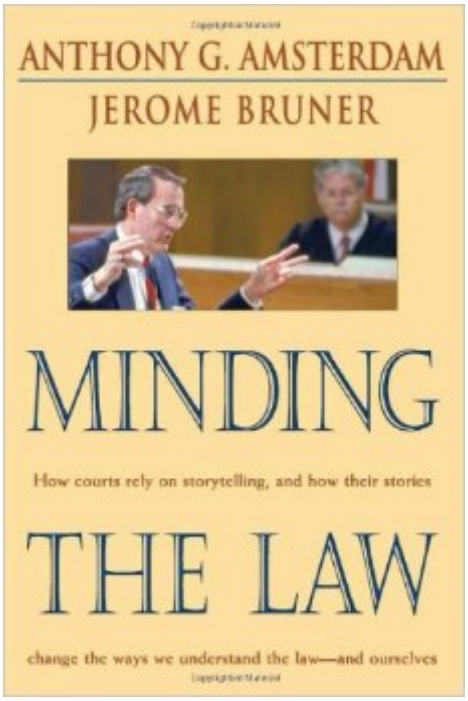
Minding The Law



Synopsis

In this remarkable collaboration, one of the nation’s leading civil rights lawyers joins forces with one of the world’s foremost cultural psychologists to put American constitutional law into an American cultural context. By close readings of key Supreme Court opinions, they show how storytelling tactics and deeply rooted mythic structures shape the Court’s decisions about race, family law, and the death penalty.Minding the Law explores crucial psychological processes involved in the work of lawyers and judges: deciding whether particular cases fit within a legal rule ("categorizing"), telling stories to justify one’s claims or undercut those of an adversary ("narrative"), and tailoring one’s language to be persuasive without appearing partisan ("rhetorics"). Because these processes are not unique to the law, courts’ decisions cannot rest solely upon legal logic but must also depend vitally upon the underlying culture’s storehouse of familiar tales of heroes and villains.But a culture’s stock of stories is not changeless. Amsterdam and Bruner argue that culture itself is a dialectic constantly in progress, a conflict between the established canon and newly imagined "possible worlds." They illustrate the swings of this dialectic by a masterly analysis of the Supreme Court’s race-discrimination decisions during the past century.A passionate plea for heightened consciousness about the way law is practiced and made, Minding the Law will be welcomed by a new generation concerned with renewing law’s commitment to a humane justice.

Book Information

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Customer Reviews

Rejecting the usual approach to analyzing case law by first describing the facts, and then reciting the court’s decision, Amsterdam and Bruner dig deeper, and describe the hidden decisions which

are made when courts (and by inference, lawyers) decide what the "facts" are--and how they are presented. Their hypothesis is that those choices--while virtually never acknowledged, either consciously or unconsciously determine the ultimate decision in a case.One of the examples chosen is a pre-Civil War case holding that states did not have the right to interfere with slave catchers seeking to return escaped slaves to their owners. The case came to the Supreme Court as an appeal from a criminal conviction of a slave catcher for capturing a slave in Pennsylvania without following the procedures established by Pennsylvania. The Court held that the federal Fugitive Slave Law trumped any local laws, and argued that, to hold otherwise, would be to grant states a veto over enforcement of federal law.To reach this seemingly logical conclusion, the Court ordered its presentation of the case around the historic compromise between slave and free states at the Philadelphia Constitutional Convention, and depicted Pennsylvania's procedural rules as an attempt to sabotage this compromise.However, as Amsterdam and Bruner point out, the Court could equally have built its description of the facts (or, to use their paradigm, told its story) from a different perspective. If one looks at the case from the perspective of the purported slave who has been seized, without any opportunity to challenge his "return" to slavery under the laws applicable to every other resident of Pennsylvania, it becomes a case about protecting innocent people from the abuses of slave catchers...

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