers are likely to accept a narrative as true, or one version as truer than another version. Jackson refers to the relationship between narrative discourses and narrative structure as “internal narrative coherence,” or just “coherence” (Jackson Narrative Coherence 73). His conviction that narrative discourses are more persuasive when they more closely resemble narrative structure (when they are more coherent) is based on empirical research regarding the role of narrative structure in jury decision making (Bennett and Feldman).³⁸

³⁸ As Jackson acknowledges, Bennett and Feldman’s research was based on a different model of narrative structure, a version of Kenneth Burke’s pentad. To demonstrate his point, Jackson turns to his own case study – a British murder trial in which the jury appeared to have little trouble deciding that the defendant was guilty, despite a mixed record of evidence. The evidence included the fact that the defendant had been engaged to the husband of the murder victim eighteen months prior to the murder. The victim’s blood was found in the defendant’s car, but not on the defendant’s clothing. The murder weapon was a rifle belonging to the defendant’s parents and kept at their home. But the angle of the shot was likely, though not conclusively, the work of a professional (not the defendant).

According to the prosecution, the defendant borrowed her parents’ rifle, shot the victim, and returned the rifle. The defendant’s alibi – that she had been vacationing in Scotland at the time of the

Narrative structure is also a means of assessing whether ethical narrative discourses are veridical. In the same way that legal narrative discourse is judged as more or less persuasive based on its coherence – based on the clarity of its structural elements and their relationship with one another – ethical narrative discourse also can be judged. Applying Jackson’s model of narrative structure, it can be explained why Hook’s narrative discourse is highly intelligible as a narrative and may be accepted as an accurate account: the narrative discourse is coherent as far as setting forth relevant elements and actants. An angiogram triggers a *stroke* that makes *Hook* suffer extensively and want *to die*. The stroke, then, is a sender that makes Hook, the receiver, into a subject, communicating by means of its horrific symptoms a goal or object: a desire to die. Hook tries to terminate his life (perform his goal) by asking his physician to discontinue life support or to show him how to do so, but the *physician* refuses. Hook is thereby impeded in his pursuit of his goal by an opponent – the physician – and the goal is not achieved. The *physician* predicts that Hook will appreciate the “unwisdom” of his request. Thus, the physician functions not only as an opponent who refuses to assist Hook in the performance of his goal – terminating his life – but as a sender who refuses to recognize even the legitimacy of Hook’s goal in the first place. Hook’s narrative discourse clearly conforms to the elements, actors, and relationships thought to make up narrative structure. The narrative discourse’s coherence explains, at least in part, how it is that audiences identify the discourse as a narrative and are persuaded to accept it as a credible account.

murder – was countered by two witnesses who testified as to seeing her near the site of the murder. According to the defense, the defendant was framed by her former lover – the victim’s husband – who was the actual murderer. The night of the murder, the defendant had had a date with her former lover, had driven with him back to his home, had been secured by three armed men, and lost consciousness. These men had stolen the rifle from her parents’ house, shot the victim, used the defendant’s car to dispose of the victim’s body, returned the rifle, and threatened the defendant if she reported anything to the police.

That the first scenario is more likely than the second seems intuitive, but Jackson argues that it has to do with the coherence of the prosecution’s narrative. That is, the prosecution’s narrative more satisfactorily meets the conventions of narrative structure. The prosecution’s narrative has a clear “subject” – the defendant. She has a clear motive (or “goal”) – acting on her jealousy – and is able to do so with the help of her parents’ rifle (“helper”). Her alibi – that she was performing a different goal (vacationing) – is not given “recognition” by the court (“sender”). In comparison, the defense’s narrative has a suggested “subject” – the former lover of the defendant and husband of the victim. But it is less clear what his motive is in both murdering his wife and incriminating his lover. As a result, the jury processed the prosecution’s narrative as having to do with what actually happened at the murder, and found the defendant guilty. The murder conviction occurred despite not insignificant evidence suggesting the defendant’s innocence, or at least a different set of events.

As helpful as narrative structure is in explaining the coherence of narrative discourses, it is also useful in making sense of narrative discourses interpretively, something Jackson rejects. The analysis of the narrative structure of Hook's narrative discourse raises any number of points of interest and questions. Among them: Why are Hook's symptoms, his experience of physical suffering, so significantly featured as agents – i.e., the senders of Hook's goal to die? Why does Hook make the physician the opponent of the narrative rather than, say, the physician's professional duties, or legal and social proscriptions against the taking of one's own life? Unfortunately, Jackson focuses only on the role of narrative structure with respect to intelligibility and veredication and specifically rejects its interpretive potential.

Jackson's focus is too limited because he confuses an epistemological issue for an ontological one. Narrative structures are simply models or lenses for understanding the conventions of narrative, not something inherent to narrative discourses themselves. The confusion is apparent not only in Jackson's rejection of narrative structure as a means of interpretation, but in his settling on just one model: Greimas's actantial model. Other models of narrative structure are available for assessing whether and to what extent narrative discourses make sense as such.³⁹ These other models also point to different features and make available different questions of interpretation, enriching interpretive possibilities.

Despite the limitations of Jackson's presentation of narrative structure, it nevertheless helpfully adds to textbooks' explanations of structure in ethical arguments. The most common approach to ethical arguments among the textbooks is a structural one: the Toulmin method. As with narrative structure, the Toulmin method asserts that ethical arguments are most persuasive when they clearly set forth certain elements – namely, claims, reasons, and warrants – and when the relationships among these elements are clear.

The Toulmin method incorporates narrative discourses as claims and reasons, but does not explain what makes narrative discourses themselves persuasive, in the sense of being credible or likely to be accepted as true. As mentioned earlier, narrative discourses

³⁹ Examples include that of William Labov and Joshua Waletzky (Labov and Waletzky) or Kenneth Burke's pentad (*Grammar*).

often serve ethical arguments by making claims or providing reasons; they fulfill these elements of the Toulmin method. But personal narrative discourses like Hook's and other narrative discourses commonly used in contemporary debates also rely on a sense of their being true for their persuasive power. In this respect, the Toulmin method falls short: as helpful as it is in assessing the completeness and coherence of propositional discourses, the intelligibility and credibility of narrative discourses depend on different structures. Models of narrative structure like that presented by Jackson explicate the structures unique to narrative discourses: their elements and the relationships among these elements. Such narrative structures can help student writers better understand why certain narrative discourses, their own and others', seem so much more plausible than others.

Narrative Schema in Ethical Arguments

What I call "narrative schemas" are the least tangible aspect of Jackson's narrative approach. This is because narrative schemas largely transcend the text itself and its discourses; they represent typical patterns of behavior that organize social knowledge regarding that behavior. In their several functions, narrative schemas make apparent that specifics play a more significant role in legal arguments and, I argue, ethical arguments than is typically acknowledged, and that decision making and position taking are often more situated than may be recognized. Narrative schemas also point to what is normatively significant in ethical arguments, even though not explicitly argued for.

In this section, I turn again to Jackson to define "narrative schema" and its functions in legal arguments. I argue that narrative schemas also apply to ethical arguments by teasing out the narrative schemas relevant to the Hook article and considering what work they do. Specifically, what these narrative schemas make evident is that Hook's op-ed is not about voluntary euthanasia writ large. Instead, Hook's arguments are situated with respect to a particular kind of voluntary euthanasia that depends on the unique circumstances and concerns of the older dying patient. To a significant extent, Hook makes his case for voluntary euthanasia in his choice of narrative schema: by choosing this patient, this situation. Finally, I consider how narrative

schemas and their functions enrich textbooks' current explanations of narrative and approaches to ethical argument.

For simplicity, I call “narrative schemas” what Jackson refers to as “substantive schemata” (Jackson "Narrative Theories" 34) or “narrative typifications” (Jackson "Anchored Narratives" 18).⁴⁰ Jackson defines these as follows:

Every society (and, we may suggest, particular subgroups within it) has its own stock of substantive narratives, which represent typical human behaviour [*sic*] patterns known and understood within that society or social group. This is the form in which social knowledge is acquired and stored, and which provides the framework for understanding particular stories presented to us in discourse. (Jackson "Narrative Theories" 30)

In legal arguments, Jackson understands narrative schemas and their functions in what seems to me to be several distinct but related ways. Legal decision makers use narrative schemas to organize the disparate and sometimes contradictory details with which they are presented – from evidence regarding the facts of a case to cues concerning things like witness credibility. These narrative schemas are informed by widely circulating ideas about how the world works. Such narrative schemas also typically have a normative component that dictates what should happen in any particular situation, an appropriate response to the circumstances presented. Because of this normative quality, narratives are rarely innocent; their recital implies a decision already in the making.

Such is the case, I argue, with respect to ethical arguments as well, and the role that narratives play in position taking. In the Hook op-ed, for example, Hook's position in favor of voluntary euthanasia is persuasive not only because of the reasons he explicitly sets forth. His case for voluntary euthanasia is also based on the situation that informs his reasoning – his own. This narrative schema of the older person facing end-of-life decision making is significantly similar to a widely circulating narrative schema concerning voluntary euthanasia, one that provides for patient autonomy. By arguing from that narrative schema, then, Hook substantially advances his position in favor of voluntary euthanasia, even while the basis on which he does so is largely obscured.

⁴⁰ Jackson states that by “narrative typifications” he is referring to “frames, stereotypes, scripts, schemata” (“Anchored Narratives” 18).

The narrative schema of Hook's op-ed is the plight of the older person brought back by medical technology from imminent death against his wishes, and is drawn from Hook's narrative discourse as well as other parts of his article. An older person is satisfied with his life and accomplishments. Yet he perceives that he does not have a whole lot more to offer the world and is concerned about the appropriate distribution of medical resources. He apparently has no advance directive or other documentation of his thoughts and wishes regarding the end of his life. He has a family and friends who care for him and whose own desires for the end of his life are unclear. He is not terminally ill; he is simply an older person and thus subject to more medical incidents than most people. One such incident causes him to suffer enormously and makes death imminent. He is put on life support. In a moment of what he claims to be lucidity, he asks his physician to discontinue life support, or to be shown how to do so. The physician refuses to do so. Altogether, the narrative schema organizes the details of Hook's arguments in a way that is meaningful and highlights the situation Hook presents when he discusses voluntary euthanasia: that of an older person facing death as part of a medical trauma, in this case a situation he has himself experienced.

Hook's narrative schema is significantly similar to a widely circulating narrative schema concerning end-of-life decision making, one that provides for patient autonomy. As applied ethicist James D. Wallace puts it, the "central paradigm" with respect to end-of-life decision making is "[a] dying patient" who "may choose to refuse any or all life-prolonging treatments" (Wallace 56). This central paradigm is expanded on to include the patient's suffering as stated by the American Medical Association's (AMA) current Code of Ethics, which states in relevant part:

The social commitment of the physician is to sustain life and relieve suffering. Where the performance of one duty conflicts with the other, the preferences of the patient should prevail. The principle of patient autonomy requires that physicians respect the decision to forego life-sustaining treatment of a patient who possesses decision-making capacity (American Medical Association Op. 2.20).⁴¹

⁴¹ Because it rejects all forms of "euthanasia," the AMA uses the phrase "forego[ing] life-sustaining treatment" instead of "voluntary euthanasia." For consistency, I will continue to use the phrase "voluntary euthanasia" as it is used by Hook.

The AMA statement of principle certainly does not look like a narrative. But, as Jackson points out with respect to legal rules, contemporary guidelines are often stated in abstract terms, as principles, rather than as narratives. According to Jackson, the form of such guidelines has to do with the pragmatics of rule-telling in the Western legal system, not the nature of principles themselves, which is actually narrative (Jackson Narrative Coherence 3).⁴²

What Jackson says of legal rules describes ethical guidelines as well: they are often stated abstractly. This is the case here, where guidance to physicians on their patients' end-of-life care concerns conflicting duties, with one duty ultimately prevailing over another. I do not agree with Jackson that the nature of such guidelines is essentially narrative. But I do believe that revisiting guidelines as narratives is helpful in that it opens up different interpretive potential.

So what narrative schema is assumed by the principle concerning patient autonomy in end-of-life decision making? Little can be gleaned from the Code itself, but together with a significant AMA report on the topic ("Decisions Near the End of Life"), relevant aspects gel. Because of the advances of medical technology, the patient is older and facing death in a hospital. Perhaps she is terminally ill, or maybe not. At some point, death becomes, if not imminent, a real possibility. Medical technology is available to intervene in or forestall her death, but this technology will not reverse the underlying condition. (This technology may be something apparently "ordinary" – e.g., artificial nutrition or hydration – or "extraordinary" – e.g., mechanical ventilation.) Perhaps she has advised in an advance directive what she wants to happen. But ideally she has the

⁴² Jackson, also a student of ancient Jewish law, argues that "[W]e have good historical reason to suggest that the basic form of a legal rule itself is indeed a narrative one" ("Narrative Models" 236). An example of a "narrative rule" in ancient law to which he regularly returns is drawn from Exodus 22:1: "If a thief is found breaking in, and is struck so that he dies, there shall be no blood guilt for him" ("Narrative Models" 237). According to Jackson, the legal rule is narrative in that it includes a hypothetical fact situation and a conditioned consequence – both parts concrete and mini-narratives. The same form, which Jackson refers to as "casuistic," is also common in medieval law.

One example of a "modern, abstract legal rule" regards inheritance under a will: "No will in writing . . . nor any part thereof, shall be revoked or altered otherwise" (Riggs 517). Jackson argues that, despite the statute's wording, it is in fact narrative. The statute assumes a "normal narrative" of family membership "associated with reciprocated affection, or at least with peaceable dispute" ("Literal Meaning" 453).

Jackson draws out the narrative qualities of legal rules such as this one in any number of ways, here by recourse to the "'common sense' of a particular community." Elsewhere, and more convincingly, he cites legal scholarship on the evolution of governing norms in a particular area of law, and considers the paradigmatic narratives assumed by these changing norms (*Narrative Coherence* 108).

capacity in the moment to decide what should happen. This capacity may not rise to the level of court-adjudicated competence, but it is nevertheless uncompromised by any pain and suffering on her part. Regarding her decision, she is not under pressure from her family, her physician, or the larger society. Others have not convinced her to the detriment of her autonomy that her life “no longer posses[es] social worth” or is “an unjustifiable drain of limited health resources.” She has been thoroughly informed by her attending physician of what she needs to know to make an informed decision. Among her options are declining or withdrawing from the use of life-sustaining medical technologies (Council on Ethical and Judicial Affairs et al.; American Medical Association Op. 2.20). The narrative schema of the autonomous patient is, of course, an ideal scenario, and one that raises few concerns with the patient making her own end-of-life decision.

Ethical arguments like legal arguments are most persuasive when what is being argued for is highly similar to widely circulating narrative schema. In the legal context, Jackson calls this “external narrative coherence” and describes it as “comparing a narrative constructed from the facts of the case with the underlying narrative pattern either explicit in or underlying the conceptualised [*sic*] legal rule” (Jackson Narrative Coherence 101). Such “coherence or pattern-matching” involves “a question of degree rather than absolutes, of similarities rather than identities” (Jackson Narrative Coherence 58).⁴³ For Jackson, the notion of legal argument as about coherence or pattern-matching is important because, among other things, it highlights the significance of facts and other situational details to legal argument. Jackson’s model of narrative jurisprudence turns on its head traditional notions of jurisprudence that focus on doctrine and its application,

⁴³ For example, returning to the law of inheritance, one factual narrative concerns a grandson who has been named a significant beneficiary under his grandfather’s will. The grandfather lets it be known that he intends to disinherit the grandson. Before the grandfather does so, the grandson murders his grandfather (Riggs). Applying the legal rule above, the result is clear: the grandson inherits the grandfather’s estate, despite being the grandfather’s murderer.

Yet the court decides differently, disinheriting the murderous grandson. The case has provoked substantial controversy over the decision’s justification. Jackson argues that the case provides an example of legal decision making based on coherence or pattern-matching: The factual narrative satisfies the letter of the law, the legal rule stating that no written will should be revoked or altered. The factual narrative, however, does not cohere with (or match the pattern of) the legal rule as a narrative about normal family relations and their recognition by means of financial succession. As a result, the court decides to disinherit the murderous grandson. As Jackson puts it, “The literal reading of the [inheritance] statute is filtered through the aesthetics or values which accompany narrative images at the subconscious” (“Literal Meaning” 453).

instead suggesting that situational specifics play a much greater role in legal decision making (Jackson "Narrative Models" 239).

Unlike Jackson, I suspect that narrative persuasion is less about coherence than interrelationship, something like a conversation between a narrative and a related narrative schema in which each informs the other. Specific narratives are produced by persons who themselves are aware of and influenced by related narrative schemas. Furthermore, when particular narratives circulate, they become part of and in turn influence, and possibly alter, available narrative schemas. Even so, the similarities among narratives and narrative schemas are still key. A narrative perceived as too far afield from already existing narrative schemas has little chance of altering those schemas, or possibly as even being perceived as a credible narrative in the first place.

Despite its limitations, Jackson's notion of external narrative coherence is nevertheless helpful for understanding ethical arguments. It opens a window on the ways that ethical arguments are tied to specific situations and the importance of the details of those situations to the arguments' persuasiveness. For example, Hook supports his position in favor of voluntary euthanasia in large part by situating his ethical arguments within a narrative schema very much like the narrative schema of the autonomous patient. Both narrative schemas involve older persons who face death in a hospital setting. Medical technology is available to intervene in or forestall death. Pressure from family and friends appears not to be an issue. In a moment of lucidity, a request is made to withdraw life-sustaining treatment. The likeness between Hook's narrative schema and the prominent narrative schema of the autonomous patient makes a powerful case for the autonomy Hook argues for.

The case made is, of course, not a perfect one; the narrative schema of the autonomous patient raises important questions regarding Hook's arguments. These include Hook's representation of his own capacity for decision making, especially given the level of suffering he portrays. Also, some of his arguments may implicate the very social pressures thought to compromise older persons' end-of-life decision making: e.g., his modest evaluation of his own social value and his concern with the fair distribution of medical resources. Finally, unlike the narrative schema of the autonomous patient, it is unclear whether Hook is sufficiently informed of his medical condition to make a

reasonable decision. His physician clearly assesses Hook's prognosis from a different vantage point than Hook. And Hook does recover, even if not to his former vitality.

Nevertheless, the likeness between Hook's narrative schema and the narrative schema of the autonomous patient is striking and suggests the importance of situational details to Hook's position. The situational details are important because they point out what Hook is *not* arguing, and the narrowness of what he is arguing. Despite Hook's claim that he argues for voluntary euthanasia writ large, he in fact argues for voluntary euthanasia in a particular set of circumstances: an older person, at death's door, suffering immensely, but having decision making capacity. The narrowness of his arguments is not evident in their propositional aspects: the claims made, the explicit reasons given, the principles and values pointed to. The focus is made apparent only in the narrative schema, and relative to other prominent narrative schemas that are not discussed – e.g., the young person in a persistent vegetative state following an unexpected accident or medical emergency,⁴⁴ the terminally or chronically ill person who seeks medical assistance to commit suicide, or to be killed, as a means of relief from intolerable pain and suffering.⁴⁵ Each of these might be described and argued for as instances of voluntary euthanasia, but they are not part of Hook's arguments. Even so, his broadly articulated "Defense of Euthanasia" would seem to embrace voluntary euthanasia as a whole.

The similarity between Hook's narrative schema and the narrative schema of the autonomous patient is also important for what it reveals about how Hook's arguments proceed with respect to what he does argue. By situating his arguments in a context so similar to an ideal one supporting patient autonomy, Hook argues for patient autonomy in voluntary euthanasia even as he sets forth his own context. The ideal narrative schema describes the ideal circumstances surrounding the issues of capacity and informed consent. In such circumstances, so the narrative schema goes, the patient should be granted autonomy in her end-of-life decision making. Hook sets forth a similar set of circumstances, both explicitly in his narrative discourse and as gathered from other parts of his article – his own narrative schema. By describing a similar set of circumstances,

⁴⁴ Persons around whom such a narrative schema have been organized include Karen Ann Quinlan, Nancy Beth Cruzan, and Terri Schiavo.

⁴⁵ Here I am thinking of the widely known work of physician and assisted suicide advocate Jack Kevorkian.

then, Hook implies without needing to explicitly argue that he, and others like him, also should be able to make choices about how they die. As with Jackson's understanding of legal arguments, the example of Hook's op-ed demonstrates that ethical arguments proceed not just based on what is explicitly claimed and the reasons given in support. Also important are the details that describe how things are. These are made sense of by means of narrative schemas that can be compared with other prominent narrative schemas, thereby pointing to what should be done or how things should be.

As with legal arguments, narrative schemas are important to ethical arguments because they help to identify the details of such arguments, make sense of how these details cohere, and explain how such details contribute to what is being argued and how. In these functions, they supplement current approaches to ethical argument in college writing instruction in at least three key ways. First, narrative schemas highlight the role of specific situations and their details in ethical arguments. This focus on the situational and specific differs from how textbooks tend to identify ethical arguments – as having to do with the general or “enduring” (e.g., Crowley and Hawhee 79; see also Appendix B "Killing Others - Death Penalty," Classification - Stases, Timothy McVeigh example). As demonstrated with respect to the Hook op-ed, unless student writers are able to identify the specific situation informing ethical arguments, they may misunderstand the scope of the arguments and overlook the more situated bases for persuasion.

Second, narrative schemas can help student writers better understand what aspects of an ethical argument are considered more important than others, or given more weight, and why. Hook's op-ed piece turns to any number of considerations: Hook's suffering, his later recovery, the disruption to his family, the quality of life of an older person, the appropriate use of community resources, the principle that persons should be able to make their own decisions. Textbooks advise that, to the extent that such considerations conflict, they might be weighed, balanced, or prioritized. The most important principle, value, or outcome can be chosen based on context or individual preference (Browne and Keeley 58-62). Or, perhaps the balance of values or outcomes suggests one result until some tipping point occurs: Persons should be charitable up until the point of self-sacrifice (Barnet and Bedau 392-402), or pursue free speech up until the point that hate speech becomes “so disruptive and so immoral that an exception must be made”

(Crowley and Hawhee 145-46). Yet another method for determining what considerations are most vital suggests prioritizing them based on their being “higher pleasures”⁴⁶ or most probable (Browne and Keeley 61). What any of these methods mean in practice is, to me at least, somewhat unclear. Narrative schemas, however, help to clarify what considerations are most important by putting them in a normative context. The narrative schema of the autonomous patient, for example, focuses attention on those aspects that are key considerations for determining whether a patient should be able to make her own end-of-life decisions – namely, the quality of the patient’s capacity and the information she has been provided. This is the case despite Hook’s limited direct attention to these concerns.

Third, narrative schemas might helpfully supplement current college instruction on ethical arguments by attending to the representation of persons and emotions and more coherently connecting these with other substantive arguments at issue, what I shall simply (if somewhat reductively) refer to as the “reasoning” of ethical arguments. It is certainly helpful for student writers to consider how they represent themselves and others in their own writing, and how others do so, as well as how they and others use emotions. The effective employment of such strategies, however, depends not only on generic formulas for their use but on their being consistent with what is being argued as a whole. Advice like “extend goodwill to audiences” or “do not be too sentimental” is helpful as far as it goes. But it does not account for how a writer’s representation of herself or employment of emotion substantively contributes to her arguments.

Hook’s op-ed piece, for example, has a strong sense of voice, and the textbooks offer any number of ways of understanding Hook’s self-representation, or *ethos*.⁴⁷ What they do not generally do, however, is help student writers to connect self-representation with the substance of arguments, in this case connecting Hook’s self-representation with

⁴⁶ The “higher pleasures” are said to include “intellectual stimulation, aesthetic appreciation, education, healthfulness” while the “lower pleasures” have to do with “animal appetites, laziness, selfishness” (Chaffee 328, describing John Stuart Mills’ approach).

⁴⁷ As described in Chapter One, textbooks explain that writers persuade in ethical arguments to the extent that values and their selves are (presented as) “virtuous,” or accord with the values and expectations of audiences. They explain the role of the writer in ethical argument as involving a number of aspects: the writer’s presumed orientation to the substantive issue under discussion (or as a generally virtuous person); the writer’s presentation of herself in her writing as respects this orientation (or her generic virtuosity); the writer’s presentation of herself as a writer; and the writer’s recognition of and conduct toward others within her writing.

his position in favor of voluntary euthanasia. Narrative schemas can make this connection, but to do so, Jackson's notion of narrative schemas has to be expanded in ways that he gestures toward but does not develop. Namely, narrative schemas have to account for not only factual content but what Jackson calls "pragmatics" – how something is stated, the qualifications of the speaker, and so forth (Jackson Narrative Coherence 35; Jackson "Anchored Narratives" 33; see also Jackson "Narrative Models" 233). For example, following Jackson, the analysis above of Hook's narrative schema did not rigorously account for aspects of Hook's self-representation. A narrative schema that did so would note how Hook represents himself, at the time he was confronting death but also later as he writes the op-ed. Hook describes himself as "lucid," a description put at question by the level of suffering he attests to. At the same time, the descriptor "lucid" is supported, if indirectly, by Hook's clearly articulated arguments. In these respects, Hook's self-representation as lucid is not simply fulfilling a generic set of requirements for effective writing. Hook's lucidity contributes to the sense that Hook had and has capacity to make his own decisions regarding his death, an important attribute of the narrative schema of the autonomous patient. Thus, self-representation is central to the substantive case Hook makes for voluntary euthanasia. The connection between self-representation and reasoning in ethical arguments is something that the textbooks largely overlook but that narrative schemas might account for, if extended to include pragmatics like self-representation.

Textbooks do not overlook narrative schemas altogether. But their treatment is brief and not applied to ethical arguments of the sort I have discussed in this chapter. The textbook *Thinking Critically* includes a brief subsection with readings about how judges and juries use narrative schemas to make sense of, decide on, and justify legal decisions, not unlike what is argued for here. Students are even asked to consider their own use of narrative schemas in deliberating on a hypothetical legal case (Chaffee 65-78). While very similar in some ways to the notion of narrative schema developed here, the textbook retains a legal focus in this subsection and does not extend narrative schemas to ethical arguments. Although not using the vocabulary of narrative schemas, the textbook *Current and Enduring* describes "good" literature as functioning like normative narrative schemas, as "*set[ting] forth a wholesome view of life*" (Barnet and Bedau 469).

Literature is a means “to some higher value” or a way of making people better; literary narratives “shape our character and therefore influence our behavior” (Barnet and Bedau 487; see also Chaffee 335-37). Despite the fact that these textbooks address narrative schemas, or something like them, they address them briefly and do not extend them beyond legal or literary contexts to the kinds of ethical arguments discussed here. For this reason, there is ample opportunity for narrative schemas to supplement textbooks’ instruction on ethical arguments by highlighting the importance of specifics, clarifying what considerations are weightiest, and connecting the representation of persons and emotions more coherently with reasoning.

Conclusion

Jackson’s narrative jurisprudence provides one means of understanding how narrative is used not only with respect to legal arguments but also ethical arguments. In other words, what Jackson’s narrative jurisprudence offers is a narrative approach to ethical arguments, one that explains how narratives at three levels function as part of and contribute to ethical arguments. Such a narrative approach is missing from current writing instruction on ethical arguments, and helpfully complements and complicates writing instruction in any number of ways.

At one level, narratives are discourses: units of communication that include actions arranged in time, like the introduction to Hook’s op-ed. A narrative approach helps student writers to recognize such narrative discourses as more than a convenient and entertaining way to engage audiences. Instead, narrative discourses are moments of ethical argument, offering independent justifications for positions, justifications that may conflict with or nuance those justifications a writer presents elsewhere.

At another level, narrative structure concerns the elements of narratives and the relationships among them. A narrative approach relies on narrative structure to make sense of discourses as intelligible and plausible courses of action. That is, a narrative approach designates those narratives that conform most closely to a standard narrative structure as most easily understood and most likely to happen (or to have already happened). Such narratives therefore serve as credible bases for ethical arguments. So

doing, a narrative approach supplements current understandings of structure in ethical argument, such as the Toulmin method.

Finally, still another level of narrative – narrative schema – represents a sense of the world and persons' behaviors within it from which a writer argues. A narrative approach highlights the narrative schemas associated with ethical arguments (e.g., the plight of the older person medically revived against his wishes). It also enables comparisons between these and other circulating narrative schemas (e.g., those concerning end-of-life decision making). These comparisons demonstrate the importance of specific situations (e.g., those involving older persons, hospital settings, etc.) as well as the norms and other considerations that are most important to ethical argument and position-taking (e.g., patient autonomy), even when not made explicit by a writer.

For clarity, I have kept these three levels of narrative relatively distinct, but they are not entirely so and often operate in concert with one another, something that will become clearer in the coming chapters. Narrative structures make sense of the elements of narrative discourses and the relationships among these elements. They also, as will be seen, do the same with respect to narrative schemas. Narrative schemas instantiate as and are informed by narrative discourses, along with other moments of ethical argument, as will be further developed.

This chapter's discussion has indicated several ways that a narrative approach based on Jackson might be refined and expanded. First, Jackson's notion of narrative structure is problematic in that it assumes that such structure is inherent to narrative rather than a means of producing and understanding narrative – a rhetorical and interpretive frame. This limits Jackson to one model of narrative structure and overlooks the interesting and significant questions that are raised around how writers *choose* to structure their narratives. Second, Jackson insists that narratives' intelligibility, plausibility, and persuasion depend on their similarity to, or coherence with, other narratives. This stance misunderstands the possible variety of interrelationships among narratives and would seem to foreclose the potential for narratives' transformation. Third, while Jackson gestures toward extending narrative schemas to include details such as the ways that writers represent themselves and others as well as emotions, he does not carry through on this project. In his neglect, Jackson foregoes an important opportunity

to develop an approach to reasoning in argument that accounts for how persons and emotions are represented. In the next two chapters, I return to the context where Jackson develops his narrative approach – legal arguments – in order to refine and expand his approach in these three ways.

CHAPTER THREE
Enhancing a Narrative Approach:
Death Penalty Judicial Opinions as a Case Study

It is in the stories that we tell, and that law in turn tells to us, that the violence of law is called to account; narrative thus provides one critical device for the ongoing critique of law. It also provides a vehicle for law's renewal and regeneration since it is in stories that the aspiration to justice is maintained and revitalized.

– Austin Sarat, “Narrative Strategy and Death Penalty Advocacy” 36

In a chapter on whether the death penalty is justified or not, the composition textbook *Current Issues and Enduring Questions* includes a number of readings, among them excerpts from two U.S. Supreme Court death penalty opinions. One opinion argues in support of the death penalty – Justice Potter Stewart's 1976 plurality opinion for *Gregg v. Georgia* (Gregg) – and the other argues against it – Justice Harry Blackmun's 1994 dissent to the Court's decision not to hear the death penalty case *Callins v. Collins* (Callins).⁴⁸ Among the materials drawn from the judicial opinions is just one narrative – Blackmun's narrative anticipating the defendant's execution:

⁴⁸ A brief clarification of the U.S. federal legal process and terminology: Except in special circumstances, legal cases come to the U.S. Supreme Court by appeal. Appellate review typically has to do with possible errors in procedure and points of law and does not reconsider lower courts' factual findings. Nine justices serve on the Court. Their initial decision with respect to any legal case presented to them is whether to hear the case (based on factors such as the significance of the legal issues involved and the level of legal disagreement among the lower courts). Determining to hear a case is referred to as granting certiorari. Occasionally a justice issues an opinion to explain or dispute the Court's decision regarding certiorari (e.g., Blackmun's opinion in *Callins*).

Once a case has been heard, the Court renders a decision, often accompanied by one or more opinions. In addition to the authoring justice, one or more justices may subscribe to an opinion in full or in part. An opinion garnering the support of the majority of the justices is known as the “majority opinion.” A “plurality opinion” is the opinion that controls when no opinion is joined by a majority of the Court. A “concurrence” or “concurring opinion” agrees with the decision of a majority or plurality opinion, but provides different reasons for doing so. A “dissent” or “dissenting opinion” disputes the Court's holding. An opinion can concur in one part and dissent in other parts. In each instance, the group of justices joining in an opinion is known generically by the kind of opinion they join (e.g., “the majority,” “the plurality,” etc.).

Bruce Edwin Callins will be executed by the State of Texas . . . Intravenous tubes attached to his arms will carry the instrument of death, a toxic fluid designed specifically for the purpose of killing human beings. The witnesses, standing a few feet away, will behold Callins, no longer a defendant, an appellant, or a petitioner, but a man, strapped to a gurney, and seconds away from extinction. (Callins 1143, qtd. in Barnett and Bedau 645)

Despite the narrative being important enough to be included among the reading materials, in its follow-up questions the textbook neither notes the narrative nor raises any observations or inquiries with respect to it. To the extent that the textbook's users notice the narrative at all, it probably appears to them as an isolated and possibly compelling argument against the death penalty.

Yet Blackmun's narrative is hardly isolated among death penalty narratives in judicial opinions. It attempts to accomplish some very specific things with respect to other death penalty narratives and does so in contrast with other dissenting justices' choice not to narrate. Only some of this, however, is evident by means of the narrative approach developed to this point based on Bernard Jackson's narrative jurisprudence, what I will refer to for simplicity's sake as a "Jacksonian narrative approach." According to such a narrative approach, it is clear that narratives such as this one do important work making ethical arguments, and, to some degree, how they do so. The discourse of Blackmun's narrative, for example, argues against the death penalty, specifically the punishment's inevitable bodily harm and finality, by means of value-laden associations (e.g., "killing human beings," "extinction"), and does so independent of ethical arguments made elsewhere in Blackmun's opinion. The narrative, although hypothetical, is arguably plausible because of the internal coherence of its structure, which includes recognition by Blackmun of the goal about to be performed by the State of Texas by means of lethal injection – a death penalty defendant's execution. Finally, Blackmun's ethical arguments as a whole, including the execution narrative, persuade to the extent they do because they cohere with a widely circulating narrative schema of execution, in which the act of execution invokes a sense of wrongness, whether in its procedures, the bodily experience of death, or in the possibility of irremediably putting to death an innocent person.

A Jacksonian narrative approach as applied here does not account for how narratives such as Blackmun's are in relationship with other narratives, nor the significance of such narratives as entering conversations that others do not. As helpful as Jackson's narrative jurisprudence has been, by refining and building on Jackson's work, it is possible to further develop a narrative approach and to explain even more fully for student writers how narratives function with respect to ethical arguments. An enhanced narrative approach is vital to student writers' full consideration of how writers such as themselves make ethical arguments, including when writers opt not to narrate and the ways in which ethical arguments persuade by means of the relationships among their narratives.

In this chapter, I expand on and revise Jackson's narrative jurisprudence in order to develop further the Jacksonian narrative approach to ethical arguments. I demonstrate how I enhance a narrative approach and what such an approach means for student writers in the context of U.S. Supreme Court judicial opinions on the death penalty, especially the opinions associated with the *Gregg* and *Callins* cases. I focus on the death penalty because it is one of the most common issues relied on by composition textbooks when defining and explaining ethical arguments (see Appendix B). Although judicial opinions are just one occasion for the discussion of significant issues like the death penalty, they are especially influential because of the consequences of what they decide and how they argue – at times, matters literally as important as life and death. Furthermore, because of the U.S. common law legal system, U.S. judicial opinions typically include at least one kind of narrative: a narration of the facts of a case, or what happened in order for the case to be recognized legally and to come to trial. Judicial opinions' narrative richness proved helpful to Jackson in developing his narrative jurisprudence and so also make sense as materials for exploring how a Jacksonian narrative approach might be enhanced. As I will argue, judicial opinions on high-stakes issues like the death penalty also sometimes include ethical arguments, making them prime materials for this project's consideration of the functions of narratives with respect to ethical arguments. Specifically, judicial opinions on issues like the death penalty are artifacts of decision making and position taking on matters of ethical import in which narratives are recounted

and put in relationship with one another in relatively routine ways, making them ideal for demonstrating an enhanced narrative approach and what it offers.

My purpose in enhancing a narrative approach is to provide student writers with an even more nuanced understanding of how narratives work with respect to ethical arguments. Blackmun's execution narrative, for example, speaks to a history of ethical arguments in judicial opinions concerning the death penalty in which a single pro-death-penalty narrative schema has predominated – what I call the “pariahic murder narrative schema.” According to the pariahic murder narrative schema, those who commit serious crimes are social pariahs whose persons and actions necessarily induce emotions such as fear and who must be put to death in order to restore social order. This narrative schema's dominance is attested to in part by the patterned refusal of death penalty dissenters (other than Blackmun) to narrate about defendants and their circumstances. I refer to this refusal to narrate as “narrative silence,” or the absence of narrative where it might otherwise be expected. Blackmun's execution narrative is significant, then, not just on its own terms but in relationship with other narratives and narrative silences: Blackmun's narrative signals Blackmun's own change of mind on the issue of the death penalty, and attempts to change others' minds as well, by entering a narrative exchange that other dissenters have met with narrative silence and by challenging and possibly changing the pariahic murder narrative schema that dominates judicial debate concerning the ethics of the death penalty.

These are valuable insights, important not only to understanding Blackmun's narrative but to a broader understanding of the work that the narratives associated with ethical arguments do in relationship to other narratives as well as the processes by which the narratives that predominate can change (and, ultimately, the positions associated with them). Such insights are accessible by means of an enhanced narrative approach, one that builds on Jackson so as to account not just for coherence but for other ways in which narratives relate to one another. In order to further a narrative approach in this manner, it is important to supplement and refine such an approach in ways that prove helpful to comparing narratives to one another and thus better understanding how they relate. These additional enhancements to a narrative approach also present advantages of their own for student writers' understanding of narratives with respect to ethical arguments.

To these ends, after explaining in the chapter's first section what I mean by "ethical arguments" in death penalty judicial opinions, in the second section I supplement and refine Jackson's notions of narrative schema and narrative structure by analyzing the pariahic murder narrative schema. I argue that some narrative schemas like this one depend on certain representations of persons and emotions involved with an issue to argue for a particular stance, in this case in favor of the death penalty. This expansion on Jackson's notion of narrative schema helps student writers better understand how ethical arguments persuade and the role of such representations in narrative persuasion. Ethical arguments persuade when coherent with narrative schemas' representations of persons and emotions, as demonstrated by the coherence between certain ethical arguments made in the *Gregg* opinions and the pariahic murder narrative schema. I also argue in this section that narrative structure is not inherent as Jackson insists, but something that writers often use strategically. Such a refinement helps student writers better understand how writers such as themselves might strategically employ aspects of narrative structure beyond a single model in making ethical arguments, as is the case with the narrative structures of the pariahic murder narrative schema, especially as manifested in the *Gregg* opinions' narrations of the case's facts. In the third section, I add to Jackson's notion of narrative discourse by explaining further what I mean by narrative silence. Narrative silence can serve as evidence that a particular narrative schema prevails with respect to an issue, just as the narrative silence of death penalty dissenting opinions attests to the predominance of the pariahic murder narrative schema. The concept also highlights the significance as well as the potential risks and limitations of alternative narratives that writers use to break narrative silences and to articulate different positions and arguments, as with Blackmun's execution narrative. I consider how the concept assists student writers in identifying those moments when they and other writers might strategically choose not to narrate. Finally, I expand Jackson's understanding of narrative persuasion as based on coherence by, as promised, extending it to other kinds of relationships among narratives. Such an expansion, in conjunction with the enhancements already introduced, affords student writers more nuanced understandings of the work that narratives such as Blackmun's do with respect to ethical arguments and how dominant narratives (e.g., the

pariahic murder narrative schema) and the positions associated with them can change over time.

“Ethical Arguments” in Death Penalty Judicial Opinions

Although some see law and ethics as distinct enterprises, ethical arguments are a part of constitutional law as a whole as well as certain judicial opinions, including the death penalty opinions analyzed in this chapter. In his taxonomy of constitutional arguments, legal philosopher Philip Bobbitt includes ethical arguments, which he claims arise from a “constitutional ethos” (141) found both in and around the Bill of Rights (105, 71). Ethical arguments are specifically a part of U.S. Supreme Court death penalty jurisprudence and certain of the Court’s death penalty judicial opinions. Especially important for purposes of this project are those ethical arguments that concern whether the death penalty is in all cases (*per se*) constitutional or ethical. It is with respect to this broad concern that the Court engages with ethical arguments regarding the death penalty in ways most similar to how the topic is addressed in college writing instruction, as identified by the textbook *Current and Enduring*.

Both the *Gregg* and *Callins* opinions analyzed in this chapter include ethical arguments regarding whether the death penalty is *per se* constitutional or ethical, with arguments made in and around the Eighth Amendment. Here, I set forth certain ethical arguments that are part of what is conventionally recognized as the reasoning of each case. These arguments are not only legal but ethical, and, as will be seen, similar arguments are made in the opinions’ narrative discourses. The *Gregg* case is notable in death penalty jurisprudence as the case that addressed and ultimately foreclosed the *per se* issue as part of its decision.⁴⁹ Its plurality opinion in particular argues for the constitutionality of the death penalty on ethical grounds, among others (e.g., history, precedent). The plurality argues that the death penalty is *per se* constitutional because it

⁴⁹ The *per se* issue had been raised for the first time four years prior to *Gregg*, in *Furman v. Georgia* (Furman). Although *Furman* struck down Georgia’s death penalty sentencing law as unconstitutional, it left open the constitutionality of the death penalty *per se*. *Gregg* ultimately foreclosed this issue by holding that the death penalty is not *per se* unconstitutional. Consideration of the death penalty issue under constitutional law also includes a more limited inquiry: whether a specific death penalty sentencing law is constitutional.

is consistent with the Eighth Amendment's prohibition against "cruel and unusual" punishment (U.S. Constitution. Am. 8). It argues that the death penalty is ethically justified as well as constitutional on the basis of *retribution* – that the punishment is not an unusual but a necessary means of giving an ordered society a legitimate channel for its outrage, and that certain crimes are so grievous that they must be redressed by the ultimate penalty. The plurality also argues that the death penalty is not cruel or unusual because it is *proportionate* – i.e., equivalent in gravity to the crime of murder.

Nearly two decades later, Blackmun attempted to reopen the *per se* issue of whether the death penalty as a whole is constitutional in his *Callins* dissent: "Although most of the public seems to desire, and the Constitution appears to permit, the penalty of death, it surely is beyond dispute that if the death penalty cannot be administered consistently and rationally, it may not be administered at all . . ." (Callins 1147). Arguing against the death penalty, Blackmun relies on the problem of *human fallibility*, that the ultimate punishment of death is not appropriate for fallible human administrators. The ethical administration of the death penalty requires a level of consistency and fairness that is in reality impossible. Because some innocent defendants inevitably will be killed, no defendants must be killed.

Especially with respect to high-stakes legal issues such as the death penalty, judicial opinions sometimes include ethical arguments. Significant ethical arguments made by the death penalty opinions analyzed in this chapter include the themes of proportionality, retribution, and fallibility, and, as will be seen, are sometimes made narratively.

Enhancing Narrative Schema and Narrative Structure

In this section, I enhance a narrative approach to ethical arguments by building on Jackson's notion of narrative schema and reconceptualizing his understanding of narrative structure. Narrative schemas and structures are important to a narrative approach as a means of understanding how ethical arguments are intelligible, plausible, and persuasive. Extending a narrative approach in certain ways expands the possibilities

for comparing narratives with one another, which ultimately is helpful in considering the relationships among narratives.

I demonstrate these enhancements by examining a prominent narrative schema of the death penalty context – the pariahic murder narrative schema – and related ethical arguments in *Gregg*. Certain arguments in *Gregg*'s judicial opinions support the death penalty based on their coherence with the pariahic murder narrative schema, and I turn to these to demonstrate the advantages of a narrative approach furthered in these respects. The significant aspects of the pariahic murder narrative schema highlighted in this section also are helpful to understanding the narrative schema itself. That narrative schema plays an important role in how the death penalty is discussed in judicial opinions, and, as will be seen, in relationship with other death penalty narratives. Without the more nuanced understandings of narrative schema and narrative structure presented here, student writers are likely only to partially understand or overlook altogether the ways in which ethical arguments like those supporting the death penalty work in their own and others' writing.

-- Narrative Schemas' Representations of Persons and Emotions

According to the Jacksonian narrative approach developed in Chapter Two, ethical arguments are considered persuasive to the extent that they have “external narrative coherence.” That is, what ethical arguments assume or depict as happening matches up with a widely circulating narrative schema that presents such events as typical and informs as to what to do about them.

In this section, I expand on Jackson's notion of narrative schemas by accounting for their representations of persons and emotions. Specifically, in the context of the death penalty, I describe the role played by representations of defendants and associated emotions in the prominent narrative schema of the pariahic murder. The ethical argument that the death penalty is justified on the basis of retribution is persuasive (to the extent that it is) because of its coherence with the pariahic murder narrative schema, especially that narrative schema's representations of persons and emotions, as can be seen in *Gregg*'s pro-death penalty opinions. A narrative approach that builds on narrative schemas in this respect can help student writers better understand how ethical arguments

persuade – based in part on their similarity to widely circulating narrative schemas’ representations of persons and emotions.

For Jackson, narrative schemas are primarily about depicting what happened, and his examples are highly concerned with trial contexts in which sorting out what happened can decide a case. Among explanations of what he means by “narrative schema,” Jackson gives the example of an indictment in a murder case that depicts the murder and resonates with jury members in any one of a number of ways: as a “crime of passion, domestic murder, contract killing, murder in the course of robbery” and so forth (Jackson "Anchored Narratives" 34). Each of these is a different narrative schema of murder in that it depicts a different set of persons and events. Ethical arguments, however, do not commonly occur through narrative schemas such as these, or at least not as limited only to these aspects. Just as relevant, if not more so, are the ways narrative schemas represent persons and emotions, something Jackson notes but does not pursue. By “representations of persons and emotions,” I mean depictions that make available to audiences certain orientations toward persons and their actions and that thereby suggest particular positions on an issue.⁵⁰

In the death penalty context, for example, narrative schemas have as much to do with how criminal defendants are represented and the emotions associated with them and their actions as with what happened. One way the narrative schema of the pariahic murder supports the death penalty is by representing defendants as social pariahs who are, by virtue of their deviancy, deserving of death (i.e., “pure retribution”). As one attorney-scholar describes the “myth of the capital defendant,” the defendant is represented as an “actor motivated by pure evil” according to a “myth of demonic agency”:

In our criminal justice system, the general public is only given access to ‘facts’ which ‘underscore defendants’ deviance and facilitate their dehumanization,’ leading society to view capital defendants ‘as genetic misfits, as unfeeling psychopaths who kill for the sheer pleasure of it, or as dark, anonymous figures who are something less than human’ . . . ‘The archetypal figure of the murderer

⁵⁰ So, for example, while the narrative schema of a crime of passion certainly involves emotion, that emotion has to do with the *defendant*’s emotion in perpetrating the crime, rather than an emotional stance made available to audiences.

supplies much of the meaning in the prosecutor's representation of the individual on trial.' (Haney 549; Doyle 438, qtd. in Banner 588)

The othering of the death penalty defendant as a social pariah is one way that the pariahic murder narrative schema argues for the support of the death penalty, as merely enacting in physical terms the defendant's social banishment.

A second way the pariahic murder narrative schema supports the death penalty is by representing certain emotions, especially fear. These strongly negative, socially shared emotions are represented as expected, acceptable, even necessary responses to death penalty defendants, their actions, and the threat of anarchy. In order to relieve the public's distress and to restore social order, the emotions must be redressed in some way. The means offered as most consistent with that goal is action by the state – the death penalty (i.e., “utilitarian” retribution). A study of death penalty movies similarly explains the representation of emotions in pro-death-penalty movies' narratives:

[A] brutal murder causes a breach in the social order. A crisis ensues while the killers are at large, characterized by a profound sense of irrationality, chaos, and fear in the community. In each of these [pro-death-penalty] stories, healing can only begin when the murderer is executed. (Meade 735-36)

Among other emotions, fear is represented here as an inevitable response to the defendant's actions and the ensuing social disorder, in turn calling for the death penalty as a means of restoration, or, as this writer expresses it, “healing.” In its significant reliance on representations of defendants as social pariahs and emotions such as fear, the pariahic murder narrative schema exemplifies the extent to which narrative schemas more generally depend on the representation of persons and emotions in arguing for certain positions on ethical issues.

By expanding Jackson's notion of narrative schema to include representations of persons and emotions, it is possible to explain more fully to student writers how some ethical arguments persuade – based on coherence with such representations. The pro-death-penalty opinions of *Gregg* make the ethical argument that the death penalty is justified on the basis of retribution. To the extent this argument persuades, it does so in

large part because it is coherent with the pariahic murder narrative schema, especially its representations of death penalty defendants like Troy Gregg and related emotions.

In what is conventionally considered its reasoning section, *Gregg*'s plurality opinion argues that the death penalty is justified on the basis of retribution, in part by representing death penalty defendants as social pariahs and certain emotions as predictable responses to defendants and their crimes. The plurality argues that extreme crimes merit extreme punishments, based on a defendant who, even aside from the crime, is depicted as deserving punishment: The death penalty is justified because, according to a source the plurality quotes, "the wrong-doer deserves it" (Gregg 184 n. 30, noted by Marshall 240). Furthermore, the plurality's argument depends on its representing certain emotions such as fear as typical responses to serious offenses, both directly in response to crime itself and indirectly to others' reactions. According to the plurality, "The instinct for retribution is part of the nature of man" and can lead to persons taking matters into their own hands via "self-help, vigilante justice, and lynch law" (Gregg 183). While audiences to the opinion may or may not identify directly with such "instincts," the argument also suggests fear of their expression – i.e., fear of mob violence leading to social disintegration, described by the opinion as "the seeds of anarchy" (Gregg 183). In effect, because death penalty defendants are identified a certain way – namely, as social pariahs – and because persons are assumed to have certain predictable, even "instinctive" emotional responses to crime, the death penalty is argued to be justifiably retributive. Although not itself narrative, the plurality opinion's ethical argument justifies the death penalty as retributive because it coheres with the pariahic murder narrative schema, including its representation of persons and emotions.

The concurrence in *Gregg* also argues in support of the death penalty based on retribution. In the concurrence opinion, however, the argument occurs in its narration of the facts. Here, too, the defendant is represented as a social pariah and the description of the crime potentially invokes audiences' fears. The representations of the defendant and related emotions are coherent with those representations in the pariahic murder narrative schema and are important because they call for the same conclusion, that the death penalty is justified because retributive.

Excerpted below are the facts of *Gregg* as narrated in the concurrence opinion, specifically those portions of the facts the Court itself narrates. (The plurality’s factual narrative is included for the sake of comparison.)

***Gregg* Plurality**

... on November 21, 1973, the petitioner [Troy Gregg] and a traveling companion, Floyd Allen, while hitchhiking north in Florida were picked up by Fred Simmons and Bob Moore. Their car broke down, but they continued north after Simmons purchased another vehicle with some of the cash he was carrying. While still in Florida, they picked up another hitchhiker, Dennis Weaver, who rode with them to Atlanta, where he was let out about 11 p.m. A short time later the four men interrupted their journey for a rest stop along the highway. The next morning the bodies of Simmons and Moore were discovered in a ditch nearby. (Gregg 158-59)

***Gregg* Concurrence**

Petitioner Troy Gregg and a 16-year-old companion, Floyd Allen, were hitchhiking from Florida to Asheville, N.C., on November 21, 1973. They were picked up in an automobile driven by Fred Simmons and Bob Moore, both of whom were drunk. The car broke down and Simmons purchased a new one -- a 1960 Pontiac -- using part of a large roll of cash which he had with him. After picking up another hitchhiker in Florida and dropping him off in Atlanta, the car proceeded north to Gwinnett County, Ga., where it stopped so that Moore and Simmons could urinate. While they were out of the car Simmons was shot in the eye and Moore was shot in the right cheek and in the back of the head. Both died as a result. (Gregg 212-13)

Certain aspects of the concurrence’s narrative are consistent with what might be expected given relevant death penalty law. Sufficient to applicable law regarding conviction and sentencing is that Gregg committed murder, and did so in order to rob the victims of their car and their cash.⁵¹

Other details, though, argue in favor of the death penalty by representing Gregg as a social pariah, who, according to the pariahic murder narrative schema, deserves to die. For example, certain details indicate the measly bargain that Gregg struck in exchange for two lives. The car and cash are specifically described as a “1960 Pontiac” purchased

⁵¹ That is why it is predictable that the facts include evidence of the victims’ deaths following their encounter with the defendant, Troy Gregg. Such a detail confirms that a death occurred – understandably central to the relevant definition of “murder” – and gives some basis for thinking that the defendant might be responsible for the death (Gregg 162-63 n. 4). Furthermore, it is predictable that the facts of a death penalty opinion such as *Gregg* would suggest a motive, as when, after picking Gregg up, one of the victims in *Gregg* pays cash for a car. Such a motive suggests that the killings were deliberate and intentional, and possibly associated with armed robbery – possible aggravating circumstances under which a jury can sentence a defendant to death (Gregg 164-65 n. 9).

with a “large roll of cash” (versus just “another vehicle” purchased with “cash” as described by the plurality). Furthermore, there are details that have no legal relevance except to add to the portrait of Gregg as despicable, and thus implicitly deserving death for reasons both related to the murders and not. The concurrence’s factual narrative discourse includes the details that the victims Simmons and Moore are drunk when they pick up Gregg, and that they disrupt their travels in order to “urinate.” Neither description paints the victims in a complimentary way, but the details do attest to their vulnerability as targets and to Gregg’s actions as particularly predatory.⁵² Finally, there is the detail that Gregg’s traveling companion, Allen, is sixteen. This detail contributes nothing of legal relevance and is not even related to the conduct of the killings. But it depicts Gregg as not only a murderer but a child abuser who would invite a minor along on a dangerous criminal escapade. As Gregg himself perceives it: “they [the court] considered that I got him [Allen] out and led him down the wrong path . . .” (Davis 83). Several details of the concurrence’s factual narrative discourse go beyond what is legally relevant and depict Gregg as despicable and lacking dignity, not just on the basis of the murders. Together these details cohere with the pariahic murder narrative schema’s representation of the death penalty defendant as a social pariah who, as a result of his already pariahic status, merits the death penalty.

The concurrence’s factual narration is also coherent with the pariahic murder narrative schema’s representation of fear as a significant emotion associated with death penalty defendants and their acts. The narration cultivates feelings of fear in audiences by aligning them with the perspective of the victims being shot. This alignment of perspective occurs in the specific, graphic description of the victims’ shooting: Simmons is shot “in the eye” and Moore “in the right cheek and in the back of the head” (Gregg 213). Such descriptions are typical of pro-death penalty opinions (West “Narrative” 430); in them, victims serve as synecdochic representatives for audiences, and the victims’ physical violation represents a symbolic violation of audiences and the larger social order. Again, according to the pariahic murder narrative schema, the death penalty is thereby justified as a retributive means of restoring social order and healing.

⁵² As one juror from Gregg’s original trial later explained it: “The two men were so drunk they couldn’t protect themselves” (Davis 124).

This explanation of persuasion in *Gregg* goes beyond what a Jacksonian narrative approach affords and demonstrates the importance of representations of persons and emotions to ethical arguments, issues largely overlooked by current writing instruction. A narrative approach enhanced in this way helps student writers better understand how persuasion happens. To the extent that textbooks address the representation of persons and emotions at all, their guidance has to do with representations of writers and their audiences and their respective virtues, values, and relationships with one another. Emotions are explained as occurring when writers affirm or transgress audiences' values. These explanations are helpful as far as they go, but in their emphasis on contexts for argument they tend to overlook the ways in which the representations of persons and emotions play key roles as part of ethical arguments themselves. For example, although a primary audience for the results of death penalty opinions, defendants are not typically a primary audience for the opinions' reasoning, yet their representation in that reasoning is key to how the death penalty debate plays out. Audiences to death penalty judicial opinions may respond with fear to the acts of violence and consequences described therein. But fear is not just triggered by claims about what to do about serious crime but by representations as to what is an appropriate emotional response to serious crimes and their punishments. A narrative approach that explains persuasion as a matter of external coherence with narrative schemas that account for representations of persons and emotions is better able to explain to student writers how these aspects are central to ethical arguments.

-- Narrative Structure As a Rhetorical and Interpretive Frame

According to a Jacksonian narrative approach, narratives making ethical arguments are more or less intelligible and plausible to the extent that they have "internal narrative coherence" – i.e., to the extent that their narrative structures fulfill conventional expectations regarding narrative structure, based on the Greimasian actantial model of narrative structure. Although instructive, Jackson's understanding of narrative structure does not lend itself to exploring how narrative structures make ethical arguments in the first place. Narrative structure can be enhanced by understanding it as something that

writers manipulate in order to achieve argumentative aims and as open to models in addition to Greimas's.

In this section, I demonstrate what I mean by enhancing narrative structure in this way and what it offers as far as helping student writers better understand and employ narrative structures with respect to ethical arguments. I do so by turning once again to the narrative schema of the pariahic murder, specifically as manifested in the *Gregg* concurrence's factual narrative. The narrative is structured to include only the events directly leading up to the crime and includes the crime itself. The structure thereby argues for the death penalty by highlighting retribution and proportionality and by bypassing the problem of fallibility. Analysis of the narrative's structure exemplifies the importance of rethinking narrative structure so as to account for how it, among other aspects of narratives, makes ethical arguments.

Jackson understands narrative structure as an inherent quality of narratives and as important to explaining why legal decision makers find certain narratives more believable. In a death penalty case, a Jacksonian narrative approach based on Greimasian narrative structural analysis would consider why a jury in the original trial finds a defendant guilty or not, and why the jury chooses to sentence the defendant to death. In the *Gregg* case, where the trial jury found Gregg guilty and sentenced him to death, a Jacksonian narrative approach would explain that the prosecution's presentation of the facts was more intelligible and plausible because a more internally coherent narrative of what happened, one that held together especially well and was therefore more easily recognized by the jury.⁵³

⁵³ According to the prosecution, the victims' car and cash induce Gregg's performance of the goal of robbery and murder. In contrast, the defense narrates that fear based on an attack on him and Allen by Simmons and Moore motivates Gregg to kill the men in self-defense.

To this point, each narrative is equally plausible structurally, each respectively fulfilling the several components associated with Greimasian analysis. The jury, however, recognizes the prosecution's narrative and not the defense's. The jury's recognition of the prosecution's narrative has to do with testimony at trial regarding certain statements Gregg made to police when apprehended: his admission of killing the men and of robbery and his statement "By God, I wanted them dead" (Gregg 213; see also Davis 124 (describing statement as relevant to at least one juror)). Also, according to some testimony, Gregg agreed with Allen's description of what happened later reported to police at the scene of the crime, summarized by one of Gregg's interrogators as "cold blooded murder just to rob them" (Gregg 214). The jury's lack of recognition of the defense's narrative is based on a letter from Gregg to Allen instructing him as to Gregg's version of events and directing that the letter be memorized and burned (Gregg 160 n. 1, 214).

The narrative approach proposed here revises Jackson's notion of narrative structure by understanding structure not as a quality inherent to narrative but as what I will call a "rhetorical and interpretive frame." By this phrase, I mean a way of organizing or understanding the organization of an argument as supporting some aspect of that argument or its position. Revising narrative structure in this way makes it possible to understand not only how structure contributes to narratives' intelligibility and plausibility but also how writers use narrative structure in order to make ethical arguments. One aspect of narrative structure that writers use to make ethical arguments is narrative time, not readily recognized by Jackson and his use of Greimas's model. As law and rhetoric scholars Anthony Amsterdam and Jerome Bruner say of time as an aspect of narrative structure: "[Time] reflects the shape of our concerns, not the metrical ticking away of seconds or days or centuries as a chronometer would count them" (124). In particular, the scope of a narrative, especially the point at which a writer chooses to begin a narrative, defines what is to be taken as ordinary or mattering (124).

Aspects of a narrative structure, like at what point a narrative begins, have significant implications for what ethical arguments the narrative makes. The narrative schema of the pariahic murder is structured so as to begin with and include only the events directly leading up to and involving the murder, which argues for the death penalty as retributive. Highly coherent with the pariahic murder narrative schema, the factual narration in *Gregg's* concurrence begins with the events directly related to the victims' deaths: "Petitioner Troy Gregg and a 16-year-old companion, Floyd Allen, were hitchhiking . . ." (Gregg 212). This starting point positions the concurring justices as supporting the death penalty, specifically on the basis of retribution. By beginning with the events of the crime, the justices reject consideration of all that came before this point, and depict the defendant as highly agential and largely responsible for the violence at issue. Legal scholar Robin West argues that in this choice of beginnings, death penalty narratives assign responsibility for the crime "irrevocably and entirely to the individual defendant" ("Narrative" 428). The defendant's agency and responsibility, as depicted by means of the narrative's beginning, in turn argue for retribution as a justification for the death penalty: an agential defendant acting on his own accord in violence against another deserves to die for what he does, so the argument goes.

Consider how differently an alternative beginning would position the justices on the death penalty. West advises that factual narratives in death penalty cases begin long before the crimes at issue and include “the life circumstances that caused and arguably mitigates [*sic*] the criminality of the event, and the social realities that engendered, facilitated, or permitted the life circumstances” (“Narrative” 437). Such narratives challenge the death penalty as the complexity of real lives muddies certain problematic notions associated with retribution – that persons act without complex personal and social histories, that any cycle of violence experienced by the defendant has been socially addressed and adequately so. These narratives are rarely discovered within judicial opinions but may be found in other accounts, such as journalist Christopher Davis’s biography of Gregg: *Waiting for It: The Ordeal of a Man on Death Row* (Davis). Davis narrates what happens in Gregg’s life before the events leading up to the killings. This earlier-starting narrative includes a remarkable history of extreme family violence, both in Gregg’s immediate family and directed at Gregg as well as in Gregg’s extended family.⁵⁴ Framed by a narrative of violence that begins long before the shootings at issue in *Gregg*, the death penalty appears less the social righting of an individual wrong than an attempt to deny the systemic roots of violence. A writer’s choice of when to begin a narrative – an aspect of narrative time and, more generally, narrative structure – has significant implications for their ethical positioning on an issue such as the death penalty. These implications are made evident by means of an enhanced understanding of narrative structure.

In addition to narrative time, another significant aspect of narrative structure reconceived is what a narrative highlights by including or excluding certain events and

⁵⁴ As a young child, Gregg lives for a number of years with his grandparents on their farm. These are the best years of his life, and an aunt describes his grandmother as “the only mommy he knew.” Explaining to Davis that his grandparents “loved” one another, he describes several times when they get drunk, punch one another, and nearly kill one another. At age ten, Gregg moves to Los Angeles at the edge of Watts. Here, Gregg witnesses and is the object of serious domestic violence on the part of both his mother and step-father. At one point, he is beaten up by some boys and returns home with broken ribs; his stepfather beats on him for having tears in his eyes and for getting beaten up in the first place. When he tries to run away from home, he ends up before a judge who examines his back and threatens to jail his mother if she continues to beat him. Gregg’s extended family, too, is ridden with violence. Gregg’s great-grandfather kills his wife by cutting her throat with a razor. A couple years after Gregg’s move to Los Angeles, his uncle by marriage shoots his grandmother dead, wounds his grandfather, and shoots and stabs to death his own three children – Gregg’s niece and nephews – before killing himself. Family members agree that Gregg was rattled by the loss, especially of his grandmother (Davis 29-44).

what this in turn means for its ethical arguments. Jackson's employment of Greimas's model of narrative structure recognizes three events as part of all narrative structures – contract, performance, and recognition – and assesses a narrative's intelligibility and plausibility based on whether it includes all three. But narratives sometimes present more involved event structures that necessitate the use of narrative structural models in addition to Greimas's. Furthermore, whether a narrative includes or excludes an event may have more to do with what is being argued than with whether the narrative makes sense or is credible.

The pariahic murder narrative schema, for example, includes the murder as part of its narrative structure. Coherent with the pariahic murder narrative schema, *Gregg's* concurrence opinion includes in its account of what happened the shooting of victims Simmons and Moore. In contrast, the plurality opinion, less coherent with the pariahic murder narrative schema, does not. Although both factual narratives are parts of opinions supporting the death penalty, the concurrence opinion's inclusion of the shooting has ramifications for what its narrative argues in support of the death penalty. Yet the Greimasian model of narrative structure relied on by Jackson is insufficient to distinguish between the plurality and concurrence opinions with respect to their respective exclusion and inclusion of the shooting. Applying Greimas's model, the shooting constitutes a part of the "performance," which also includes the death of the victims. The death of the victims is noted in both opinions, so Greimas's model does not distinguish between the two opinions with respect to the shooting's exclusion or inclusion. A different narrative model is necessary here in order to identify relevant structural features and what is accomplished by their inclusion or exclusion.

Demonstrating the value of enhancing narrative structure by embracing other models, I turn to the narrative structural model of linguists William Labov and Joshua Waltezy, as taken up by Amsterdam and Bruner. What this additional model of narrative structure provides is a means of identifying a structural component significant to the pariahic murder narrative schema and not identifiable by means of Greimasian analysis. Furthermore, Amsterdam and Bruner's model of narrative structure understands structure as argumentative; the inclusion (or exclusion) of a structural component, for

example, makes an argument in addition to providing evidence of the integrity or defectiveness of a narrative.

Based on their study of oral narratives of personal experience, Labov and Waletzky determined that such narratives follow a routine temporal pattern that includes certain components that recur from narrative to narrative. Amsterdam and Bruner rename and adapt these narrative components to a legal context. For example, the structural component known by Labov and Waletzky as a “complication” is renamed “trouble,” and in both cases signals a breach in the course of events. Given their interest in legal narratives, however, Amsterdam and Bruner narrow the troubles that interest them to those caused by or susceptible to human agency (Labov and Waletzky 27-28; Amsterdam and Bruner 114).⁵⁵

Amsterdam and Bruner’s work is particularly helpful to my purposes because of two related aspects in which it differs from that of Labov and Waletzky. First, Amsterdam and Bruner understand the components of narratives that they borrow from Labov and Waletzky not as fixed but as subject to manipulation, whereas Labov and Waletzky define “narrative” based on the temporal conformity of the events as they are told to actual experience (Labov and Waletzky 4). Second, Amsterdam and Bruner understand narrative, and narrative time in particular, as argumentative rather than as purely structural or developmental. Labov and Waletzky are not as clearly committed as Amsterdam and Bruner are to narrative structures’ argumentative functions, noting that narrative structures are affected by human development, by personality, and by who is relating the narrative (Labov and Waletzky 27, 29). In contrast, Amsterdam and Bruner describe narrative as “rhetorical” by which they mean that it can be used “rather than a set of propositional assertions to *prove* something persuasively” (Amsterdam and Bruner 134-35).

⁵⁵ Other components include Labov and Waletzky’s “orientation,” which becomes Amsterdam and Bruner’s “steady state,” and which, in both cases, orients audiences to a narrative’s context. Labov and Waletzky’s “resolution” is clarified by Amsterdam and Bruner as including two possibilities – “restoration or transformation” – and is expanded to include consideration of efforts as well as results. Labov and Waletzky define a “coda” as functioning to return the narrative to the present in answer to the question “what happened.” Amsterdam and Bruner narrow the understanding of “coda” to the point that is to be taken away from the narrative, comparing it to a moral in one of Aesop’s fables. Amsterdam and Bruner do not include Labov and Waletzky’s “evaluation,” which conveys the narrator’s attitude regarding what is being narrated (Amsterdam and Bruner 114, 22; Labov and Waletzky 27-28, 35).

Amsterdam and Bruner's model of narrative structure helps to make sense of the more nuanced structures of certain narratives and their argumentative functions. The model of narrative structure helps to identify what component of the narrative is included by the pariahic murder narrative schema, as evident in *Gregg's* concurrence opinion, and excluded by the plurality opinion – the “trouble.” Up to a point, the concurrence's narrative is structurally similar to the plurality's.⁵⁶ And in the end, each narrative ends with Simmons and Moore dead. But the concurrence narrative includes the shooting of the victims, what Amsterdam and Bruner refer to as a “trouble.”

Amsterdam and Bruner's model of narrative structure also helps to make sense of what a narrative's structure accomplishes as far as ethical arguments. Amsterdam and Bruner's narrative structural model helps explain that, by including the “trouble” (i.e., the murder), the pariahic murder narrative schema argues in favor of the death penalty as justified because the punishment is proportionate to the crime. The inclusion of the murder in the concurrence's account of the facts lends weight to the gravity of the murders. By including the crime, the concurrence opinion's narrative amplifies audiences' possible identification with the victims in their injuries and deaths (cf. West "Narrative" 430). The killings are thereby made to seem even more serious. This heightened perception of the gravity of the murders argues for the death penalty on the basis of proportionality, that a serious crime merits a serious (i.e., the ultimate) punishment.

Because its narrative structure includes the murder, the pariahic murder narrative schema also argues in favor of the death penalty by rejecting what I have been calling the fallibility problem. By using narrative structure to make a version of the facts of a case appear certain, the pariahic murder narrative schema argues that the death penalty stands on firm factual ground and rejects the ethical problem of fallibility regarding the death

⁵⁶ The narratives each involve a “steady state” (or “orientation”) that orients audiences to the narratives' context. They introduce the persons involved – Gregg, Allen, Simmons, and Moore – the place (Florida), the time (November 21, 1973), and the situation – i.e., Gregg and Allen are hitchhiking when they are picked up by Simmons and Moore. There is a first “trouble” (or “complication”) when the car breaks down. This trouble ends in a “transformation” – a.k.a. “restoration” or “resolution,” when the situation returns things to how they were, or transforms – enacted when Simmons purchases a new car. Following this, there is another steady state in which an additional person is picked up and dropped off, and the car is stopped so that Moore and Simmons can relieve themselves (see Amsterdam and Bruner 114, 22; see also Labov and Waletzky 27-28, 35).

penalty – the impossibility of ever knowing for sure that the person being put to death is guilty of a capital crime. This ethical problem is based on, among other things, a more pragmatic and epistemological one: despite the best efforts of the legal system, courts and juries can never really know what happened with respect to a case's facts, specifically whether a crime was actually committed, or whether the crime committed was a capital offense. Highly coherent with the pariahic murder narrative schema, the concurrence opinion's factual narrative includes the event of the shooting, lending its authority to a single, unquestioned version of what happened consistent with a capital sentence – that Gregg killed Simmons and Moore in order to rob them. (By contrast, the plurality opinion's facts, which exclude the shooting, go on to provide two possible versions of what happened via testimony – that Gregg shot the victims as part of a robbery and that the shootings were in self-defense.) By including the event of the crime, the pariahic murder narrative schema disregards the possibility that no capital crime occurred, or even that no crime occurred at all. As a result, the narrative schema's structure argues that only the guilty are punished. Connections such as this, between narratives' structures and the ethical arguments they make, become available when narrative structure is reconstrued as a rhetorical and interpretive frame subject to multiple possible models.

Without such an enhanced understanding of the work narrative structures do, student writers are less likely to consider and possibly critique the ways in which narrative structures subtly but powerfully orient audiences toward particular positions on issues such as the death penalty, or to use them effectively and responsibly in their own writing. A Jacksonian narrative approach preliminarily prompts student writers to consider narrative structure as a means of figuring out why some narratives are more easily understood and more credible than others. But narrative structures also are a way in which writers make ethical arguments, like supporting the death penalty, as has been demonstrated in this section. Together with increased attention to the representations of persons and emotions in narrative schemas, the rethinking of narrative structure enhances a narrative approach and helps student writers better understand how they and others use narratives to make persuasive ethical arguments.

Narrative Silence as a Strategy of Ethical Arguments

Among its excerpts, the textbook *Current and Enduring* does not include material from either of the dissents in *Gregg*. If this material had been included, one thing that would stand out is the absence of any narration specifically concerning Gregg and his crime. This absence is not unique to the *Gregg* dissents. As legal scholar Robin West notes based on her study of a year's worth of U.S. Supreme Court habeas corpus and death penalty cases, death penalty dissents “eschew the narrative voice entirely” (“Narrative” 428). That is, the dissents do not narrate any of the facts concerning the cases as part of their arguments against the death penalty. Dissenting opinions’ silence is so common it suggests a strategy on the part of dissenting justices, a means by which, as West puts it, “the dissents construct a world in which rights trump all, and responsibility – individual or otherwise – matters not at all” (“Narrative” 428). In its focus on narrative discourse, however, the narrative approach of Chapter Two does not readily recognize the absence of narration nor consider its meaning.

In this section, I enhance a narrative approach to ethical arguments by supplementing Jackson’s notion of narrative discourse with narrative silence, or the notable absence of narrative discourse where such discourse is typically expected. The concept of narrative silence is important because it can serve as evidence of the predominance of a particular narrative with respect to an issue, as with the pariahic murder narrative schema. Narrative silence also highlights the significance of those narratives that writers like Blackmun employ when they break silences – both in terms of how remarkable such narratives are for entering a conversation that others have refused and for the risks and limitations that they pose in doing so, something I develop further in the next section. For these reasons, narrative silence is a helpful conceptual tool for student writers in identifying narrative silences in the ethical arguments of others, and prompting their consideration of why writers such as themselves might opt to narrate, or not. That is, as one aspect of an enhanced narrative approach, narrative silence helps student writers to recognize such silences, and their disruption, as strategic.

I define “narrative silence” based on the definition of “narrative discourse” established in Chapter Two. There, informed by Jackson, “narrative discourse” was

defined as a unit of writing identifiable for including actions arranged in time and that, through these and other features, embodies certain beliefs, values, and categories that constitute a way of looking at the world and organizing experience. Here, I build on Jackson by defining “narrative silence” as an inverse of narrative discourse – also constituting a way of looking at the world and organizing experience, but by specifically rejecting narrative discourse when it might otherwise be expected. That is, silence is not an absence but an activity, understood here consistent with rhetoric scholar Cheryl Glenn’s understanding of silence “*as a rhetoric*, as a constellation of symbolic strategies that (like spoken language) serve many functions” (xi, 19) and “a kind of emptiness, but that is not the same as absence” (4).

One example of narrative silence is when a judge might be expected to narrate the facts of the case but does not, given the importance of judicial opinions’ factual narratives as already discussed. Such a narrative silence occurs in the *Gregg* dissents. Judicial opinions as a whole tend to conform to a pattern in which the issue of the case is set forth, followed by a statement of facts (often narrative), then a summary of relevant law, a discussion of how the law applies, and the holding. This is the pattern that governs *Gregg*’s plurality opinion, for example. Given the pattern, a factual narrative typically occurs near the beginning of the opinion and prior to any discussion of the law. The *Gregg* dissents, however, display narrative silence. They launch immediately into a discussion of law, bypassing any narrative of the facts of *Gregg*. Justice Brennan begins with a quote from another case interpreting the clause concerning cruel and unusual punishments; Justice Marshall opens with a statement of his own position in the Court’s prior death penalty case. The dissents do include other kinds of narratives.⁵⁷ Yet with respect to relating possible factual narratives concerning *Gregg* and his actions and circumstances, each of the dissenting opinions is silent.

Narrative silence can help students to identify when narrative silences occur, as in the *Gregg* dissents and other death penalty dissents. Even more importantly, the concept of narrative silence prompts reflection on why writers, including student writers

⁵⁷ For example, Justice Brennan’s narrative schema of the evolving society represents the eventual rejection of the death penalty as inevitable as the rejection of “the rack, the screw and the wheel” (*Gregg* 229). Justice Marshall’s narrative schema of “democratic optimism” assumes that “if people only knew the truth about capital punishment, they would reject it” (Sarat “Narrative Strategy” 357).

themselves, might opt for silence over narration. With respect to the death penalty, for example, dissenters' narrative silence is not simply a failure of narrative imagination or ability or courage. It is a cautious response to the widely iterated and influential pariahic murder narrative. In this respect, the narrative silence is what Glenn calls "recipricol" rather than "oppositional"; it speaks to rather than necessarily negates the death penalty narratives that are articulated elsewhere.

That said, it is far from clear what narrative silences mean. The dissenters' narrative silence, like other silences, is indeterminate as "[t]here is not one but rather many silences" (Glenn 160). That is, as Glenn and political scientist Kennan Ferguson each claim with respect to silence more generally, narrative silence can be repressive (or a response to repression); resistant, disapproving, or noncompliant; creative or constitutive; or more than one of these at once (Glenn 36, 40-41, 154; Ferguson 114, 21-22; Gere (describing various functions of students' silences in personal writing)). The narrative silence of the death penalty dissents, for example, possibly cooperates in the death penalty narratives of the plurality and concurrence opinions by not countering them narratively. Or, by not narrating, the dissenters may signal resistance to or even disapproval of these pro-death-penalty narratives, or something else (e.g., available anti-death-penalty narratives, narrative as a form of argument). Or, the narrative silence may serve as a call for a different kind of narrative regarding the death penalty that does not yet exist.

I understand the dissenters' narrative silence as a strategic response to an entrenched narrative in the absence of viable, competing narratives that make different ethical arguments and take a different position on the issue of the death penalty. While the meaning of such silence is not transparent, it does depend on differences in power in the rhetorical situation, as Glenn describes it: "who can speak, who must remain silent, who listens, and what those listeners do" (9). Glenn's explanation, however, does not go far enough in that it does not account for two additional features significant to this rhetorical situation: who is spoken about and the resources available for speaking. There is little difference in power, for example, among those who speak narratively and those who exercise narrative silence in this case; they are all U.S. Supreme Court justices. The challenges of speaking and the resulting silences, specifically narrative silences, instead

have to do with what narratives are most available for speaking (e.g., the pariahic murder narrative) and the potential limitations of these narratives (e.g., the narrative's representation of death penalty defendants).

My understanding of narrative silence is more generous than that of West, who suggests that death penalty dissenters too rigidly reject narration. West sees narrative silences as problematic in their potential to create “an excessively legalistic and alienating community” (“Narrative” 426, 33). She understands “storytelling” as she calls narrative discourse, along with the discussion of individual rights (“rights talk”) as “clearly necessary to moral decision making . . . to a society sufficiently integrated to call itself a community, but sufficiently diffuse so as to be nonoppressive” (“Narrative” 426). She advocates that dissenting justices forego narrative silence and narrate the facts of death penalty cases, especially focusing on the life circumstances of the defendant. While in many ways I agree with West, her consideration of narrative silence in the death penalty context focuses too exclusively on the advantages of narrating and underestimates its challenges. This occurs because West does not consider fully how narratives are in relationship with one another, specifically how they compete for primacy, something I examine further in the next section.

My point here is not to determine the legitimacy of narrative silences in death penalty dissents, but to raise the question of their use in as sophisticated a way as possible as a demonstration of their importance. As Glenn states:

The question is not whether speech or silence is better, more effective, or more appropriate. Instead, the question is whether our use of silence is our choice (whether conscious or unconscious) or that of someone else. (13)

By understanding narrative silence and how it works in the writings of others, student writers are better able to understand the tensions between narrating and not narrating in their own writing.

Relationships Among Narratives

As mentioned in the introduction to this chapter, the death penalty readings in *Current and Enduring* include Blackmun's powerful narrative. The narrative approach of Chapter Two is helpful in identifying Blackmun's narrative as an ethical argument against the death penalty that persuades based on its coherence with a widely circulating narrative schema – the execution narrative. Yet such a narrative approach only partially explains what Blackmun's narrative accomplishes. In order to more fully explain to student writers what is happening in this and other instances of ethical argument, it is necessary to expand Jackson's understanding of persuasion beyond coherence to consider other kinds of relationships among narratives. That is the goal I undertake in this section: I demonstrate how I expand on Jackson's notion of persuasion by comparing two readings of Blackmun's narrative – one based on Jackson and the other implementing an approach that goes beyond Jackson. So doing, I argue that the expanded understanding of persuasion explains more fully for student writers how narrative persuasion works, that the narratives associated with ethical arguments not only cohere with but potentially challenge and sometimes can change predominant narrative schemas.

A Jacksonian narrative approach explains ethical arguments as persuasive when they are externally coherent; that is, understood as narratives, persuasive ethical arguments are highly similar to widely circulating narrative schemas. A Jacksonian narrative approach explains the ethical argument Blackmun makes with his narrative as persuasive because it is coherent with the widely circulating narrative schema of execution. The execution narrative schema is well established; as far back as 1890, a *New York Times* article reported the debacle of the first electric chair execution ("Far Worse Than Hanging", qtd. in Davis 144-45). It begins at the point of the defendant's execution, whether an anticipated or actual execution, and describes the defendant's death, often in graphic detail, as a means of arguing against the death penalty as cruel.⁵⁸ Defendants' bodily experience of death by execution gives audiences an opportunity to relate to defendants and thus humanizes defendants. Audiences may not be able to identify with defendants' other experiences – their lives, their crimes – but the

⁵⁸ The case preceding the execution described by the *New York Times* article had included arguments that the punishment was cruel and unusual ("The New Execution Law").

experiences of their bodies are experiences shareable by anybody (literally, any body).⁵⁹ Blackmun includes this aspect when he describes Callins with intravenous tubes attached and “strapped to a gurney,” as “no longer a defendant, an appellant, or a petitioner, but a man” (Callins 1143, qtd. in Barnet and Bedau 645). The execution narrative schema frequently includes witnesses – their perspective or reactions – as vehicles for reading audiences’ own experience of the execution.⁶⁰ Blackmun’s narrative coheres with the execution narrative schema in this respect because it observes Callins’s experience through the perspective of “witnesses, standing a few feet away” (Callins 1143, qtd. in Barnet and Bedau 645). In its humanizing depiction of the bodily experience of execution as observed by witnesses, Blackmun’s narrative anticipating Callins’s execution persuades against the death penalty, to the extent that it does, by cohering with the narrative schema of execution. As this analysis demonstrates, a Jacksonian narrative approach is preliminarily helpful in understanding how narratives such as Blackmun’s persuade.

The extent to which a particular narrative persuades, however, must go beyond its *coherence* with some narrative schema to what it means for that narrative to be circulating *in relationship with* other narratives. What I mean by “relationships” among narratives has to do with two things. First, what relationship exists among narratives depends on how widely a narrative circulates and is accepted with respect to other narratives at a particular point in time. Coherence is helpful as far as it goes, but at any particular time, some narrative schemas are more widely accepted, more deeply internalized than others. This predominance is evidenced by such schemas’ regular recurrence, by the absence of (or few) other competing narratives, and by the widespread acceptance of the positions related to such schemas. Although the narrative associated with an ethical argument may be highly coherent with a particular narrative schema, that ethical argument may not be as persuasive as another argument that is coherent with an even more widely accepted narrative schema.

⁵⁹ *The New York Times* article, for example, includes a description of the execution gone wrong, with several signs of the dying man’s pain (“Far Worse Than Hanging”).

⁶⁰ As is pointed out by a study of films treating the death penalty, it is often easier for audiences to relate to third parties than to defendants (e.g., Sister Helen Prejean in *Dead Man Walking*) (Meade 760). The witnesses in *The New York Times* article are described as leaving the execution “as weak-kneed a lot of men as can be imagined. It had nauseated all but a few of them, and the sick ones had to be looked out for” (“Far Worse Than Hanging”).

In death penalty judicial opinions, for example, the narrative schema of the pariahic murder predominates. This predominance is evident in the regular manifestation of the narrative in the facts of pro-death-penalty opinions (cf. West "Narrative" 429-31), the narrative silences of death penalty dissents, and the legal scholarship on narrative and the death penalty, which consistently focuses on the recognition and generation of narrative alternatives.⁶¹ Some of the more significant narrative schemas concerning the death penalty include the narrative of the innocent defendant (Meade 736-46); the narrative of individual injustice, highlighting procedural misconduct (Gordon 36; Sarat "Representation" 457 ("legalist" narrative)); the narrative of structural injustice, focusing on more systematic arbitrariness or discrimination (Gordon 36; Meade 749; Sarat "Representation" 457 ("broad agency")); and the narrative of defendant's life circumstances (discussed above with respect to narrative structure) (Gordon 38; West "Narrative" 437; Sarat "Narrative Strategy" 374; Sarat "Representation" 457 ("bad structure rather than bad agents"); Banner 579).

That Blackmun's narrative of execution is coherent with the narrative schema of execution is insufficient to determining the persuasiveness of Blackmun's narrative in light of the predominant pariahic murder narrative schema and other narrative schemas concerning the death penalty. An enhanced narrative approach builds on Jackson's understanding of narrative persuasion as coherence by examining which narratives are more widely accepted at a given point in time, thereby providing a fuller explanation of to what extent and how ethical arguments persuade.

The second thing I mean by "relationship" among narratives is the way in which the narratives associated with ethical arguments respond to other narratives, for example, by challenging them, or even changing them over time. Jackson's version of persuasion as coherence does not sufficiently account for when such narratives are significantly different and what those differences might mean. Rather than evidencing a failure to persuade, the dissimilarities between a narrative associated with an ethical argument and

⁶¹ Drawing on Robert Cover's theory of narrative jurisprudence, Austin Sarat describes death penalty lawyering somewhat fatalistically as "redemptive constitutionalism" in which, despite lawyers' failure to abolish the death penalty, the court record becomes an archive serving as the "materialization of memory" ("Narrative Strategy" 454, 56). Law and narrative scholarship on the death penalty might be described as serving a similar role, with Sarat and other scholars identifying any number of narratives that oppose and problematize the death penalty.

a predominant narrative schema may reflect something like a conversation – e.g., a challenge to the predominance of that narrative schema, the position it reflects, its ethical arguments. Given such a conversation over time, the qualities of predominant narrative schemas, or even what narrative schemas predominate, may change. What I have in mind is similar to the point made by educational and legal scholar Jerome Bruner, who has explained the reasoning and results of certain groundbreaking legal cases as due at least in part to the introduction and circulation of innovative narratives concerning their themes.⁶²

A narrative approach that attends to the relationships among narratives provides student writers with a richer explanation of how narrative persuasion works. Returning to the death penalty context, a narrative approach enhanced in this way better explains how narratives challenge and potentially change other narratives as well as the ethical arguments and positions associated with them. Blackmun’s execution narrative in particular is significant because it breaks away from a tradition of narrative silence in death penalty dissents and challenges and attempts to change the otherwise entrenched pariahic murder narrative schema. Blackmun’s narration is initially remarkable among death penalty narratives simply for being articulated. As discussed earlier, death penalty dissents such as Blackmun’s typically opt for narrative silence regarding defendants and cases’ facts. By narrating as he does, Blackmun also responds to the pariahic murder narrative schema, challenging its pro-death-penalty position, specifically in each aspect of the narrative schema developed to this point – the way it represents persons and emotions and its narrative structure. In its representation of persons and emotions, Blackmun’s execution narrative portrays the defendant not as a social pariah but as a body and human being, unlike the pariahic murder narrative schema. Audiences are placed in the perspective not of victims but of witnesses who view the defendant and his execution not with fear but with empathy and possibly repulsion for the punishment, not the person. Additionally, in contrast with the pariahic murder narrative schema, the execution narrative is structured so as to begin with the defendant’s execution and

⁶² Discussing race and desegregation efforts, for example, Bruner notes how the innovative narratives of the Harlem Renaissance reflected an “inward turn” and changed what narratives predominated, setting the course for *Brown v. Board of Education*. According to Bruner, the introspection of such narratives gave “equal protection its subjective story,” making available as a basis for legal argument and decision making the psychological impact of racism on African Americans (“Legal and Literary” 55).

disregards the events associated with the crime. In each of these aspects of narrative schema and narrative structure, the execution narrative challenges the ethical arguments made by the pariahic murder narrative schema and so argues against the death penalty. Yet this understanding of the work that Blackmun's execution narrative does requires that the narrative be understood not just as coherent with the narrative schema of execution but also in light of other narratives and narrative silences.

In pointing out how Blackmun's execution narrative challenges the pariahic murder narrative schema, I do not mean to overstate its effectiveness in doing so, or to overlook its limitations. The challenge that Blackmun's execution narrative poses to the pariahic murder narrative schema and its predominance is acknowledged by Justice Scalia in the counter-challenge he makes in his concurring opinion in *Callins*. (*Current and Enduring* does not include the Scalia opinion, which is unfortunate given the context it lends to understanding at least one reception of Blackmun's narrative.) In what has been called a "battle of stories" (Meade 752 n. 114), Scalia briefly but powerfully reasserts the pariahic murder narrative schema by recounting the murder at issue in the *Callins* case and the facts of another death penalty case before the Court: the brutal rape and murder of a child. Comparing his narratives with Blackmun's narrative of Callins's execution, Scalia comments "[h]ow enviable a quiet death by lethal injection" (Callins 1143). To the extent Blackmun's narrative of the Callins execution attempts to shift the portrayal of the defendant and the emotions surrounding him and his actions, Scalia's narratives attempt to restore the pariahic murder as not so easily altered or dismissed. Scalia's response serves as further recognition of the challenge Blackmun's execution narrative poses to the pariahic murder narrative schema as well as the limitations of this challenge.⁶³

⁶³ Christopher Meade notes the "battle" between the narratives in a footnote to his essay concerning narrative constructions of the death penalty. His essay as a whole considers, as I do here, the relationships among death penalty narratives: a pro-death-penalty narrative (much like the pariahic murder narrative schema) and alternative, abolitionist narratives that portray defendants as innocent or otherwise cultivate identification with them, or that represent the death penalty as arbitrary.

Despite the similarities in our work, Meade considers death penalty narratives and the relationships among them differently than I do. First, his analysis focuses on film narratives rather than those in death penalty judicial opinions. Second, the analysis he applies is largely structural, focusing on the death penalty as offering symbolic resolution when a norm has been breached (a murder) and a crisis ensues (social chaos and fear) (736-37). While structure certainly plays a significant role in my analysis, I

A narrative approach that is improved upon by attending to the relationships among narratives better explains for student writers how predominant narratives change, and, with them, the positions most associated with an issue. Ultimately, by articulating the execution narrative, Blackmun attempts to alter the death penalty debate by changing the narrative that predominates. Although the extent to which he succeeds more generally is beyond the scope of this discussion, Blackmun's narrative plays an important role in marking his own change of position on the death penalty. Twenty-two years prior to *Callins*, Blackmun supported the death penalty as one of the concurring justices in *Gregg*. Yet in *Callins*, Blackmun famously declares "From this day forward, I no longer shall tinker with the machinery of death" (Callins 1145, qtd. in Barnett and Bedau 647). In fact, it may be Blackmun's radical change in position on the death penalty as much as anything that allows him to narrate at all credibly as a dissenter when others have not done so. The role Blackmun's narrative plays in his change of position, however, becomes clear only when it is considered in relationship with other death penalty narratives, especially the ways it challenges the predominant pariahic murder narrative schema. Student writers who understand narrative persuasion in this broader sense are better equipped to understand the narratives associated with their own ethical arguments in relationship with other narratives, and, ultimately, how they, too, might challenge and possibly change the ways audiences think about an issue.

Conclusion

Expanded on and refined in certain ways, Jackson's narrative jurisprudence provides an even more powerful narrative approach – a means of explaining to student writers how narratives function with respect to ethical arguments. By extending Jackson's notion of narrative schemas to include representations of persons and emotions,

also focus on other aspects of narrative (e.g., representations of persons and emotions) that Meade does not identify as part of his theoretical framework.

Meade's reference to the "battle of the stories" in *Callins* also differs from my analysis. He does not explicitly identify Scalia's narrative as consistent with the pro-death-penalty narrative. Oddly, he describes Blackmun's narrative as an example of an abolitionist narrative concerning the arbitrariness of the death penalty, rather than as cultivating identification with the defendant. And, other than describing the narratives as in "battle," Meade does not specifically describe the ways in which they differ and the argumentative work that each narrative accomplishes as a result.

it becomes clearer how ethical arguments depend on such representations to persuade, just as certain ethical arguments in *Gregg* persuade in their support of the death penalty based on their coherence with the pariahic murder narrative schema's representations of death penalty defendants as social pariahs and emotions such as fear associated with defendants and their actions. Instead of a quality inherent to narrative, narrative structure is reconceived as a rhetorical and interpretive frame, productive and scrutable according to more than one model. This rethinking makes more evident how writers employ structure when making ethical arguments, as when justices arguing in favor of the death penalty narrate the facts of a case by starting with those events directly leading to the crime, and opt to include the event of the crime. Narrative silence, employed regularly by death penalty dissenters, is a helpful supplement to narrative discourse as a strategy of ethical argument and a tool for understanding the risks as well as the advantages of narrating. Finally, Jackson's understanding of narrative persuasion is expanded to consider the multiple possibilities for relationships among the narratives associated with ethical arguments and other narrative schemas that circulate. Such an expansion helps student writers to recognize when certain narratives are highly entrenched (e.g., the pariahic murder narrative schema) and the work that other narratives (e.g., Blackmun's execution narrative) do to challenge and potentially to change such narratives and the positions and the arguments they forward.

In further developing a narrative approach, this chapter has examined how narratives function with respect to deliberative ethical argument, focusing on particularities such as the representation of persons as well as emotions as they occur in relatively concrete and graphic narrative discourses in a context governed by an entrenched narrative schema. Another important attribute of deliberative ethical argument is how writers use values, which is different than how values are employed according existing approaches with more liberalist orientations – e.g., a principles-and-values approach. In Chapter Four, I explore the relationship between deliberative and liberalist argument by considering how a narrative approach considers values and so complements a principles-and-values approach.

I turn there to the issue of affirmative action. Unlike the death penalty, this context does not involve richly relevant narrative discourses, nor highly routinized factual

narratives, thereby promising further development of the role of narrative as ideologic. Affirmative action also has been described as having “no settled narrative” (Bruner "Legal and Literary" 55). The values associated with affirmative action are highly contested, and audiences are unlikely to accept one value as more important than another. With respect to the relationships among narratives, then, such a context is likely to require something more analytically than different narratives (and values) in “battle.”

CHAPTER FOUR
**A Narrative Approach Complements a Principles-and-Values Approach:
Affirmative Action Judicial Opinions as a Case Study**

As observed in Chapter One, composition textbooks often turn to principles and values to explain ethical argument. As addressed by composition textbooks, for example, the issue of affirmative action⁶⁴ involves the principles or values of “equality,” “fairness” (or “equity”), and “individualism.” As helpful as it is in clarifying some aspects of high-stakes debates like affirmative action, however, the principles-and-values approach employed by textbooks is insufficient in helping student writers understand the full complexity of debates such as this one.

For one thing, in describing how values operate in ethical arguments, textbooks often define a value (or assume its definition) and apply it deductively to an issue. One textbook gives the following example of the use of values in arguing about affirmative action:

Claim: Academic institutions should accept students only on academic merit.

Evidence: It is fair and right.

Assumptions: Fair and right are important values. AND: Academic institutions are only about academics. (Seyler 76)

The example assumes that the value of fairness, and some other value identified as “right” (perhaps justice), refer exclusively to the consideration of academic merit in admissions. It also demonstrates the arguer as applying these values to affirmative action in order to argue for this policy’s rejection. In fact, values are more contingent than examples such as this one represent, both in the multiplicity of their meanings and how

⁶⁴ Unless otherwise noted, when I use the phrase “affirmative action,” I mean race-based affirmative action in higher education admissions.

they are defined. In addition, ethical arguments that employ values involve important stakes that are only remotely suggested above.

When describing values in ethical argument, textbooks also sometimes acknowledge that there may be multiple values, or multiple meanings of a single value, that conflict with one another. One textbook, for example, explains the controversy over affirmative action (here, with respect to employment) as involving a conflict between the values of equality and individualism (Browne and Keeley 60). Another textbook describes the different positions on affirmative action as depending on the different meanings of fairness: as correcting past inequities versus causing inequity today (Lunsford et al. 95-96). It is important to acknowledge the multiple values (or meanings) associated with an issue, but textbooks give little idea of how such values are compared in ethical arguments or otherwise made to speak with one another. Demonstrating the superiority of some values over others can be especially difficult when values are understood by some to be universal and nonnegotiable.

In order to open up for students more meaningful debate over values and their articulation as policy, it is helpful to complement a principles-and-values approach with a narrative approach. I demonstrate how and its usefulness for student writers by turning in this chapter to affirmative action jurisprudence in the U.S., focusing in particular on two judicial opinions drawn from the 2004 U.S. Supreme Court affirmative action case *Grutter v. Bollinger*, concerning the University of Michigan Law School's (Law School) use of race as a factor in its admissions policy (Grutter). These opinions include Justice Sandra Day O'Connor's majority opinion (supporting affirmative action) and Justice Clarence Thomas's opinion (concurring in part and dissenting in part). Of the case's several judicial opinions, these two opinions are most centrally concerned with ethical as well as legal arguments concerning affirmative action.

While the value of diversity ultimately governs the Court's support for affirmative action, this chapter explores the value of equality in the opinions and in affirmative action jurisprudence more generally. Equality is the value primarily informing Grutter's explanation of the case she brings against the law school. The value of equality has an extensive history in the jurisprudence of educational access and affirmative action jurisprudence. Central to doctrine in this area, this value is discussed by each of the

selected *Grutter* opinions in some way, even when the value of diversity is determined to outweigh it.

This chapter examines the chosen legal materials first according to a principles-and-values approach and then according to a narrative approach, arguing that the latter approach complements the former. In the chapter's first section, I use the selected *Grutter* opinions to elaborate on how a principles-and-values approach makes sense of ethical arguments as well as the limitations of such an approach for student writers. In the second section, I show that a narrative approach can reveal values as contingent by providing insight into the multiple and nuanced ways in which values often are defined – e.g., by a turn of phrase, a historical reference, or some other example of a value's application. I use narratives – what I call “value narratives” – to recognize and to make an aggregate sense of the often brief and indirect moments of the *Grutter* opinions that discuss the value of equality in the several different understandings of that value that circulate there – what I call “corrective equality,” “colorblind formal equality,” and “color-conscious formal equality.” Doing so, I demonstrate how the multiple meanings of equality are contingent on these moments, moments otherwise possibly overlooked or underemployed by student writers. In addition, because the meanings of equality depend on moments that are not themselves narrative discourses nor propositional definitions, I extend the understanding of how narrative functions with respect to values as ideologic, as organizing the regular connections among the moments that make up an ideology, here designated as a value.

The chapter's third section examines how a narrative approach helps student writers to better understand the stakes involved when they and others employ values as part of ethical arguments. In this section, I use a narrative approach to explain how petitioner Barbara Grutter employs colorblind formal equality to argue against affirmative action. More so than a principles-and-values approach alone, a narrative approach gets at the ways that stakes such as the representation of certain persons and events are critical to ethical argument and position taking.

Finally, in the chapter's last section, I use two examples drawn from the affirmative action context – one historical and one contemporary – to demonstrate how a narrative approach provides student writers with an alternative to comparing and

prioritizing among values, namely by rewriting values. My first example concerns the historical rewriting of the meaning of equality in the jurisprudence of educational access and affirmative action – from corrective equality to colorblind formal equality – that results in a change of position: a growing lack of judicial support for affirmative action. My second example concerns a contemporary rewriting of the meaning equality: Thomas’s *Grutter* opinion, which I argue rewrites colorblind formal equality as color-conscious. The function of this rewriting is not a change of position but the accommodation of different interests, those ostensibly associated with African American audiences. Altogether, then, the chapter demonstrates the usefulness to student writers of a narrative approach as a complement to a principles-and-values approach, one of the most common approaches currently used by writing instruction on ethical arguments.

The Limitations of a Principles-and-Values Approach

The principles-and-values approach commonly used by textbooks to discuss ethical arguments is initially helpful in determining what values are relevant to an issue, and, at least preliminarily, possible relationships among these values. Yet, without more, a principles-and-values approach risks providing little sense of the complexity of an issue. In this section, I demonstrate how a principles-and-values approach makes sense of ethical arguments by using such an approach to consider the ethical arguments concerning affirmative action made in the two *Grutter* opinions. So doing, I expand on textbooks’ abbreviated discussion of a principles-and-values approach to ethical argument in the context of affirmative action while pointing out the limitations of such an approach and the implications of these limitations for student writers.

Affirmative action arises as a legal concern, and, I argue, an ethical one as well in affirmative action cases like *Grutter*. In *Grutter*, the University of Michigan’s nationally recognized public law school applied an admissions policy that used race as an “extremely strong” but not “predominant” factor in admissions (*Grutter* 320). According to the policy, the admissions staff considered race along with other factors with the goal of ensuring a “critical mass” of students from groups that otherwise would be underrepresented among the student body (i.e., “African-Americans, Hispanics and

Native Americans”) (Grutter 316, 18). The factors on which applicants were assessed included their academic ability, based on grade point average (GPA) and Law School Admissions Test (LSAT) scores, as well as their “talents, experiences, and potential ‘to contribute to the learning of those around them’” based on a personal statement, letters of recommendation, and an essay (Grutter 315). Barbara Grutter, who is white, applied for admission to the Law School. Despite Grutter’s excellent GPA and LSAT score, her application was rejected. In *Grutter*, Grutter argues that she has been discriminated against on the basis of race. The Court holds against Grutter, upholding the Law School’s affirmative action policy as consistent with the Constitution. Thomas dissents as to this point: Despite ostensibly agreeing as to the facts and applicable law, he decides that the affirmative action policy ought to have been struck down on constitutional grounds.

A principles-and-values approach understands ethical arguments as having to do centrally with values, and so considers what values are relevant to an issue.⁶⁵ As with the issue of affirmative action more generally, the ethical arguments of the *Grutter* opinions often are described as significantly involving the value of equality, as that value is made sense of within and accompanying the constitutional framework.⁶⁶ The value of equality is reflected in and enacted through the law governing the case, especially the Equal Protection Clause of the Constitution’s Fourteenth Amendment, which states in relevant part “no state shall . . . deny to any person within its jurisdiction the equal protection of

⁶⁵ Although not part of this project’s study of textbooks, a particularly helpful example of a principles-and-values approach to ethical arguments occurs in the textbook *A Rhetoric of Argument*. Turning to the 1972 U.S Supreme Court case *Wisconsin v. Yoder*, the textbook explains the centrality of values to ethical arguments (Yoder).

Suppose you were a judge faced with the following question requiring your legal evaluation: Is it right for the Amish to refuse state-mandated secondary education on the grounds that any education beyond eighth grade conflicts with the practice of their religion? Here is a case not of clear right versus clear wrong, but of two values in conflict – education and religious freedom. (Fahnestock and Secor 248)

⁶⁶ As one legal scholar has evocatively stated it, *Grutter* and its companion case *Gratz* (concerning undergraduate admissions) are a “swirl of opinions that radiate . . . out to the ends of the spectrum generated by the unresolvable clash between fairness and equality” (Mootz III 74). I focus on the value of equality because it is what most explicitly concerns the Court when it speaks of values associated with the issue of affirmative action. The value of fairness, or more broadly justice, seems to me to be not so much in conflict with equality as a species of it, fluctuating with equality’s meaning. So, for example, the kind of individualized consideration of academic merit narrowly defined that Grutter argues for and that Mootz and others regard as “fairness” is related to a particular notion of what it means to be treated equally with respect to others.

the laws” (U.S. Constitution Am. 14). The provision’s legal assertion – that persons be treated equally before the law – is based on a prior ethical one – that persons be treated equally – that highlights equality as a value. As legal scholar Robin West states it, “[I]n constitutional law, to whatever degree – and it is considerable – legal truths about the permissibility of . . . state interference with equal opportunity [among other issues]. . . become more or less accepted moral claims about the proper or desirable relation between the state and the individual” (West "Constitutional Fictions" 1006-07).

One limitation of considering values according to a principles-and-values approach is that values labeled the same way are often assumed to mean the same thing. In *Grutter*, petitioner Barbara Grutter, Justice O’Connor, and Justice Thomas all appeal to equal protection and the value of equality underlying it. Yet the arguments set forth by each come to different positions on the issue of affirmative action, indicating that more is going on with the meaning of equality than is initially apparent. What equality means within each set of arguments, however, is not stated explicitly – e.g., as a definition. The meaning of equality must be discerned in some other way, one that accounts for the often indirect means by which such meaning is developed, such as by a narrative approach. Given its focus on the propositional content of ethical arguments, a principles-and-values approach is limited in what it offers student writers for this kind of analysis.

According to a principles-and-values approach, writers often argue for their positions when they weigh one value against another.⁶⁷ The *Grutter* case, for example, is governed by the principle of what is known as “strict scrutiny.” Although a legal doctrine, strict scrutiny also can be understood as a principle according to which the values (or “interests”) associated with race-based classifications such as affirmative action are described as being weighed against one another. According to strict scrutiny

⁶⁷ As evidence of this aspect of a principles-and-values approach to ethical arguments, I again turn to *A Rhetoric of Argument*. Its discussion of ethical arguments goes on to explain how values are compared (or “weighted”) and prioritized, again relying on *Yoder* (the Amish religious freedom case):

The United States Supreme Court decided that although a state has the right to insist on compulsory education to the age of sixteen, that right or value was not as significant in this case as freedom of religious practice . . .

What the Supreme Court did was weight one value over another. Ethical and legal argument often involves making such fine discriminations, ranking values in a hierarchy in order to pass judgment . . . Your job then is to weight one value, the one that will become the critical criterion of judgment, above others. (Fahnestock and Secor 248-49)

analysis, a racial classification on the part of the state is potentially unconstitutional, unless carefully designed so as to serve a very important interest, one that cannot be served in any less restrictive manner. Understood as an ethical principle, strict scrutiny effectively balances equality as a value with certain other values possibly associated with the use of racial classifications.⁶⁸ So, for example, O'Connor declares as the holding of the Court that the Law School's affirmative action policy "furthers a compelling interest in obtaining the *education benefits that flow from a diverse student body*," an interest that outweighs that of equality as reflected by the Equal Protection Clause (Grutter 343, emphasis added). Thomas, by contrast, argues that the purposes of affirmative action do not carry the kind of weight demanded by strict scrutiny to offset the interests of equal protection – namely, measures on the order of "provid[ing] a bulwark against anarchy" and "prevent[ing] violence" (Grutter 354).

A limitation of understanding ethical argument as a matter of weighing values is that it can be difficult for student writers (or anybody else, for that matter) to understand how one value is "weighed" or "balanced" against another value. Values are, of course, ideas not things, and so the notion of them having a certain weight according to which they might be compared is a metaphor that only goes so far. Other than in obvious cases, a principles-and-values approach simply does not lend much guidance as to how to assess the respective importance of values. Additionally, audiences with values very different from a writer's are unlikely to be persuaded to accept that the writer's values are more important than their own.

A principles-and-values approach thus presents certain limitations for student writers' understanding of their own and others' ethical arguments. A narrative approach complements a principles-and-values approach by addressing these limitations.

Values as Contingent: Multiple Meanings that Depend on Moments of Ethical Argument

A narrative approach to ethical arguments understands values as intimately associated with narratives. Bernard Jackson describes an analogous relationship when he

⁶⁸ For purposes of this discussion, I disregard strict scrutiny's second component – that legitimate classifications must be narrowly tailored. Although legally important, this requirement is less important to affirmative action's ethical arguments because it tends to involve detailed consideration of particular policies, as is the case with *Grutter*'s companion case – *Gratz v. Bollinger* (Gratz).

notes that legal principles and values are narrative by nature but tend not to be articulated as such because of the pragmatics of rule-telling (Jackson *Narrative Coherence* 3). Similarly, as legal scholar Robert Cover famously states in his germinal “Nomos and Narrative”: “No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture” (Cover 95). In the article as a whole, Cover connects narratives with normative universes (nomoi), and so approaches what I discuss here as the relationship between the values presented in ethical arguments and their associated narratives.

The relationship between values and narratives is significant because narratives offer another way to understand what values mean and so to elaborate values’ meanings. What I mean by “narratives” in this context is specifically narrative schemas that organize social knowledge about the meaning of a value and appropriate enactments of it as well as responses to its perceived compromise, what I call “value narratives.” Such narrative schemas can manifest as narrative discourse, or, more commonly, can depend on the weaving together of various moments of ethical arguments that are not specifically narrative and are often rhetorical rather than propositional (e.g., word choices, descriptions, quotations, and so forth). A narrative approach is helpful in this sense not only for making more nuanced meaning of values but also for acknowledging and making sense of aspects of ethical arguments that otherwise might be overlooked.

Despite the regular use of “equality” to name the value at play in the *Grutter* opinions’ ethical arguments, I argue that there are at least three distinct meanings of equality: corrective equality, colorblind formal equality, and color-conscious formal equality.⁶⁹ I identify and distinguish among these meanings by using a narrative approach in which I construct the narrative schemas associated with each of the three meanings of equality based on various moments of the ethical arguments presented in the opinions. Here, then, narrative operates as ideologic – as a kind of reasoning that organizes the moments of an argument. What such an approach accomplishes for student writers is a more elaborated sense of values’ contingency as well as the role of non-

⁶⁹ Similarly, legal scholar D. Marvin Jones identifies “radically different models or paradigms of equality” in the affirmative action debate (23).

propositional and often highly rhetorical moments of ethical arguments in defining values.

-- *The Narrative of Corrective Equality*

One meaning of equality that circulates within the ethical arguments of *Grutter* is what I call “corrective equality.”⁷⁰ The value of corrective equality is associated with a value narrative: the narrative of corrective equality. That narrative represents certain persons as central, typically those who are members of minority racial groups. Such persons often are represented as experiencing a history of legally, politically, or socially sponsored discrimination. The narrative also involves state actors who represent the interests of the state and take actions on its behalf. Trouble ensues when these state actors take some specific action based on the racial classification of minority persons. The action is clearly egregious, or at least without apparent redeeming justification, and results in harm. In its resolution, the narrative calls for equality as a corrective in the sense of addressing the specific injuries accomplished and making the injured persons whole to the extent possible.

The narrative of corrective equality is based on certain historical narratives that specifically inflect the persons to whom and circumstances in which it is understood as applying. In particular, the value of corrective equality and its narrative has and continues to be associated primarily with African Americans. The Equal Protection Clause, which serves as the value’s constitutional source, was passed following the Civil War in order to federally redress the problematic, enduring legacies of slavery, such as Jim Crow. As one legal scholar describes it, one purpose for the clause’s passage was the “elimination of racial caste” (Hunt 544); it was intended to serve as an “anticaste principle” (Sunstein, qtd. in Hunt 544; see also LaRue 46).

The value of corrective equality as it animates the Equal Protection Clause also was a basis for the landmark desegregation decision in *Brown v. Board of Education* (Brown). As much a part of U.S. socio-cultural mythology as a legal case, *Brown* concerned whether school districts’ requirement of separate (but, as it was argued,

⁷⁰ Legal scholar Adeno Addis has referred to something like corrective equality with respect to affirmative action as “corrective justice” (114).

equivalent) schools for white and African American students was constitutional. The case drew on and contributed to the narrative of corrective equality. Specifically, it borrowed on the ongoing understanding of the Equal Protection Clause and the value of corrective equality as protective of African Americans. Additionally, *Brown* emphasized forms of harm not previously recognized, namely the impact of segregated facilities on African American students' learning and self-esteem (Brown 494). These specific political and legal histories give further shape to the narrative of corrective equality – emphasizing African Americans in particular as the persons against whom race-based classifications frequently have been used and educational access as a significant instance in which African Americans have been harmed on the basis of race.

Corrective equality is one meaning of equality in the *Grutter* majority opinion. This meaning is not evident definitionally, however, but by means of narrative as ideologic, as making sense of a quotation from a case involving a factual narrative that is coherent with the narrative of corrective equality. In the majority opinion, the most explicit setting forth of what equality means occurs when the opinion declares “We are a ‘free people whose institutions are founded upon the doctrine of equality’” (Grutter 326), quoting *Loving v. Virginia* (Loving 11). It is not so much the statement itself, however, as the citation to *Loving* that gives shape to what equality means for the *Grutter* majority. *Loving*'s facts are largely coherent with the narrative of corrective equality, thereby invoking the value of corrective equality in the *Grutter* context. In something of a twist on the narrative of corrective equality, *Loving* involved the interests of a multi-racial person – Mildred Loving, identified as African American and Native American – and a white person – Richard Perry Loving. The relevant state actors were Virginia police officers. Shortly after the Lovings' marriage, the police entered the couple's bedroom while they were sleeping in order to arrest the couple. The couple's arrest and later conviction occurred under the state's anti-miscegenation laws. The Court unanimously overturned the Lovings' convictions, arguing that denying persons the fundamental right to marry based on racial classifications was “directly subversive of the principle of equality at the heart of the Fourteenth Amendment [i.e., the Equal Protection Clause]” (Loving 12). Highly coherent with the narrative of corrective equality, the factual narrative of the *Loving* case establishes that what equality means is corrective equality.

By citing the *Loving* case as part of its principle statement regarding the meaning of equality, the majority in effect imports the narrative of corrective equality and thereby establishes one meaning of the value of equality in its opinion.

Granted, *Loving*'s factual narrative is probably unfamiliar to most readers (although it is easily discovered with a little research). The example is instructive, however, not so much for its specifics. Its significance lies in its emphasis on moments of ethical argument (such as citation) and the sense narrative as ideologic can make of such moments in defining values.

-- *The Narrative of Colorblind Formal Equality*

As with corrective equality, another meaning of equality – formal equality – can be developed by means of a narrative approach that uses narrative schemas to make sense of the disparate and often indirect ways that this value surfaces in the *Grutter* opinions. According to formal equality, the words of the Equal Protection Clause are to be taken at face value, often without regard to historical or contemporary contexts or purposes. That is, formal equality disregards or sets aside differences in circumstance or any other factor that might be understood as compromising the treatment of persons as the same.⁷¹

The value of formal equality has two narratives. One version of the narrative of formal equality – what I refer to as the “narrative of colorblind formal equality” or the “colorblind narrative” – focuses on the individual who is a member of a racial group that does not have a history of being discriminated against on racial grounds.⁷² This person is represented as having done nothing wrong: she has neither intended nor enacted any discrimination against another on the basis of race and so are “innocent.”⁷³ According to the narrative, this individual is harmed when they are treated differently than others on the basis of their race, despite any contexts or purposes for such treatment. As described

⁷¹Jones also refers to this “model” or “paradigm” of equality in the affirmative action debates as “formal equality” (27).

⁷² While not addressing the value of equality as narrative, Jones identifies a “colorblind approach” in the Court’s treatment of affirmative action (27). To be somewhat more precise, the individual also can be from a racial group that, despite a history of discrimination, appears contemporarily to have largely overcome such discrimination, at least in some context.

⁷³ Legal scholar Thomas Ross locates the representation of “white innocence” as a “theme” within a larger “legal rhetoric of race” that informed nineteenth century jurisprudence concerning race and continues, more subtly, to do so today.

by legal scholar Robin West, the narrative depends on the assumption that society itself is just – a meritocracy, for example. Renditions of the narrative “echo the oft-told stories in popular culture of spectacular individual effort and success” such as those concerning Horatio Alger and Bill Gates, among others (“Constitutional Fictions” 1013). Given the narrative’s understanding of equality, the individual’s harm demands to be rectified by restoring what is perceived to be their similar treatment with others.

A narrative approach helps to identify that formal equality plays some role in the *Grutter* majority’s ethical arguments: the colorblind narrative makes sense of the majority’s adoption of the term “innocent” in describing persons like Barbara Grutter. Summarizing the case’s governing precedent, the majority recites the interests possibly supporting affirmative action but rejected by that precedent. Among these are “an interest in remedying societal discrimination because such measures would risk placing unnecessary burdens on *innocent* third parties ‘who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered’” (Bakke 310; qtd. in *Grutter* 323-24, emphasis added). In this passage, the majority relies on the earlier opinion’s description of certain persons as “innocent” (i.e., not responsible for discrimination) by quoting the opinion, but it goes even further in adopting the opinion’s understanding of innocence by embracing the term as its own. As legal scholar Cecil J. Hunt II notes regarding this instance, “the Court’s approving use of the language of White racial innocence has implicitly put the government’s rhetorical imprimatur on this racialized characterization of innocent White victimization” (Hunt 531). Specifically, the majority’s use of the term “innocent” coheres with the colorblind narrative’s representation of white inculpability, giving a nod to the value of formal equality even while ultimately deciding the case on other grounds (i.e., diversity). The use of narrative here helps to make sense of the profound work that certain moments – like the term “innocent” – do in establishing the meaning of a value such as formal equality and its presence in certain ethical arguments.

-- *The Narrative of Color-Conscious Formal Equality*

The value of formal equality has a second narrative, what I call the “narrative of color-conscious formal equality” or the “color-conscious narrative.” Unlike the colorblind narrative, the color-conscious narrative focuses especially on members of racial minorities and represents formal equality as protecting their interests, as well as those of an assumed public at large. The narrative also involves the government as an actor, represented as being in conflict with that public, especially certain of its racial minority members. In part, this antagonism is simply a matter of differences in respective identities and interests. These differences, however, especially come to bear when the government classifies persons based on race, ostensibly serving important but potentially misguided interests. That is, the color-conscious narrative represents government discretion regarding racial classifications as not so clearly invidious, as mixed up with motives that are otherwise crucial or benign. Problematic results ensue, not only for those minorities typically subject to such classifications but for everyone – the public as a whole. These consequences throw into doubt whether the government can ever make racial distinctions responsibly. Stated somewhat differently, the government’s inability accurately to assess the harm of racial classifications means that all such classifications must be considered harmful and either avoided altogether or struck down. The solution tendered is that equality be considered as “formal” or absolute, not subject to compromise regardless of the circumstances.

Certain moments of Justice Thomas’s ethical arguments in his *Grutter* opinion point to the significance of the value of formal equality to those arguments as well as to what that value means there. These moments are coherent with the color-conscious narrative, and include a description of what equality means. Thomas defines what equality means in light of the Equal Protection Clause, but the work that his definition does is neither direct nor obvious. The color-conscious narrative of formal equality, however, helps to make sense of what Thomas’s definition accomplishes. Thomas states:

The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and

makes race relevant to the provision of burdens or benefits, it demeans us all. “Purchased at the price of immeasurable human suffering, the equal protection principle reflects our Nation’s understanding that such classifications ultimately have a destructive impact on the individual and our society.” (Adarand 240; qtd. in Grutter 353)

Thomas’s definition of equality is coherent with the color-conscious narrative in that it represents the government at odds with the public (“citizens”) for classifying persons on the basis of race. Such classifications go beyond the “illegitimate motives” that are consistent with the narrative of corrective equality. What is implied is that racial classifications are significant even when their objectives are benign. Furthermore, the implications of racial classifications exceed the “harm [to] favored races” that is the concern of narrative of colorblind formal equality. Instead, such an act “demeans us all.” In its coherence with the color-conscious narrative, the passage signals Thomas’s resort to a different kind of formal equality to argue against racial classifications.

Color-conscious formal equality is further in evidence in Thomas’s ethical arguments in the coherence between the color-conscious narrative and a speech by Frederick Douglass excerpted by Thomas. The speech – “What the Black Man Wants” – addresses the topic of the “Equality of all men before the law” in the final days of the Civil War (Douglass and Foner, vol. 4 157-65).

In regard to the colored people, there is always more that is benevolent, I perceive, than just manifested toward us. What I ask for the negro is not benevolence, not pity, not sympathy, but simply *justice*. The American people have always been anxious to know what they shall do with us . . . I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us . . . (Douglass, Blassingame and McKivigan 59, 68, qtd. in Grutter 349)

It is not so much the historical speech as Thomas’s manipulation of it in his excerpting that proves coherent with the color-conscious narrative as far as whom it represents, how, what it represents as having happened, and what it argues should happen.⁷⁴ First, much

⁷⁴ As editorialist Dwayne Wickham observes, Thomas’s excerpting omits portions of the speech critical to its contexts and purposes. For example, the excerpt overlooks the actual targets of Douglas’s complaints – Louisiana General Nathaniel Banks (who was requiring slaves to continue working on plantations) and those who would stop slaves from going to school, working, voting, or dining at a hotel. The excerpt also

like the color-conscious narrative, the passage makes racial minorities its focus, African Americans in particular. Not only are the interests and concerns of African Americans represented as important; they are claimed as central to the concerns of the passage's respective speakers, Douglass and Thomas (via Douglass) who identify as African American by including themselves as part of an African American "us." (Douglass does so explicitly here, and Thomas does so implicitly here and explicitly following the passage, as I discuss later in the chapter.) Furthermore, the passage locates an antagonism similar to that of the color-conscious narrative, here between African Americans and the "American people" (rather than the government). As with the color-conscious narrative's concern with well-intentioned racial classifications, the passage represents African Americans as antagonized by a "benevolent" and "anxious" American people. Problematic results are likely to ensue based on some history of injury (not specifically spelled out here) that has "already played the mischief with us [African Americans]." As a result, the solution proposed, here as with the color-conscious narrative, is not to tinker: "Do nothing with us!" As with Thomas's definition of equality, his excerpt of Douglass's speech coheres with the color-conscious narrative, marking formal equality's circulation in his ethical arguments and defining what it means here.

Finally, color-conscious formal equality also circulates in and is informed by Thomas's quotation of and citation to another court case as is made evident by a narrative approach. Thomas turns to the Court's 1944 case *Korematsu v. U.S.* (*Korematsu*), notable in equal protection jurisprudence as being the first case to articulate the principle of strict scrutiny. *Korematsu* concerned the interests of racial minorities, specifically persons of Japanese descent, most of them American citizens. Because of Japan's enemy status with respect to the U.S. in World War II, the U.S. government perceived persons of Japanese descent living within the U.S. to be a threat to national security. On the basis of racial classification, the government interred such persons in detention camps. *Korematsu* upheld the internments on the basis of race as consistent with the Equal

elides Douglass's support of organizations like the Freedmen's Association, designed to assist former slaves (Wickham, ctd. in Turner 13).

Protection Clause because national security interests were thought to outweigh the equality interests at stake.

One reason Thomas's use of *Korematsu* is significant to what equality means in his opinion is that strict scrutiny's enunciation in *Korematsu* is coherent with the color-conscious narrative's representation of the public's interests as at odds with the government's interests. *Korematsu* describes strict scrutiny as permitting racial classifications when required by "pressing public necessity" (*Korematsu* 216, qtd. in Grutter 351). By contrast, the *Grutter* majority opinion would allow for racial classifications only where there are "compelling governmental interests" (*Grutter* 326). Thomas's use of "public" rather than "governmental" to describe which interests are at stake marks the public and its interests as potentially distinct from, even possibly at odds with, the government and its interests.⁷⁵ Such a word choice may appear interesting but arbitrary until considered in light of the color-conscious narrative of formal equality, which likewise represents the government and its interests as distinct from the public and its interests. In other words, a narrative approach helps to clarify for students the ways a value's meaning is contingent on a moment – here, a word choice.

Thomas's use of *Korematsu* is also significant to what equality means for his opinion in a second sense, one that narrative helps to get at. *Korematsu* raises the specter of racial discrimination as sanctioned not only by the government but by the Court under the guise of equal protection analysis. The narrative of *Korematsu* goes beyond its factual narrative; it includes what the case later came to mean as far as its ongoing social and political implications, coherent with the narrative of color-conscious formal equality. Decades later, it was determined that the government's interests in interning persons of Japanese descent was misguided. A federal district court established that the case was wrongly decided and overturned Fred Korematsu's conviction for failing to comply with his internment order (*Korematsu*). Furthermore, the U.S. government apologized and recognized the harm resulting to interned persons by awarding detainees reparations (Civil Rights Act of 1988). What *Korematsu* comes to stand for, then, is the failure of the

⁷⁵ Thomas disavows any difference between the two phrases: "Throughout I will use the two phrases interchangeably" (*Grutter* 352, n. 1). He describes the differences as a matter of what has grown to be a more popular choice of phrasing: "This standard of 'pressing public necessity' has more frequently been termed 'compelling governmental interest'" (*Grutter* 351). Yet his persistence in using "pressing public necessity" suggests its importance to his argument.

government and the Court equitably to consider when racial classifications are truly justified. One conclusion *Korematsu*'s legal, social, and political narrative leads to, consistent with the color-conscious narrative of formal equality, is that equality should be considered absolute in the sense of not subject to compromise and guaranteeing sameness of treatment, regardless of race and circumstances.⁷⁶ It is this understanding of equality – color-conscious formal equality – to which Thomas appeals by citing *Korematsu* and thereby invoking that case's narrative.

As demonstrated in this section, a narrative approach helps to identify the multiple meanings of a value such as equality as it circulates among ethical arguments by using narrative to make a holistic sense of the moments of those arguments. A narrative approach thus complements a principles-and-values approach by providing student writers with a sense of values' contingency. That is, values like equality are contingent in that they can have different meanings, even though labeled the same way – e.g., corrective equality, colorblind formal equality, color-conscious formal equality. Values also are contingent in that their meanings often depend on specific moments of ethical argument rather than explicit definitions – e.g., citations, word choices, quotations. Narrative helps to get at how values' meanings depend on such moments by organizing the connections among such moments, that is, as ideologic. By recognizing values as contingent in these ways, student writers are better able to understand the often indirect ways in which writers such as themselves define and employ values, and that any particular value may have several different meanings.

⁷⁶ Similarly, in arguing a different point, Thomas turns to *Palmore v. Sidoti*, another case consistent with the color-conscious narrative. Like *Korematsu*, *Palmore* demonstrates the problematic racial assumptions that sometimes inform the Court's weighing of interests, suggesting that that the Court should not participate in such weighing in the first place. In the 1984 *Palmore* case, a father argued for his child's custody, arguing that the child's best interests would be met by living with him rather than the child's mother, who had married a man of a different race. The Court held for the mother because it didn't find the child's interest in living in an all-white household to be "compelling." At the same time, the Court did find the interest "substantial" (*Palmore* 433, ctd. in *Grutter* 352). As with *Korematsu*, Thomas's use of *Palmore* suggests that the Court's consideration of interests involved with racial classifications often embroils it in racism. Instead, the color-conscious narrative implies that equality should not be subject to what is perceived to be problematic balancing against other interests and instead should be adopted absolutely.

Clarifying the Stakes Involved When Using Values in Ethical Argument

A narrative approach complements a principles-and-values approach by affording student writers a clearer sense of the stakes involved with the use of values in ethical argument. Rather than applying a value to an issue in order to argue for a certain position, writers represent the issue at hand as coherent with a value's narrative, thereby establishing the meaning of the issue and what to do about it. That is, just as values have associated value narratives, issues have "issue narratives" – narratives that organize social knowledge regarding some specific issue and what should be done about it. The coherence between value narratives and issue narratives occurs with respect to certain aspects – e.g., who is involved, how they are represented, what happens. These coherent aspects reveal what is most important as values are used to argue for particular positions.

In this section, I demonstrate how a narrative approach understands values' articulation with respect to issues and the greater sense a narrative approach can provide student writers of the stakes involved. Specifically, I examine the coherence between an issue narrative – Barbara Grutter's affirmative action narrative – and a value narrative – the narrative of colorblind equality. Those aspects that the narratives share highlight the stakes most central to the use of colorblind formal equality with respect to affirmative action. Such aspects include persons being reductively represented according to their race and certain other qualities, as well as a narrow version of events: those directly leading up to and involving admission to higher education.

As discussed earlier, the value of formal equality insists that persons be treated the same, setting aside or overlooking altogether potentially relevant differences among them. The narrative of colorblind formal equality focuses on individuals who are members of racial groups without a history of being discriminated against in some context. According to the narrative, such persons are treated differently than others on the basis of their race and, as a result, suffer a harm that must be rectified in order to restore formal equality as an operative value. In the context of affirmative action, the issue narrative coherent with this narrative of formal equality focuses, for example, on white candidates for admission to higher education. According to the narrative, affirmative action policies admit white candidates less often than other minority

candidates, despite their “sameness” as far as some generic measure of merit, such as grades and test scores. As a result, whites are harmed by not being able to access educational goods on the basis of race. Informed as it is by the narrative of formal equality, this narrative of affirmative action thus demands that only non-racial “merit-based” characteristics be considered as part of an applicant’s profile, that affirmative action, in other words, be done away with.

The narrative that initiated the *Grutter* case – that of Barbara Grutter – is coherent with the narrative of colorblind formal equality. Here, in brief, is how the majority opinion presents the facts of the case, and affirmative action more generally, according to Grutter:

Petitioner Barbara Grutter is a white Michigan resident who applied to the Law School in 1996 with a 3.8 grade point average and 161 LSAT score. The Law School initially placed petitioner on a waiting list, but subsequently rejected her application. In December 1997, petitioner filed suit . . . Petitioner alleged that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment [and other laws] . . . Petitioner further alleged that her application was rejected because the Law School uses race as a “predominant” factor, giving applicants who belong to certain minority groups “a significantly greater chance of admission than students with similar credentials from disfavored racial groups” . . . (Grutter 316-17)

Grutter’s narrative argues against affirmative action by portraying the issue as coherent with the colorblind narrative – i.e., as inconsistent with the value of formal equality (cf. Jones 25). And the aspects with respect to which the narratives cohere indicate what is at stake as Grutter invokes that value.

For one thing, Grutter’s narrative is coherent with the colorblind narrative’s representation of persons, its insistence on a kind of generic and measurable consistency among persons that obscures possibly relevant points of difference. It reduces the representation of Grutter as a candidate for admission to her high grade point average and test scores, making these the assumed bases for fair and objective admissions decision making: “a 3.8 grade point average and 161 LSAT score.” Silence surrounds other attributes of Grutter’s identity potentially significant to her admissions or to the case. In fact, at the time of her application to law school, Grutter was not a typical law school

candidate. She was a mother in her forties running a small business, and her grades were from her undergraduate career nearly twenty years prior. She had grown up as one of nine children in a family that struggled financially and had financed her own education. She also was one of few women graduating in 1978 with a Bachelor of Science degree (Parker 1, 7). According to the Law School's general counsel, Grutter would have been admitted under the school's diversity policy had she chosen to share these more unique details as part of her profile. Grutter, however, was unwilling to do so because she did not think it would be "appropriate" (Parker 7-8). Grutter's reductive representation of herself as a candidate for admission based on her grades and test scores is consistent with the narrative of formal equality's assumption of there being "objective" bases that should be used for admissions decisions.⁷⁷

Additionally, coherent with the colorblind narrative's sense of harm, the limited description of Grutter includes the membership she ascribes to herself as part of "disfavored racial groups." Other narratives of affirmative action, such as those associated with the narrative of corrective equality, might connect such a phrase with minority racial groups experiencing a state-sponsored history of subjugation or exclusion. Here, however, Grutter refers to whites such as herself and possibly other racial groups not specifically recruited by the Law School's policy.

The credibility of the descriptive phrase depends on the structure of Grutter's narrative, which begins with her application to law school and ends with a denial of admission. The narrative sets aside any history or larger context for affirmative action in order to insist on a category of disadvantage defined by an imminent policy decision – a

⁷⁷ Consider an alternative view of test scores as a basis for admissions, as "quantitative measures that inevitably privilege members of social elites, the overwhelming majority of whom are white" as part of a "testocracy" (Jones 26).

Another simplification of the representation of Grutter is that the narrative is silent with respect to Grutter's gender. As is often the case with class action lawsuits, Grutter was especially selected by the trial attorneys from among two hundred possible plaintiffs who responded to a call by representatives of the Michigan legislature (Parker 7). Although outstanding because of her articulateness, Grutter also was chosen because she is a woman. In part, the choice of a woman plaintiff was surely tactical, as any advantage to Grutter's admission based on her gender would not be at legal issue, despite gender being a grounds for mobilizing social and political support of affirmative action (Jaschik). Yet the choice of a woman plaintiff was also a symbolic one, playing into the innocence ascribed to the protagonist of the narrative of formal equality. According to Michael McDonald, the co-founder of the organization heading the litigation effort, hope of overturning affirmative action depended on the case not being about "angry white men" (Stohr 49, qtd. in Parker "Story of Grutter" 7). Anger would disrupt the representation of the plaintiff as a blameless victim of wrongheaded policy for which she individually had no responsibility or agency.

single admissions choice – thereby reversing how disadvantage is often conceptualized in the affirmative action debate. Grutter’s identification in her narrative as a member of “disfavored racial groups” is thus consistent with the colorblind narrative’s assertion that persons are harmed when treated differently on the basis of race, despite any contexts or purposes for such treatment.

In its representation of Grutter and its structure, Grutter’s narrative of affirmative action attempts to establish that policy as inconsistent with colorblind formal equality. Rather than understanding ethical argument as the application of a value (e.g., colorblind formal equality) to an issue (e.g., affirmative action), a narrative approach construes the relationship between values and issues as one of interrelationship among narratives with similar stakes. The value of colorblind formal equality involves a narrative of “innocent” persons who are harmed by actions that “disfavor” them, a narrative on which Grutter’s own narrative of affirmative action draws and to which Grutter lends a specific protagonist and circumstances. Grutter’s anti-affirmative action position thus depends not only on the value of colorblind formal equality but also on the representation of persons and events associated with that value’s narrative. A narrative approach highlights for student writers the stakes most critical when values are employed as part of ethical argument and position taking.

Rewriting Values

A narrative approach provides student writers with a way of understanding ethical argument that is alternative to the weighing of values: rewriting values. The values associated with the issue of affirmative action are controversial and changing as that issue is addressed by *Grutter*⁷⁸ and in public opinion.⁷⁹ The relationships among these values

⁷⁸ While the value of diversity and its use in support of affirmative action prevails in *Grutter*, it is by no means a clearly predominant value in the majority opinion. Although the majority decision ostensibly rests on the value of diversity in education, the ethical arguments of the opinion sometimes resort to a value resembling what I call “distributive equality” and what Jones has referred to as an “integrative ideal” or “compensatory justice” (22, 27). At one point, for example, the opinion states that “in a society, like our own . . . race unfortunately still matters” (Grutter 333). Later, it is noted that “our Nation’s struggle with racial inequality” has real implications for the distribution of goods such as education (Grutter 338). At issue in these instances are not so much the challenges and stakes of providing a learning environment enriched by diverse viewpoints, but distributional issues like educational access that are still highly influenced by race.

are thus complicated, and audiences are unlikely to accept one value as necessarily more important than another. In this section, I use a narrative approach to demonstrate what it means to rewrite the value of equality in the context of affirmative action, namely rewriting relevant narratives and stakes, including the persons, events, and even emotions considered most significant to the issue. So doing, I show how rewriting values has implications for position taking on issues as well as for accommodating different audiences and interests. That is, values like equality do not simply have different meanings; the substitution of one meaning for another is a purposeful act with significant implications.

-- *Changing Audiences' Position on an Issue*

Despite reference to the same value in ethical arguments concerning an issue, the meaning of that value can change over time. In other words, the meaning of a value can be rewritten. The issue of race and educational access, of which affirmative action is a part, exemplifies just such a rewriting of values. By the 1970s, the importance of corrective equality came to be overshadowed by formal equality, allowing for narratives like *Grutter's* to come into being. The value of corrective equality played a significant role in earlier educational access decisions such as the landmark desegregation opinion *Brown*. Yet in *Grutter's* majority opinion, corrective equality has largely gone missing (see Addis 114). The opinion cites *Brown* not for its notions of equality, but for a rather generic connection *Brown* makes between education and “good citizenship.”⁸⁰ And even

⁷⁹ Public opinion continues to reflect somewhat different interests and values (and a different balance of such) respecting affirmative action. State-level initiatives to ban affirmative action have succeeded in California, Florida, Washington, Michigan, Nebraska, and Arizona (but not Colorado) (Constitution of the State of California "Proposition 209"; Bush; Washington State Civil Rights Act "Washington Initiative 200"; Constitution of the State of Michigan "Proposal 06-2"; Constitution of the State of Nebraska of 1875, and Subsequent Amendments "Initiative Measure No. 424"; Constitution of the State of Arizona "Proposition 107"; Frosch). According to a recent poll of over 3,000 registered voters across the country, 55% favored abolishing affirmative action, with voters' respective positions on the issue highly informed by their own racial identifications (Schmidt). Researchers have found that those who disagree with affirmative action (who are by-in-large white) tend to do so more so based on group interests and the perceived threat to entitlements rather than based on principles such as individualism or fairness, or based on racism (Bobo; Awad, Cokley and Ravitch).

⁸⁰ “[E]ducation . . . is the very foundation of good citizenship.” *Brown v. Board of Education*, 347 U.S. 483, 493, 98 L. Ed. 873, 74 S. Ct. 686 (1954). For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity” (*Grutter* 331).

though the majority opinion espouses corrective equality in its definition of equality, as I discussed earlier, the value plays no further role in the opinion's arguments.

To the extent that the *Grutter* majority opinion's very subtle references to corrective equality have impact at all, that impact is to mark the distance between that value and the value of formal equality that has come to prominence in discussions of affirmative action. As law and narrative scholar Jerome Bruner evocatively described affirmative action jurisprudence just prior to *Grutter*:

The controlling image is of Justice with her blindfold back on, presiding over a 'level playing field' where blacks and whites are equal – and *Brown* is cited as having guaranteed that it was so! (Bruner "Legal and Literary" 56)

It is beyond the scope of this project to dig too deeply into the question of how the value of formal equality came to take precedence over the value of corrective equality. Instead, I use this instance of the rewriting of a value with respect to an issue in order to consider how a narrative approach can enrich student writers' understanding of how values are rewritten.

To explain this more concretely, I compare two narratives of affirmative action. The one narrative is coherent with the value of corrective equality and its narrative. The other narrative – *Grutter*'s narrative – is coherent with the value of colorblind formal equality and its narrative. The process of comparing differences in narratives points to what is involved in rewriting the value of equality: not only a change in narratives but a change in the stakes considered relevant to the issue of affirmative action.

One significant difference between these narratives of affirmative action is the persons represented as significant to each narrative. The affirmative action narrative associated with corrective equality focuses on African Americans and certain other minorities. (Because this narrative is not a part of the *Grutter* opinions, I extrapolate from *Brown* in order to determine how it might go.) Just as *Brown* focused on African American students and their access to educational resources, this narrative directs its attention to students who are members of minority groups underrepresented in higher education. As a result of inadequate educational opportunities, *Brown*'s narrative represented African American students as suffering in their self-esteem and learning; the

affirmative action narrative examines the drawbacks to minorities turned away by higher education – e.g., participation in the professions, lifetime earnings. As with desegregation, affirmative action serves as a corrective to the problems facing certain minorities with respect to educational access, a means of enacting equality by providing equal opportunity to a resource – here, higher education. In other words, at each point in the narrative of corrective equality regarding affirmative action, African Americans and members of certain other minorities underrepresented in higher education are central.

By contrast, the persons represented as significant to the narrative of colorblind formal equality regarding affirmative action are not minorities but whites. Recall that in Barbara Grutter’s narrative, for example, Grutter’s key identification is as white and that she represents whites as among “disfavored racial groups.” This redirection from minorities to whites as the protagonists of the affirmative action narrative began with Justice Lewis Powell’s opinion in *Regents v. Bakke*. In that 1978 case, Allen Bakke, who identified as white, challenged the University of California, Davis School of Medicine’s rejections of his applications for admission. While using *Brown* as precedent, Powell’s opinion in *Bakke* changes the focus of the narrative of equality as it applies to affirmative action from minorities to whites. He declares that it is “no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority” (Bakke 292, qtd. in LaRue 45-46).⁸¹ As Bruner observes, affirmative action cases are the legacy of earlier desegregation cases and yet their respective narratives have distinct racial foci (Bruner “Legal and Literary” 55-56). What is significant about this change in persons represented as between the two narratives is that it signals a key aspect of the stakes that change when the value of equality is rewritten.

A second aspect of the narratives of affirmative action – narrative structure – further highlights what specifically is being rewritten as the values considered most relevant to the issue change from corrective equality to colorblind formal equality. Specifically, accompanying the shift in values is a shift in the scope of the narrative, from a broader one encompassing national histories of racism as they inform state-sponsored

⁸¹ Analyzing the rhetoric of that opinion, legal scholar L.H. LaRue demonstrates how Powell abstracts *Brown*’s meaning as precedent by relying on the case’s “bland style,” meant to diffuse the racial tensions surrounding its result. Powell also abstracts what it means to be a member of a racial minority by arguing that the U.S. is a nation of minorities by virtue of its citizens’ roots as immigrants (46-47).

acts of discrimination to a narrower one that involves a particular instance of perceived wrong to an individual. The narrative of corrective equality and affirmative action acknowledges a history of racially exclusionary practices by institutions of higher education, understood as having an ongoing impact on the lower rates of admissions of students belonging to certain minority groups. By contrast, as noted earlier, the structure of narratives of colorblind formal equality and affirmative action such as Grutter's excise historical and other contexts in order to limit their focus to the moment of the admissions decision.⁸² The effect, as with representations of persons in these narratives, is to shift the focus of the wrong to be remedied, and, of course, positioning either for or against affirmative action. As legal scholar Robin West explains it, such narratives "distort our history" in that they deny (or fail to mention) "the non- and anti-meritocratic value of whiteness in a world that is anything but color- or sex-blind" (West "Constitutional Fictions" 1012). She states: "We are forced to deny . . . the degree to which the academic successes of Bakke . . . was a product of a distribution of public resources skewed by race" ("Constitutional Fictions" 1016). Here, again, as relevant values are rewritten with respect to the issue of affirmative action, so, too, are certain aspects of narrative – such as narrative structure – highlighting more specifically what is prioritized and what is not.

As this comparison of narratives demonstrates, a narrative approach complements a principle-and-values approach as far as how values are rewritten. A narrative approach elaborates which stakes associated with an issue are accorded more or less emphasis. With respect to affirmative action, for example, a rewriting of corrective equality to colorblind formal equality meant a change in focus from minorities to whites and from a historical context broadly conceived to the instance when someone like Grutter is denied admission. For student writers, understanding how they and others make ethical arguments concerning values in this more nuanced manner means a fuller understanding of what is at stake in those arguments, often despite writers' insistence on the continuity

⁸² As with the change in narrative focus from minorities to whites, Powell's decision in *Bakke* appears to be a key turning point for this limitation in scope of the affirmative action narrative's structure. LaRue describes Powell's rhetoric as requiring him to "give a nonhistorical reading to cases, to see the ideal judge as transcending history, and see the individual as isolated from history" consistent with "classical liberalism" (60-61). More generally, Ross identifies an ahistorical approach as part of the wider "legal rhetoric of race," defining as one theme of such a rhetoric "black abstraction," or the "rhetorical depiction of the black person in an abstract context, outside of any real and rich social context" (6).

of a value. Understanding how values such as equality are rewritten also enables student writers to address audiences hostile to their values more effectively, by having such audiences reconsider values' meanings rather than asking them to adopt altogether different values.

-- *Accommodating Audiences and Interests*

So far, the discussion of the relationships among narratives has focused primarily on values and associated narratives as they inform different positions on an issue. It is also the case, however, that multiple narratives can be in relationship with one another with respect to a single position, informing the meaning of relevant values and vying for what is considered significant. Such is the case with the position against affirmative action and the narratives of affirmative action in *Grutter* associated with it. This position is informed by the value of formal equality, which insists on the treatment of persons as the same – i.e., without respect to their race.

Yet, as I demonstrate here, the value of colorblind formal equality and Grutter's narrative are rewritten by Thomas. A narrative approach explains how Thomas rewrites formal equality as color-conscious, namely by representing as significant to affirmative action persons different from Grutter, different events, and a different emotional tone. A narrative approach thus highlights for student writers how values are rewritten in order to accommodate different interests and audiences.

Both Barbara Grutter and Thomas appeal to the value of formal equality in positioning themselves as opposed to affirmative action. Each argues that affirmative action should be rejected and candidates for admission treated in ways perceived to be equivalent (e.g., based on grades and test scores) regardless of race. Yet at no point does Thomas recite Barbara Grutter's narrative, even though it serves as the facts of the *Grutter* case. Instead, Thomas rewrites the colorblind narrative of formal equality in the context of affirmative action as a color-conscious narrative, changing who and what is represented as central to that narrative.

Significantly, Thomas's color-conscious narrative shifts the persons represented as important to affirmative action from Grutter's focus on whites and other races

sufficiently represented in higher education admissions to African Americans. After quoting extensively from the Douglass speech in the introduction to his opinion, Thomas draws a parallel between that speech's message of "Do nothing with us!" and what he represents as the contemporary situation of African Americans with respect affirmative action:

Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators. (Grutter 350)

By focusing on African Americans in his narrative, Thomas is able to reject a position against affirmative action as one of (primarily) white interest, as is the case with Grutter's narrative. Recall that in establishing that equality means formal equality, Thomas disputes Grutter's representation of whites and members of certain other racial groups as "disfavored races" by inverting its language: "The Constitution abhors classifications based on race, not only because those classifications can harm *favored races*" (Grutter 353). Thomas's choice of African Americans as protagonists is thus consistent with his refusal to articulate Grutter's narrative and his rejection of her anti-affirmative action stance, based as it is on white interests. In his focus on African Americans, Thomas also attempts to authorize the color-conscious narrative of affirmative action as the contemporary legacy of earlier histories of equality. Logically, a narrative concerning those admitted under affirmative action policies should embrace a variety of racial and ethnic minorities, including (as stated by the Law School policy) "African-Americans, Hispanics, and Native Americans" (Grutter 316). Yet Thomas focuses only on African Americans, those for whom the Equal Protection Clause was initially designed and whose experiences regularly have been the subject of legal and other national discussions regarding the meaning of equality. By changing the focus of the narrative of affirmative action to African Americans, Thomas is able to represent a position against affirmative action as consistent with African American (rather than white) interests and with a predominantly African American history of progress toward racial equality.

As compared with Grutter's colorblind narrative, Thomas's color-conscious narrative also largely shifts what is focused on by means of its structure, from the instant of an admissions decision to the implications of that decision prior to and following

admissions, especially with respect to African American students. Doing so, Thomas turns on its head the notion that affirmative action helps certain minority students by focusing on whom the policy fails to serve and how it does not help (and, according to Thomas, even harms) those it does serve. According to the color-conscious narrative, a problem exists prior to the time of admission that is far more complicated and extensive than affirmative action is able to address. That is, affirmative action does not target those students who are truly in need. Despite affirmative action's purposes, Thomas observes that it "does nothing for those too poor or uneducated to participate in elite higher education and therefore presents only an illusory solution to the challenges facing our Nation" (Grutter 355 n. 3), nor does it address the "crisis of black male underperformance" (Grutter 372 n. 11). Following the admissions decision, the color-conscious narrative insists that affirmative action accomplishes little for the students admitted according to the policy and may even harm these students in any number of ways. Thomas represents such students as "overmatched" and unable to "succeed in the cauldron of competition" (Grutter 372). He doubts the benefits of an "elite" education in comparison with one for which he assumes such students would be better prepared. Furthermore, students admitted under affirmative action policies suffer from "attitudes of superiority" and "resentment among those who believe that they have been wronged by the government's use of race"; they are stamped with a "badge of inferiority" that possibly breeds a sense of dependency or entitlement (Adarand 241, qtd. in Grutter 373). Finally, it is not only the African Americans who are admitted under affirmative action who are stigmatized, but "all [African Americans who are] tarred as undeserving" and whose merit is questioned as a result (Grutter 373). Structurally, then, even as Thomas's narrative of affirmative action ostensibly continues to prioritize the interests of minority students, especially African American students, it depicts affirmative action as not serving their interests either prior to or after the time of admissions.

As for the admissions decision itself, Thomas's color-conscious narrative reworks Grutter's representation of the decision as an injury to whites like herself in order to insist on its injury to minority students, especially African American students, as well as the wider public. The narrative attempts to accomplish this end in at least two respects: by means of the language Thomas uses to describe affirmative action and by means of his

representation of the persons responsible for promulgating and executing the policy, namely university administrators. In each of these aspects, emotion plays a key role in representing the policy and the persons involved as alternately inept and invidious and in heightening impact.

So, for example, Thomas never uses the phrase “affirmative action” to describe the policy at issue, instead regularly using the descriptors “discrimination” and “racial discrimination” (e.g., using them three times in the first page of the opinion) (Grutter 350). Other terms and phrases describing the policy include “meddling,” “racial tinkering,” and “racial experimentation” (Grutter 350, 61, 64). Such language already condemns affirmative action as both ineffectual (“meddling,” “tinkering”) and invidious, given the overtones associated with the pejorative common understanding of “discrimination” and the genocidal connotations of “racial experimentation.” Not just discreet instances of language use, Thomas’s descriptors for affirmative action participate in his color-conscious narrative of affirmative action, one that depicts the policy as either failing to serve or injuring those whom it is intended to help.

Similarly, Thomas’s color-conscious narrative emphasizes the role of persons who are not as significant to Grutter’s narrative – university administrators (as the relevant state actors) – and depicts them in such a way as to suggest that they do not serve the interests of minority students, minorities more generally, or the public at large. The narrative accomplishes this initially by representing university administrators as elites whose identity and interests are at odds with those of the wider public. The opinion refers to university administrators as “cognoscenti,” a term with pejorative overtones in the context of the opinion, particularly in light of the way it is juxtaposed against “[the people of] Michigan” and, more broadly, “the people.” Support for affirmative action is described, for example, as arrived at “not by interpreting the *people’s Constitution*, but by responding to a faddish slogan of the *cognoscenti*” (Grutter 350, emphasis added). The narrative goes on to put administrators’ interests and motives with respect to affirmative action at question. Affirmative action policies are in one sense a means of diversifying the racial and ethnic makeup of student bodies. But the original imbalance occurs because administrators are represented as attempting to preserve the elite quality of their institutions by means of “academic selectivity” (i.e., certain admissions criteria such as

grades and test scores): “[T]he Law School seeks to improve marginally the education it offers without sacrificing too much of its exclusivity and elite status” (Grutter 355-56). Thus, administrators are represented as harboring an interest in elitism aside from their publicly espoused interest in educational quality and at odds with the public’s interests. As the opinion states, “Michigan has no compelling interest in having a law school at all, much less an *elite* one” (Grutter 358). Finally, Thomas’s narrative represents administrators and the aims they expect to achieve through affirmative action as ultimately trite, and even racist. In one of the more condemning passages of the opinion, Thomas states, “the aestheticists [administrators] will never address the real problems facing ‘underrepresented minorities,’ instead continuing their social experiments on other people’s children” (Grutter 372). The term “aestheticists” represents administrators and the aims of affirmative action as superficial, as Thomas has described it earlier in the opinion, targeting a “certain appearance, from the shape of the desks and tables in its classrooms to the color of the students sitting in them” (Grutter 354 n. 3). And describing affirmative action as “social experiments on other people’s children” identifies administrators racially as white, or at least as members of racial groups with significant representation in higher education. The racial binary created by “other people’s children” and the way the interests of the two groups are represented as diverging in that phrase and “social experiments” contributes to the depiction of administrators and their interests in Thomas’s narrative as at odds with those of underrepresented minorities.

In its representations of affirmative action and of the university administrators involved with the policy, Thomas’s color-conscious narrative is emotionally charged. The predominant emotion is anger, an anger specifically represented as being located in minorities’ frustration with the “meddling” of others. In this aspect, the narrative is coherent with other narratives of color-conscious formal equality such as those associated with Douglass’s speech and the *Korematsu* case. And this is perhaps the biggest difference between Grutter’s and Thomas’s respective narratives of affirmative action and orientations toward formal equality: Unlike Grutter’s largely emotionally neutral colorblind narrative, Thomas’s color-conscious narrative uses the emotion of anger in an attempt to consolidate minority racial interests around the value of formal equality, construed here as a deep desire on the part of minorities, especially African Americans, to

be left alone. In other words, even as Thomas's narrative draws on the value of formal equality and argues, along with Grutter, that formal equality is inconsistent with affirmative action, the narrative remakes the value from one that is "colorblind," or classically liberal in its treatment of persons without respect to race, to one that ostensibly aligns itself with minorities' interests.⁸³

The rewriting of values involves a rewriting of narratives and the stakes they emphasize – e.g., persons, events, and emotions. Writers rewrite values in this way in order to change positions with respect to an issue, just as the rewriting of corrective equality as colorblind formal equality has led to decreased support and new challenges for affirmative action. Writers also rewrite values in order to accommodate additional interests and audiences, as Thomas attempts to invoke the interests of African Americans in rewriting colorblind equality as color-conscious. Audiences often have different values than the writers who address them, values that they hold dear and are unlikely to be persuaded to count as less important than other values. For this reason, it is important that student writers in particular have alternative means of understanding and making ethical arguments – such as rewriting values – that might provide a work-around when their arguments threaten to stall.

Conclusion

As this chapter demonstrates, a narrative approach complements in any number of ways how composition textbooks address principles and values as part of ethical argument. So doing, it builds on several of Sharon Crowley's suggestions for taking values seriously as part of deliberative argument. First, a narrative approach highlights for student writers values' contingency as far as values' potential multiplicity of meanings and how they are defined. With respect the *Grutter* opinions, for example, value narratives elaborate on the multiple meanings of equality circulating among those opinions' ethical arguments – i.e., corrective equality, colorblind formal equality, and

⁸³ A narrative approach thus makes a different reading possible regarding the role of emotion in Thomas's *Grutter* opinion, one that understands emotion as a strategy of Thomas's arguments. Such a reading differs from interpretations of the "passion" of Thomas as a reflex based on (or in defense of) his personal and professional experiences, or consistent (or not) with his otherwise rather formalist approach to judging (e.g., Kearney; Tushnet "Black Nationalism"; Turner; Fish).

color-conscious formal equality. They do so by making an aggregate sense of often disparate and non-propositional moments of such arguments, including citations to precedent word choice, quotations, and so forth. In this respect, a narrative approach carries through on Crowley's advice that a given value or sets of values be demonstrated to be contingent, "by locating them in space and time, thus destabilizing the system of belief in which these same values are taken to be noncontingent" (201).

Second, a narrative approach helps student writers to better understand the stakes involved when writers employ values as part of their ethical arguments. These stakes are implicated by certain narrative aspects of those arguments, including particular representations of persons (e.g., as "objectively" meritorious) and structurings of events (e.g., history as an admissions decision). By providing student writers with a means of investigating the stakes of their own and others' arguments involving values, a narrative approach responds to Crowley's call for increased awareness of how values do not merely dictate but "*articulate with* policy recommendations" (200, emphasis added).

Finally, a narrative approach provides student writers with a means of understanding how values are related with one another, alternative to the weighing of values. Writers interested in changing audiences' position with respect to an issue, or accommodating additional audiences and interests, can rewrite relevant values. A narrative approach explains that rewriting values (e.g., the meaning of equality with respect to affirmative action) means rewriting the narratives and stakes associated with those values, thereby emphasizing different persons, events, and emotions as most important. So doing, a narrative approach elaborates on Crowley's suggestion that, rather than "demonstrat[ing] the superiority of alternative values" – a difficult task "when values are imbricated with a densely articulated and resonant ideology" – such values can be "rewritten" (200).

CONCLUSION

In my writing courses, my students and I grappled with certain features of ethical arguments, including narratives, that seemed to be insufficiently addressed by textbooks and other resources for argument. These moments of argument did not easily conform to the understanding of ethical argument as, for example, about asking and answering questions; making and backing up claims; or declaring, comparing, and prioritizing principles and values. Instead, they seemed to be doing argumentative work that was only partially acknowledged or understood, often involving particulars, values, and emotions, and a somewhat different kind of reasoning – deliberative argument.

Because narratives were so commonly employed to do this argumentative work, my sense was that narrative could be a key means of recognizing and understanding the deliberative aspects of ethical arguments more generally. This led me to wonder about the functions of narrative with respect to ethical arguments and how these might inform the teaching of ethical argument as deliberative.

In this concluding chapter, I review the narrative approach to ethical argument that I have developed in this project and what its adoption promises for student writers. I then consider several of the implications of the approach, implications for application and teaching argument as well as for composition and rhetoric scholarship and public debate. Finally, I address possible avenues for further research and practice.

The Narrative Approach

In developing the narrative approach, I turned to an area of legal scholarship known as narrative jurisprudence, examining the sense it makes of legal arguments and considering how it might be helpful to understanding and explaining ethical arguments. In particular, Bernard Jackson's narrative approach to legal arguments provided an initial vocabulary for and means of conceptualizing narrative's roles. In Chapter Two, I

explained how Jackson's narrative approach applies in the context of ethical arguments by using it to analyze Sidney Hook's arguments regarding voluntary euthanasia.

According to Jackson's narrative approach, narrative can be understood at three levels: narrative discourse, narrative structure, and narrative schema. Narrative discourse is significant because it offers justifications independent of and possibly different from those provided elsewhere in ethical arguments (as with legal arguments). Narrative structure also is helpful to understanding and explaining narrative's roles in ethical arguments. Ethical arguments are more likely to be accepted as true when their narrative structures conform to certain standard structures, when they have "internal coherence." Narrative schemas can be used to show that ethical arguments (like legal arguments) are persuasive when coherent with widely circulating narrative schemas. One implication of this "external coherence" is that specific, contextual details often play a much greater role in persuasion than is acknowledged. A further implication is that by setting forth what is significant about how things are, ethical arguments often implicitly argue for what should be done, in their coherence with narrative schemas that direct particular outcomes.

In order to develop further the narrative approach and to consider the relationship between it and other approaches to ethical argument, I turned to two areas of U.S. Supreme Court jurisprudence – the death penalty and affirmative action – and certain associated judicial opinions. In Chapter Three, I developed the narrative approach in four ways. First, I expanded Jackson's notion of narrative schemas by more systematically accounting for their representations of persons and emotions. Enhanced in this respect, the narrative approach more effectively addresses how representations of persons and emotions participate in ethical arguments. Second, I reconstrued narrative structure as a rhetorical and interpretive frame that involves the scope of a narrative (especially when a narrative begins) as well as what events a narrative includes or excludes. Reconstruing narrative structure in this way helps student writers better understand how writers strategically employ narrative structure according to any number of models in making ethical arguments. Third, I supplemented Jackson's notion of narrative discourse with narrative silence. Narrative silence can prove helpful to student writers in identifying such silence in their own and others' writing as well as in prompting reflection on when

and why it is used. Fourth, I extended Jackson's idea of narrative persuasion to consider what relationships exist among narratives in addition to coherence. This expanded understanding of narrative persuasion affords student writers a better understanding of the work that narratives accomplish and explains how dominant narratives and the positions associated with them can change over time.

In Chapter Four, I showed how the narrative approach complements the principles-and-values approach so common to textbooks' instruction on ethical arguments. For one thing, the narrative approach makes evident to student writers that values are contingent in that they often have multiple meanings that depend on subtle moments of ethical arguments. As ideologic, value narratives help make sense of the many moments that contribute to these meanings, including word choices as well as citations to and quotations of other cases and materials.

The narrative approach also complements a principles-and-values approach by clarifying for student writers the stakes involved in ethical arguments employing values. Whether explicitly or implicitly, writers represent issues as coherent with values, and this process can be understood by means of narrative. In its various narrative aspects, the coherence between issue narratives and value narratives— e.g., a certain representation of persons, a particular narrative structure – highlights the stakes significant to ethical argument and position-taking. Finally, the narrative approach explains for student writers how values are rewritten when writers alter relevant narratives and stakes. Writers rewrite values in order to change audiences' position on an issue as well as to accommodate different audiences and interests.

The narrative approach developed in this project directs student writers' attention to the argumentative possibilities of narratives and to the ways in which ethical arguments that are not specifically narrative can be thought of as narrative. That is, ethical arguments persuade when, as narratives (or as narrative schemas constructed from various moments), they cohere with widely circulating narrative schema, including representations of persons, emotions, and events. Values in particular can be thought of as narrative in this sense, and as contingent as such. When a narrative might be expected but does not appear as part of an argument, this narrative silence might mean any number of things, including that a writer is rejecting certain ethical arguments. Understanding

ethical argument as narrative also highlights the specifics that matter, including the stakes that are critical to ethical arguing and position-taking. Ethical arguments persuade, too, when they challenge and possibly change predominant narrative schemas, rewriting relevant values, for example, by rewriting the narratives and stakes associated with those values. Altogether, the narrative approach provides student writers with a useful alternative in recognizing, thinking about, and employing ethical arguments, with any number of implications.

Implications of the Narrative Approach

Several implications follow from the narrative approach for composition pedagogy – some having to do specifically with the teaching of ethical argument, others with the teaching of argument more generally and public debate. The narrative approach also contributes in important ways to two areas of scholarship in composition and rhetoric: scholarship on deliberative ethical argument and scholarship on narrative and rhetoric.

-- Composition Pedagogy on Ethical Argument

In the Introduction to the project, I shared two stories concerning the experiences and questions that prompted this project and what I hoped it might address. One implication of the project is the insights it yields for composition pedagogy respecting ethical argument and its more deliberative aspects, particularly narrative. The narrative approach developed here does not answer those earlier questions so much as it provides a helpful means for instructors and students to think through them.

With respect to Hasan's introductory narrative to his essay on racial profiling, for example, I wondered as a writing instructor about the work student narratives such as his accomplished, whether such narratives could be considered persuasive, and, if so, how. Like Hook's introductory narrative, justices' factual narratives concerning the death penalty, and Grutter's narrative of affirmative action, Hasan's introductory narrative to his essay on racial profiling is a narrative discourse. At the very least, the narrative approach requires attention to such narrative discourses, that they be taken seriously for

the arguments they make and not dismissed as merely engaging or entertaining audiences.

Beyond this, the narrative approach provides instructors and student writers with tools to examine how writers use such narrative discourses to make ethical arguments, by means of moments that contribute to the representation of persons, events, and emotions. In several of its details, Hasan's narrative represents racial profiling in such a way as to argue against it. As far as the representation of persons, Hasan groups himself and other travelers (described as "fellow passengers") into an "us" that consolidates their identities and interests and that indicates that his treatment and impressions are not individual but shared. The other persons involved in the narrative, presumably immigration and security personnel, are not represented as persons but as "eyes" and "attitudes." Despite these persons' reduction to their function, the narrative portrays them as having agency and the travelers as being acted upon – monitored, separated, searched (as far as luggage), questioned, delayed. The number of activities mentioned adds to the sense that the process is long and involved for the passengers. And the narrative has strong emotional orientations, especially anger and vulnerability, both in how persons and events, actual and imagined, are described. The "eyes" are "unruly, suspicious, and hawkish"; the "attitudes" are "condescending." Questions are "intruding" and "intense" – as with the question about "whether or not we stole our American passports" – as well as "repetitive" and "prolonged." At the end of the story is a description not of what actually happens but what Hasan represents he and other travelers as *feeling* – caged and threatened with "harsh punishment." Together, Hasan's representations of persons, events, and emotions create a sense that racial profiling has a profound impact on the security, liberty, and emotional wellbeing of those subject to it, at least in the context of airport immigrations and security procedures. By carefully considering these representations and the argumentative work they accomplish, the narrative approach makes more evident aspects of student narratives as strategic choices as well as the things that these aspects accomplish argumentatively.

As far as the persuasiveness of student narratives like Hasan's, the narrative approach explains that such narratives are persuasive when they cohere with widely circulating narrative schemas. In the alternative, such narratives may challenge

predominant narratives, rewriting the values associated with those narratives by rewriting relevant narratives and stakes. This explanation of persuasion should motivate instructors and student writers to investigate those narrative schemas in circulation about an issue and to consider how they compare with narrative discourses such as those students anticipate writing or already have written. Common narratives of the kind of racial profiling Hasan speaks to, for example, might be drawn from news stories about responses to the threat of terrorism, popular movies that portray Middle Eastern villains, and legal cases such as that against 9/11 organizer Khalid Sheikh Mohammed, among other sources. Hasan's narrative would seem to challenge these widely circulating narrative schemas, with its sympathetic portrayal of harassed travelers and its critical depiction of immigrations and security personnel and their actions. By shifting the focus to those potentially subject to racial profiling and the steps involved rather than ultimate outcomes, the narrative rewrites the value of security as being diminished rather than enhanced by such procedures. As such, the narrative might be more comparable with counterstories regarding racial profiling, such as those by legal scholar Patricia Williams (*Alchemy of Race and Rights: A Diary of a Law Professor*) and novelist Mohsin Hamid (*The Reluctant Fundamentalist*). Comparing and contrasting student narratives like Hasan's with other circulating narratives is not likely to lead to any easy answers about how persuasive such narratives are. Yet the ways such narratives participate in and reject the choices reflected in other narratives can provide rich opportunities for reflecting on students' uses of narratives in ethical arguments.

In the Introduction's second story, reading and discussing the *Abrams* case, students and I puzzled over the regular use of tropes to describe the defendants and their actions, often outside the judicial opinions' narratives of the facts of the case. Even though such moments did not obviously participate in narratives, I wondered if narrative could nevertheless be used to make sense of such moments as ethical arguments. If so, I also wondered whether and how they were persuasive.

As with the citations, quotations, and word choices in *Grutter*, the narrative approach understands the descriptions of the defendants of *Abrams* and the pamphlets they distributed as not simply rhetorical flourishes but as moments of ethical argument. These moments participate in a different kind of reasoning that can be described as

narrative – i.e., narrative as ideologic. The majority opinion describes the defendants as “intelligent” and “having considerable schooling” and describes the pamphlets as “an attempt to defeat the war plans of the Government of the United States.” These moments contribute to a narrative that concerns capable persons who conscientiously threaten a vulnerable U.S., a narrative that prioritizes national security as a value. In his dissenting opinion, Justice Holmes challenges this narrative by differently representing the defendants and their actions, thereby indicating the significant stakes involved with respect to the issue. He compares each defendant to an “unknown man” and the pamphlets as “pronunciamentos” and “poor and puny anonymities” comparable to a “silly leaflet.” So altered, these moments are coherent with a narrative in which foolish statements, like poorly-made products, need to be accommodated in a free marketplace of ideas, a narrative prioritizing free speech as a value. The narrative approach, then, provides student writers with a means of understanding the argumentative work accomplished by the more rhetorical features of their own and others’ ethical arguments, as with the descriptors in *Abrams*, even when these features do not specifically present as narrative discourse. In particular, the narrative approach helps student writers to understand how the values that they and others employ, such as national security and free speech, are contingent on these moments of ethical argument.

At times, less common narratives challenge and attempt to change more predominant narratives and the positions associated with them, just as with Justice Harry Blackmun’s execution narrative in relationship to the predominant pariahic murder narrative and its pro-death-penalty stance. Here, Holmes’s narrative is best understood as not only challenging but eventually changing the nation’s course with respect to free speech protections. Almost five decades later, the *Abrams* case and other cases like it were overturned in favor of greater protections for potentially violent speech. This sea change in First Amendment jurisprudence depended, of course, on any number of developments in addition to Holmes’s narrative. Nevertheless, the narrative approach prompts student writers to consider not only what ethical arguments understood as narrative accomplish in their specific contexts. It also encourages consideration of these arguments’ ongoing implications for changing the arguments and positions associated with significant issues like free speech.

Applied to teaching ethical argument in composition, then, the narrative approach offers a protocol for considering narrative's functions with respect to ethical arguments, both students' own ethical arguments and those of other writers. So doing, the approach makes sense of aspects of ethical argument according to a different kind of reasoning, one that highlights particulars, is value-laden, and involves emotion. The approach, in other words, contributes to instruction on ethical argument by making more systematic sense of how ethical arguments are deliberative.

-- Composition Pedagogy on Argument and Public Debate

By providing student writers with a means of making and analyzing arguments as deliberative, the narrative approach addresses at least some of the concerns of those who resist teaching argument in composition. Far from being reductive, such an approach accounts for many of the more complex aspects of arguments and issues. These include arguments' more rhetorical features and non-syllogistic structures, and how representations of persons beyond the argumentative context impact arguing and position-taking. Also, the narrative approach encourages student writers' engagement with arguments by considering how they and other writers employ values and emotions. As Roberts-Miller points out with respect to personal narrative, the narrative approach makes clear that values and emotions are neither personal nor universal, but "something with which people might disagree" (211). Finally, the narrative approach counters the concerns of those who consider argument unidimensionally combative by highlighting emotion and less direct means of argument, especially as these occur with respect to argumentative contexts often otherwise stereotyped as masculinist and aggressive (such as legal disputes).

For those convinced of the value of teaching argument in composition and interested in teaching it in their classrooms or textbooks as effectively as possible, the narrative approach has any number of specific implications for points of pedagogical practice, including but going beyond narratives. The narrative approach is useful, for example, in working with student writers on the effective employment of details in their arguments. In a classic article, Richard Ohmann critiques the advice and examples

provided by textbooks and style guides on this topic. He argues that their calls for “definite, specific, concrete language” sometimes foreclose the analyses made possible by abstractions, or discourage the development of a clear line of thought amidst a myriad of details that are not particularly relevant. Ohmann instead would have students and instructors sit with the abstractions of writing long enough to consider conceptually what might be worth developing, what questions might be asked of the writing.

The narrative approach offers a means of thinking through the use of details, one less conceptually dismissive of these tools and more accessible to those not as versed in the theories and knowledge that inform the interrogation of abstractions Ohmann recommends (i.e., deconstruction, Marxist theory, *Tom Jones*). At the simplest level, the narrative approach can assist with figuring out what details are or might be included as part of narrative discourses by considering their argumentative impact. As I demonstrated with certain narratives concerning voluntary euthanasia and the death penalty, the vividness of descriptions, the use of metaphor, the inclusion or exclusion of details (chronologically, for example) matter to what is argued. With somewhat more complexity, the narrative approach directs students’ attention to the wider narratives that inform and are informed by specific narrative discourses, thereby also making meaning of details such as who is represented and how, or the emotional positioning made available to audiences.

Finally, in its most nuanced application, the narrative approach redefines what argumentative detail means and makes sense of its employment beyond narrative discourses to other kinds of argumentative discourses. In contrast to the kind of language that Ohmann critiques as unhelpfully concrete and not sufficiently conceptual, details, or what I have been calling throughout this project “moments,” are understood as always implicated in larger structures of understanding, or ideologies, conceptualized here according to narratives. An implication of this redefinition is that details are understood more broadly and more generously, not only as physical descriptors of the kind Ohmann focuses on, but also as involving the more conceptual aspects of argument, such as citations, quotes, definitions, excerpts, and word choices. Not just things, but concepts – values like equality, issues like affirmative action – involve details that shape their meaning and the arguments respecting them. Recognizing this relationship between

details (or moments) and concepts makes it more difficult to divide the argumentative universe among them, and challenges Ohmann's advice that student writers temporarily retreat to abstractions. The narrative approach instead provides a means by which students might more effectively navigate their and others' uses of details, by conceptualizing such uses narratively and thereby consistently connecting the particular with the more abstract.

The narrative approach has further implications for argumentative pedagogy with respect to certain kinds of details or moments, such as word choice and definition. As this project has shown, word choices are enormously influential with respect to arguments made. Word choice is not just about using words precisely but also about how writers' use of words shapes the arguments they make. The narrative approach can help student writers key into the importance of word choice by considering the work that a certain word does in a specific narrative and what a different word might accomplish. In other kinds of argumentative discourses, the narrative approach might be used to have students consider the narrative that might accompany a word choice, as with Justice Thomas's use of "discrimination" (rather than "affirmative action"). Eventually, the narrative approach can help student writers recognize when writers such as themselves respond to other writers and their narratives in their choice of words (e.g., Thomas's use of "favored races" to describe the same group that Grutter refers to as "disfavored races"). It can also point to word choices that are inconsistent (strategically or not) with the arguments they explicitly espouse (e.g., the words Hook chooses to describe his near-death experience, the *Grutter* majority's adoption of "innocent").

Advice for argumentation often calls for student writers to define their terms, and helpfully so. Yet definition is not only about explicitly stating what a term or concept means, even when it is acknowledged that such statements argue for a particular definition. It also involves arguing for a definition by any number of other, less direct means, such as by describing involved persons in a certain way or making reference to another source that uses the term in a particular way. Definition, in other words, is an ideologic – connecting various moments of argument in order to compose a system that describes a view of reality available for contest (see also Schiappa).

The narrative approach can help to translate this understanding of definition into instructional practice. Student writers first identify the terms that are significant to their own and others' arguments, whether or not these terms are explicitly defined. Next, they consider what moments of argument may be associated with any particular term – word choices, citations, quotations, and so forth. (Students engaged with writing may generatively free associate such moments if they are at an early stage of the writing process.) The narrative approach then helps students to consider how these moments may work to define the term. That is, students can use narrative in order to connect these moments into an ideology that clarifies for students how they or others are indirectly defining a term. (Similarly, I used the narrative of corrective equality with respect to the *Grutter* majority opinion to make sense of certain moments (e.g., the citation of *Loving*) and how they contributed to the meaning of equality employed there (i.e., corrective equality).) With more advanced students, the narrative approach can be used (as in Chapter Four) to identify multiple narratives associated with a single term, pointing to different definitions of that term, whether contemporary with one another or over some period of time, associated with a single position or with multiple positions. Whatever the case may be, as Edward Schiappa observes, all definitions are political in that they serve particular interests and empower through persuasion or coercion (69). The narrative approach helps students operationalize this crucial observation, noting how the definitions implicitly associated with a term differ by considering how their narratives differ as well as the key stakes these differences index. Such tools are important because, outside of specialized discourses, definitions are rarely explicitly delivered. Yet whether or not made explicit, definitions do critical political and ideological work and have significant consequences for how issues are thought about, discussed, and resolved.

The practices discussed so far – concerning the use of details, word choice, and definition – have implications for instruction with respect to students as readers as well as writers, something I have alluded to throughout the project. When writing instruction addresses reading, students are advised to read attentively, perhaps with some pointers on how to mark up a text and to take notes. There also may be suggestions for how to read critically, or “against the grain” (see Bartholomae and Petrosky), checking in with reactions to a text and posing sample questions for thought and discussion. Readings are

sometimes paired or otherwise grouped so as to provide multiple formats, arguments, or positions with respect to some issue or controversy.

The narrative approach supplements such advice by expanding what is considered important to attend to in reading and providing additional tools for reading closely and critically. For one thing, the narrative approach encourages the close reading of discourses that students might otherwise overlook as argumentative, such as narratives, and helps students to recognize their significant details and the ways these shape arguments. With more advanced students, the narrative approach can be used to read and interpret more standard argumentative discourses as narrative, which can help students read closely with more sophistication. In particular, students are able to better understand what is being argued that may not be set forth explicitly as a claim or definition. The narrative approach also can help students read closely and critically across multiple sources, including both narrative and non-narrative discourses. Comparing narrative discourses (like the two factual narratives of *Gregg*), students are able to use similarities and differences to determine the details significant to each narrative and to begin to construct associated narrative schemas. With the development of these skills, students can use narrative schemas to compare arguments across sources (including definitional arguments) in order to read such arguments more critically. That is, students can use narrative schemas in their reading in order to determine the respective prominence of what is being argued, how one source differs from another (and possibly challenges it), how the arguments respecting some issue may have changed over time, and how differences among arguments attest to differences in the stakes represented as important to an issue (e.g., who is represented, how, and so forth). Finally, one of the most advanced reading skills involves perceiving what is *not* included in a reading, something the narrative approach facilitates when students compare narratives and narrative schemas as well as when they recognize and consider narrative silence.

Returning to advice for students as writers, students are counseled to keep their audiences in mind as they write. As was pointed out in Chapter One's discussion of textbooks, audiences are often imagined as neutral or mildly skeptical and the assumed goal of writers is to connect with audiences in order to assert (or eventually arrive at) consensus with respect to an issue. While such advice is helpful to a degree, it conceives

of audiences too narrowly, as dispassionate and predominantly rational and prepared to accede to writers' views as long as rigorously argued.

This rather utopian understanding of audience has at least two problematic consequences, one pragmatic and the other ethical. First, it does not accord with actual audiences, as anyone can attest who has spent time at a dinner table engaged with family members in a heated debate, or taken in a couple minutes of talk radio, or sat in on certain closing arguments at trial. By missing the mark as far as actual audiences, advice regarding audiences risks being ineffectual for student writers, unable to prepare them for professional, civic, and other kinds of writing outside of academic and classroom discourses. Second, such advice excludes certain audiences – both their means of arguing and their views. It does so by rejecting the heterogeneity of actual audiences in favor of an ideal, and sometimes by insisting that all reasonable people would agree with the writer. Disagreement is thus a sign that something is wrong with audiences – they are irrational, they are uneducated or untrained – rather than a problem of the writer or her arguments, or simply a quality of argument. To borrow Sharon Crowley's phrase, such assumptions regarding audiences are hardly the grounds for civil discourse.

The narrative approach does not speak to the issue of audience *per se*. It does, however, potentially encourage student writers to imagine audiences more diversely, as having values and emotions and responding to these in arguments as well as legitimately differing in values and positions from students. In her reformulation of what "audience" means, Barbara Biesecker argues that audiences do not merely exist but are produced discursively, or (as she puts it) "articulated": ". . . the rhetorical situation [is understood] as an event that makes possible the production of identities and social relations" (126). This being the case, the narrative approach's conceptualization of argument has implications for how student writers understand and articulate audiences.

First, the narrative approach identifies values and emotions as attributes of argument and offers narrative to help students make sense of the argumentative work accomplished by these in narrative and non-narrative discourses. In the process of recognizing the roles of values and emotions in argument, the narrative approach also helps students to articulate audiences more broadly, as having and being moved by values and emotions. Second, the narrative approach helps students to distinguish among

particular values, definitions, and reasons for a particular position, among other aspects of argument, by distinguishing among the narratives associated with these. Doing so, students are able to recognize and to articulate differences, allowing them to do so with respect to differences among themselves and audiences as well. To do so begins to put at question the goal of consensus with respect to argument.

Finally, and most challenging, the narrative approach helps students to respond to and navigate differences in argument, which has implications for doing so with respect to audiences. That is, differences can be ignored or elided (consistent with at least some textbooks' advice), acknowledged and accepted (a kind of impasse), or engaged. The rewriting of values is one means of engaging differences (albeit not a consistently or necessarily progressive one). As an attempt to reshape understanding of a value, the rewriting of that value also offers the possibility of rearticulating audiences' subjectivities as at least partially continuous with what writers perceive to be audiences' current priorities (e.g., their allegiance to family values, their identifications as African Americans). So doing, it offers student writers an alternative means of understanding audiences as different and yet still addressable.

Enhancing students' understanding of and responsiveness to audiences is just one of the many ways that a narrative approach has the potential to contribute to argumentative pedagogy, not only improving student writers' argumentative agility but also enriching public debate and decision making more generally. In particular, as one means of arguing with and about values, the approach makes more evident arguments that otherwise would be obscured because of more limited ideas about what argument is supposed to be about and how it is supposed to work. In the U.S., public arguments regarding values tend to be associated with more conservative stances. It is no surprise, then, that in this project several of the examples of deliberative ethical argument, especially in judicial opinions, were associated with more conservative positions (e.g., favoring the death penalty, opposing affirmative action). Textbooks included possibly more progressive deliberative ethical arguments but disregarded these as arguments (e.g., Hook's pro-voluntary-euthanasia narrative, Blackmun's anti-death-penalty narrative). As Crowley and her co-author Debra Hawhee explain in their textbook *Ancient Rhetorics*, "Whether or not he [the liberal rhetor] can support regulation of hateful speech [or drug

legalization or abortion (139)] depends on whether he defines it as a political or ethical issue, since liberals generally support intervention that regulates matters of social equity but do not approve of legislation of moral matters” (145). Yet, as legal scholar Robin West claims, something like deliberative argument, specifically narrative (or what she calls “stories”), is necessary to the construction of rights (“Narrative” 419). Narrative is necessary even though rights construction is an activity more typical of liberalist argument (see also Crowley 3, 63). Ideally, argument includes both “rights talk” and “storytelling”:

[B]oth rights talk and storytelling are clearly necessary to moral decision making . . . to a society sufficiently integrated to call itself a community, but sufficiently diffuse so as to be nonoppressive . . . A regime of rights that is unsupported and uncomplemented by narratives that explain the source of those rights does indeed give rise to an excessively legalistic and alienating community . . . (West "Narrative" 426)

Part of this project’s purpose has been to make deliberative arguments more evident and available for use as they are associated with progressive stances, primarily in method but also as far as content (e.g., Blackmun’s execution narrative, the narrative of corrective equality and affirmative action). That it has been such a labor to do so indicates the opportunities for the project’s enrichment of public debate in this direction.

-- Scholarship on Deliberative Ethical Argument

By advancing the understanding of narrative’s roles with respect to ethical argument, the narrative approach developed here contributes to scholarship regarding narrative as a strategy of deliberative argument. Specifically, the approach addresses several kinds of narrative discourses in deliberative arguments (not just personal narratives), restores the association between narrative and myth, and understands narrative as a form of ideologic. The approach also contributes to the understanding of deliberative argument more generally.

While the narrative approach makes sense of personal narratives (e.g., Hasan’s narrative), it applies beyond these to narrative discourses by narrators such as judges,

newspaper reporters, biographers, filmmakers, and novelists about persons other than themselves (e.g., death penalty defendants, students seeking admission to higher education, revolutionaries). By going beyond personal narratives, the narrative approach builds on Patricia Roberts-Miller's understanding of narrative as part of deliberative argument. In its consideration of how persons, events, and emotions are represented, the narrative approach offers what Iris Marion Young refers to as "social knowledge" about "how social segments view one another's actions." And in tying these and other narrative aspects to norms and positions, the approach highlights the stakes involved in an issue, or, as Young puts it, "the likely effects of policies and actions on people in different social locations" (Young 132, qtd. in Roberts-Miller 213).

The narrative approach construes narrative as operating at the level of narrative schema, which builds on what Sharon Crowley imagines for narrative with respect to deliberative argument. Specifically, it restores narrative to myth, by construing narrative as in ongoing relationship with principles and rules (despite the pragmatics of rule-telling) (Jackson *Narrative Coherence* 3). Crowley defines "myth" as a collective fantasy that "generaliz[es] particular and contingent experiences into the bases of universal rules of understanding and conduct" (Slotkin 19, qtd. in Crowley 97). In doing so, however, she rejects an ongoing association between narrative and myth, based on an overly narrow understanding of narrative as an instigating historical happening that disappears once the event is mythologized. The restoration of narrative to myth is significant because it permits narrative to be an ongoing vehicle for the disarticulating of such "universal rules," which Crowley herself recommends as part of deliberative argument.

By conceptualizing narrative as operating at the level of narrative schema, the narrative approach affords an example and a more concrete idea of what Crowley means by "ideologic" in deliberative argument. That is, as narrative schema, narrative can be used to organize the connections between and among various moments of ethical arguments, such as quotations, citations, and word choices. So doing, it offers recognition of and sense-making with respect to qualities of ethical argument that are more rhetorical than propositional. (The Toulmin method, by contrast, offers one means of recognizing and making sense of arguments' more propositional components.)

Crowley refers to the regular connections among such moments, the “kind of sense that is not covered by the term *reason*,” as ideologic (59-60). While narrative is certainly not the only way of organizing ideologic, as construed by the narrative approach presented here, it does provide one way.

In explaining how narratives function with respect to deliberative ethical argument, the narrative approach advances not just the understanding of narrative but the understanding of deliberative argument as well. The narrative approach can draw student writers’ attention to the particulars and emotions of arguments, qualities characteristic of deliberative argument (Roberts-Miller 5) – e.g., the persons, events, and emotions represented and how. Consistent with deliberative argument, the narrative approach also recognizes values as central to argument, and provides a means of understanding such values as contingent, as articulating with policy recommendations, and as being subject to rewriting (Crowley 200-01). As already discussed, the narrative approach additionally provides a different means of organizing reasoning in argument, as ideologic – another attribute of deliberative argument (Crowley 50-60).

-- Scholarship on Narrative and Rhetoric

The narrative approach developed in this project contributes to the scholarly literature on narrative and rhetoric by understanding narrative as operating at many levels at the same time. Narratives can instantiate as narrative discourses, significant for the ways in which writers use their details to make ethical arguments. Such specific narrative discourses are further understood in light of narrative conceived at another level – as narrative schema. Narrative schemas help to make a broader sense of the argumentative work that narrative (and even non-narrative) discourses accomplish, both the ways in which those discourses cohere with schemas as well as how such discourses challenge and possibly rewrite them.

The multi-level narrative approach contributes to existing scholarship on narrative and rhetoric, which tends to focus on the level either of narrative discourse or of narrative schema. So doing, it is better able to explicate the wider argumentative meanings and implications of specific narratives beyond the particular contexts of their use. It also

insists on specific, textual evidence for the sometimes sweeping claims made regarding the existence of and argumentative work accomplished by narrative schemas.

A second way that the narrative approach contributes to this literature is by considering the relationship between deliberative argument and other kinds of argument, such as liberalist argument. This project specifically used the approach to consider how a commonplace of liberalist argument – equal protection and the value of equality associated with it (Crowley 3, 5) – involves several different narratives, particularly in the context of affirmative action. The U.S. Supreme Court justices speaking to that issue use the terms and operations of liberalist argument, among them the weighing and balancing of the value of equality against other significant values. At the same time, as the narrative approach demonstrated, the justices also employ deliberative argument: understanding the value of equality’s several meanings with more particularity than initially may be evident as well as using emotion to rewrite the meaning of the value. Rather than distinct paradigms (e.g., Fisher *Human Communication*), deliberative and other kinds of argument may be more like the young woman and the old woman in the optical illusion that depicts both or either one, depending on what the viewer attends. That deliberative argument relates with other kinds of argument, as this project indicates, is significant because it means that there are probably strategies for deliberative argument in other kinds of argument, and vice versa. The narrative approach might prove useful in conducting further research on the nature of the relationships among different kinds of arguments.

Future Research and Practice

This project provides any number of opportunities for further research and practice, including several having to do with the scope of the study as well as a potentially enriching body of scholarship.

In this study, I focused on narrative as an argumentative strategy of deliberative ethical argument, yet there are numerous other such strategies. Among them, Crowley suggests “conjecture,” which “considers a proposed state of affairs” (Crowley and Hawhee 430). With respect to an issue, rhetors “should depict the world as it would exist

with this policy in place, and they should depict it with all the *pathos* and compelling detail they can muster” (Crowley 199). Another strategy suggested by Crowley is “encomium” – a “discourse that praises someone or something” (Crowley and Hawhee 431), and, by doing so, potentially cultivates attention for an issue and arouses the emotions (Crowley 199).

I am not suggesting that these strategies are entirely distinct from narrative or the narrative approach: By carefully establishing the details involved with the scene of a policy outcome, conjecture might be understood as a kind of either narrative disruption or resolution. Writers can praise someone or something by representing them in a positive light as part of a narrative. And these strategies and the argumentative work they accomplish might be made sense of as moments of narrative as ideologic. Nevertheless, there remains a good deal more that could be said about other strategies for deliberative ethical argument as well as their possible relationships with narrative and the narrative approach.

Second, this project proposes that the narrative approach can help student writers with understanding and employing deliberative ethical argument. The materials analyzed and the analysis itself were aimed at establishing the need for a greater understanding of deliberative ethical argument as well as the development of an approach that might assist with such argument’s understanding and use. Such materials and analysis can now serve as the basis for formulating resources with respect to instruction on ethical arguments, not only a framework for understanding deliberative ethical arguments but also readings, points for discussion, assignments, and so forth.

These resources could be used to teach a unit, or perhaps an entire course. Such a unit or course could serve as the basis for future research regarding whether the narrative approach actually helps student writers to think about and employ ethical arguments more deliberately, narratives in particular. Data gathered from the course – e.g., recorded class discussions and office-hour interactions as well as the assignments produced by students – could be compared with those same materials in a course taught using more standard resources (e.g., a compilation of textbooks’ discussions of ethical argument). Would the students in the course using the narrative approach think about and employ ethical arguments more deliberately? That is, would discussions and students’ writings

indicate any greater attention to the particulars, values, and emotions associated with issues? Would the data show more awareness and uses of different kinds of reasoning, such as narrative as ideologic? Would they demonstrate a greater willingness on the part of students to combine various approaches to ethical argument? Would student writers remark on, make sense of, and use narratives with any greater frequency or understanding of the argumentative choices reflected in those narratives?

A third opportunity for research involves the materials analyzed, and methods of analysis. In describing and developing the narrative approach, I relied primarily on careful analysis of an opinion-editorial and several judicial opinions. (The range of other materials that I drew on as a whole was considerably broader, including student writing, a professional ethics code, films, newspaper articles, a biography, and jurisprudence.) I also adopted (and adapted) Bernard Jackson's narrative jurisprudence. Further research might provide different insights regarding a narrative approach: by analyzing different kinds of materials such as novels or websites, or by exploring at greater length the ways in which other scholarship on narrative and rhetoric (e.g., Kenneth Burke, Walter Fisher) or narrative jurisprudence (e.g., Robert Cover, James Boyd White) contributes to, is parallel with, or complements that of Bernard Jackson.

An additional possible direction has to do with a potentially helpful body of work that this study did not include – scholarship on narrative ethics. As just one example, bioethicist Tod Chambers considers how narrative implicates ethical problem-posing and what is considered relevant to ethical decision making by examining bioethics cases and several of their narrative attributes, including (but going beyond) narrative structure and the representation of persons. Likewise, philosopher Hilde Lindemann Nelson considers the narrative representation of persons to be ethical in the sense of “a necessary means to some moral end” (Nelson 37). So doing, she develops an understanding of the challenges and possibilities of narrative self-representation in particular in the face of oppression. Narrative ethics as an area of scholarship might enhance understanding of ethical argument as deliberative, especially the functions of narrative with respect to ethical argument, by expanding the kinds of questions asked, materials examined, and methods and theories applied.

Finally, early on in this project, I distinguished the ethics of argument – writerly concerns regarding the integrity of various aspects of research and argument – from the argument ethics, and, throughout the project, I prioritized the latter. Yet this work invites important questions regarding the ethics of argument, particularly in relationship with the argument of ethics, questions that merit further consideration and discussion. As just one example, I introduced narrative silence as an argumentative tool that might be used by writers in any number of ways, such as to reject a particular narrative regarding an issue, to resist or disapprove of narration as a form of argument, or to call for new narratives. Unfortunately, narrative silence also can be used to disregard or to dismiss the recognition or interests of others, to cover something up, or to reflect a writer's having been silenced by someone or something. Broadly conceived, the ethics of narrative silence, then, involve not only what narrative silence means or accomplishes, but also whether such silence itself is ethical (i.e., whether its use contributes to what is good or right). This question of the ethics of argument extends beyond the particular example of narrative silence to other aspects of the narrative approach, such as the representation of persons, the uses of emotion, the inclusion or exclusion of certain material, and so forth. This project's consideration of what these aspects accomplish with respect to the argument of ethics is a starting point for thinking about the extent to which and in what contexts they are ethical (or not) as arguments.

Altogether, the narrative approach of this project has much to offer composition and rhetoric's understanding and teaching of deliberative ethical argument and deliberative argument more generally, even as it suggests additional ways in which this scholarship and practice might be developed.