



The opinion as literary genre HON 251: Prompts for writing response #5

Instructions:

1. Format: 2 pages (-ish); 12-point type; double line-spaced
2. Deadline: Tuesday, Oct. 23, in class

Law as literature; law as performance

How does viewing or reading a judicial opinion as a genre of writing help us understand law and what law does?

We had an excellent debate about the presence or absence of the individual, the human, in the writing, in the opinion. What do you think? Should the individual voice be absorbed or erased in the larger project to seem inevitable? Or is the presence of the human voice, the writer, a good thing? Which is more persuasive, and why?

How are both (Frankfurter on the one hand and Jackson on the other) in some ways a “performance”? How are both “ceremony”?

From the James Boyd White reading, but applying Ferguson, how does judge Jackson use the monologic voice, the interrogative mode and the declarative tone? Does Jackson achieve what Ferguson calls “the rhetoric of inevitability”?

What does any of this have to do with “history”?