
WHOSE STORY WINS: NARRATIVE JURISPRUDENCE AND THE CONSTRUCTION OF LEGAL TRUTH

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ABSTRACT

This article challenges the connection between story, authority and the production of truth of law. Despite the purported objectivity, neutrality, and excessive precision of the law, the practice of the courtroom makes it clear that facts do not come to adjudication in the form of self-contained truths. They are selectively chosen, framed and arranged as competing narratives.

Legal decision-making is not, then, the operationalisation of rules on objective information but rather organised competition between discourses which strives to achieve a sense of coherence, plausibility and authority. The article is based on narrative jurisprudence, the critical legal theory as well as cognitive methods concerning reasoning that legal truth lies in the exchange between evidence and storytelling. Judges and jurors do not examine facts alone in fact they are assessing the appearance of an account as whole, coherent and as harmonized with wider societal demands. The prevailing cultural beliefs about what is considered right or wrong, race, gender, economic and institutional credibility may emerge as dominant in this process and may be used to subtly determine which stories are accepted and which are excluded. The cases of the most high-profile wrongful convictions, prosecutions that are all over the media, politically charged prosecutions demonstrate how persuasive framing may eclipse weak foundational evidentiary bases. Whether law is based on storytelling or not, is not the main point, but rather the extent to which this is critically and consciously so.

Through the interactivity with counter-storytelling cultures, and interests of testimonial injustice, the article brings attention to structural disparities in whose narrations get presumptive deference in legal institutions. Legal truth is a product of negotiation that is proved in an institutional procedure, on extra-evidentiary normative expectation, and on normative judgment that begs the timeless question, whose story wins?

Keywords: Legal truth; narrative jurisprudence; story telling; testimonial injustice; wrongful conviction; critical legal theory; courtroom discourse; Legal narrative; counter-storytelling.

Whose Story Wins: Narrative Jurisprudence and The Construction of Legal Truth

“The law does not merely adjudicate facts it adjudicates stories. From the first time a client speaks to a legal advocate, experience transforms into a legally presentable narrative that depends upon determinations about what to emphasize, what to omit, how to present a story in a particular tone and with a certain level of persuasiveness. Once inside a courtroom, stories compete with one another. Adjudication might consist not so much as a judgment about matters that did occur as a judgment about which stories make more sense as a matter of legally relevant familiarity and narrative persuasion.” Once again, it seems that the key here might be narrative jurisprudence. Legal studies have traditionally passed themselves off as a science of reason. The language of its aspirations, the means of its approaches, and the verdicts of its judgments are neutrality, objectivity, and finality. But there is more than rationalism here, and there is a more complex truth in the depths below. Facts do not lead to legal outcome; it is finished by organising them into stories. The court of law is not just a place of finding the fact, but it is a place of the narrative contest.

Legal practice has traditionally posed itself as a rational business. It says that it judges by impartial rules applied to objective fact, and separates emotion and analysis, and makes decisions by disciplined reason. However, this image is shaken by the closer look at the modern legal science. Law cannot merely apply rules to objective facts, but is better understood as a kind of communicative action where legal meaning and truth is constructed narrative form as *Jane B. Baron and Julia Epstein* argue in *Is Law Narrative?*¹ Even the fact of legal opinion, evidence of witnesses, even law dictums in pleading, are not stratbanks of fact inert. They are framed on records-organizations of acts into harmonized narratives which strain to an end.

While the craft of legal storytelling has come under significant legal theory and scholarship, there has been little similar investigation into the practice of listening. In the case of *Chamberlain v The Queen*² (1984 failure for Lindy Chamberlain to be wrongfully convicted) it shows the extent to which narrative is powerful in shaping legal judgment. And, after her infant daughter Azaria vanished near Uluru in 1980, Chamberlain insisted a dingo could have taken the child. However, this story was widely held to be implausible and the prosecution put forward a rival story that she had invented it to provide an alibi for murder.

¹ Jane B. Baron & Julia Epstein, *Is Law Narrative?*, 45 Buff. L. Rev. 141 (1997).

² *Chamberlain v. The Queen* (No. 2) (1984) 153 C.L.R. 521 (Austl.).

Despite the dependence on flawed forensic evidence, the prosecution version seemed more coherent and consistent with existing social assumptions and finally persuaded the jury. Only years later, with the corroboration of new physical evidence, did Chamberlain's story hold up and she was exonerated. legal decision-making will depend not only on the gathering of objective information through investigation but, also upon the plausibility of the narrative as perceived through contemporary cultural thought; and, thereby, illustrates how vulnerable the Court is to the persuasive power of the narrative, rather than to the reliability of the evidence.

Courts do not tell all the available facts but rather choose the facts that appear visible or invisible and do not by filtering them through legal categories. In this regard, the meaning of what is referred to as truth in law cannot be detached to the way the story is told. A question of the relationship between narrative persuasion and legal legitimacy then is to ask, "whose story wins."

I. Narrative Theory in Jurisprudential Thought

The initial disturbance of the view that law is an analytic business was the first pronouncement of narrative jurisprudence. It has been demonstrated by scholars like **Robin West** that the practices of jurisprudence themselves work by repetitive narrative mode.

Traditions of natural law tend to present law as a moral hero, as a romantic tale where justice will triumph. Legal positivism takes a less demanding attitude in its turn, presenting law as a social fact with no relation to the moral cohort. There is a liberal constitutionalism narration of a slow process of development and reconciliation, whereas statist or critical accounts are more tragedy oriented and depict law as a tool of repression.³ These do not add ornaments in style; they form what law has come to be. In all situations in which a judge perceives a statute or a theorist defines legality, he or she does so as part of a narrative that already frames law as good, dynamic, forward-looking or repressive. It is the plots inherited which filter legal truth. In the way that evidence is considered, a narrative about law is already selected. If jurisprudence follows a narrative approach on the theoretical level, then adjudication follows a narrative approach on the practical level. The trials are not conducted by using cumulative facts and processing them mechanically by rules. This shows that fact-finder's develop opposing stories of what has happened and evaluate them in terms of their coherence, completeness and

³ Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. Rev. 145 (1985).

plausibility as work on the story model of adjudication has made evident. The meaning of evidence is created by its location in a larger story. A part of evidence receives strength only when it is applied in a more comprehensive history of cause, sequence, and effect. Jurors and judges put questions, implicitly frequently: does this story make sense? Does it cover all the available facts? And what is a better alternative? The most convincing of the stories answering these questions is the legal truth. However, narrative coherence does not mean truth to the fact. The gaps in evidence presented in stories can be absorbed by welcoming assumptions. They can reduce complex realities to morally understandable curves. A convincing story can be authentic in the sense that it goes according to cultural beliefs regarding the manner in which individuals conduct themselves and conflict situations occur. Not that reason loses its ground in courts, but that reason works within the story which prescribes the clarity of reward and the last instance of it as opposed to uncertainty and monolith. A hybrid product is a legal truth, as it is part evidentiary assessment, part narrative satisfaction.⁴

Similarly, in *(People v. Simpson, 1995)*,⁵ the trial of O.J. Simpson in the United States shows how powerful storytelling can overcome the evidence. Despite extensive forensic evidence including DNA, blood analysis, physical exhibits it came because of the defence successfully reframing the case by constructing a counter narrative at its centre that was based on police misconduct, racial bias and the contamination of evidence. In his final closing argument, Johnnie Cochran used the well-known phrase, **“If it doesn’t fit, you must acquit”**.⁶ By using this phrase, the defence turned complex scientific evidence into an easy, emotionally moving, and logical explanation of reasonable doubt. The case exposes how jurors do not actually process evidence in an objective and objective way but rather interpret evidence in frames provided by cultural context, media influence, and psychological disposition. In this sense, the Simpson trial highlights an important understanding of the role of narrative in jurisprudence: legal persuasion works not just through the telling of stories, but through their reception the way fact finders listen, interpret and connect the evidence on the table with cogent and emotionally satisfying stories. “If legal truth is a product of narrative contestation, then isn't justice also a matter of generating judicial and professional practices of critical listening, aware of all forms of bias, resistant to all forms of narrative seduction, and alive to the

⁴ Tristan L. Duncan, *Narrative Jurisprudence: The Remystification of the Law*, 7 J.L. & Religion 105 (1989).

⁵ *People v. Simpson*, No. BA097211 (Cal. Super. Ct. Oct. 3, 1995).

⁶ Johnnie Cochran, Closing Argument, *People v. Simpson* (Cal. Super. Ct. Sept. 27, 1995), <https://famous-trials.com/simpson/1868-cochranclosing> (last visited Feb. 17, 2026).

incompleteness of narratives claiming to explain the facts of law's reality."⁷

II. Narrative Boundaries and Victim Impact Statements

The more difficult and problematic question is not whether this matters, but rather what stories should be incorporated if law is always a place of narrative and so some storytelling. Law is not a neutral factor when it comes to granting or including story. We can't just demand "more stories." To limit, marginalize, or exclude the stories that must never be revealed, as well as to give them broad legal attention, we must, at the very least, make normative and political decisions. Recent discussions over victim impact statements and, most notably, the *Booth v. Maryland*,⁸ in which the Supreme Court acknowledged that a legally required assessment of the defendant's circumstances and character was required for imposing the death penalty, are the source of this tension. The concern here is not that victim impact statements are irrelevant or lack moral and emotional content, but rather that their potential impact might supplant the legally relevant narrative. Victim impact statements cannot simply supplement the evidence; they redefine it. In part, they redefine the context by which evidence is received and, in turn, may inspire feelings of sympathy, anger, and vengeance, and raise the concern that the law itself has not anchored the decision-making process, supplanting it with the more compelling narrative. In short, the work of the law is not to suppress narrative at all; it is to make a judgment about narrative boundaries, to determine at what points the story helps us to grasp legal truths, and at what points it obscures them. Such a determination is inevitable, thoroughly political, and central to any discussion of narrative jurisprudence that treats legal truths as more than an abstraction.

The defence of counter storytelling by *Richard Delgado* gives light to the disguised appearance of the dominant narratives as neutrality. Companies narrated in privileged place by those who have stayed on the right side of the whole discounting, fairness, logic of markets, or social order, tend to be termed as being no story at all. They appear as common sense. As a contrast, when narratives have been created by marginalised communities, the premises are taken up to examine their authenticity, generalisability, and relevance to the doctrine. Autobiographical descriptions of misery can be accepted as agony narratives, which can sympathize without disturbing metaphysical theses. Structural hierarchies are also questionable

⁷ Anthony G. Amsterdam & Jerome Bruner, *Minding the Law* (2000).

⁸ *Booth v. Maryland*, 482 U.S. 496 (1987).

influenced by counterstories that are resisting. The narrative battle becomes a battle of the epistemological rule. Legal truth is more apt to favour stories which tend to correspond to the majoritarian expectations and to brand disruptive stories as either political or unrigorous.⁹ This imbalance is especially evident when the law is being changed by reforms to alter the locked-in practices. Judicial rulings that express a new ethnography of equality or justice can fail because they cannot defeat the back stories on which they are functioning. Transformative judgments are absorbed and reduced by the cultural weight. One may say a principle as it is practiced in the judiciary platform and once issued; especially within a society where leading discourses are not apprehensive of its lawfulness when coupled with other Australian legal professions. It is not only a matter of persuasion in the courtroom, though, that defines who tells a better story, but also within the larger setting of the story in which law is immersed.

Legal truth, far from being an objective discovery, appears as an active construct that is shaped by the choices of narratives emerging in accordance with the power dynamics and institutional assumptions at hand. Indeed, as critical race theorists such as **Delgado** have shown, legal narratives, in the majority of cases, tend to mirror the experiences and assumptions of the powerful within society, in contrast to the narratives of the less powerful, who are characterized as being purely subjective, emotional, and so forth, as is clearly shown in the following: "Moreover, the tension between the 'rational world paradigm' and the 'narrative paradigm' suggests that the legal narratives, notwithstanding the fact that they are presented as purely logical argumentations, inherently incorporate elements of the 'narrative paradigm' by virtue of the fact that they are necessarily grounded in the 'narrative paradigm' in the sense that the narratives refer to the experiences that are embedded in the narratives and are therefore 'truth'.¹⁰

In criminal adjudication, courts do not assess facts in isolation but through narratives that give coherence and meaning to evidence. In judging, there is inevitably a choice to be made between competing narratives of a situation, which are all necessarily predicated on assumptions about veracity, social context, and normative conduct. Thus, when the dominant narratives, as reflected in the judgment of the courts, are accepted as true, the actualities of the lives of the marginalized individual under scrutiny may be lost to the courts, including in the

⁹ Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. Cal. L. Rev. 545 (1995).

¹⁰ Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 Mich. L. Rev. 2411 (1989).

presence of material evidence. Somewhat paradoxically, therefore, the actual constitutional role of counter-narratives is a critical one, as they force the courts to think about the frameworks within which they judge, as a contrast to the more compelling narratives presented as the truth.¹¹

III. Race, Media and Manufactured Guilt

The social standings of a particular race or a section of society and the opinions formed around it influence the court's ruling. A clear example of this imbalance is seen in "**The Central Park Jogger Case (1990)**"¹² where the societal racism projected in the trials of Five Innocent Children, where they were forced to admit to raping the victim by the pressure of the investigating officers and their racial mindset. The public prosecutor used this hatred of the people to form his narratives to convince the judge that the crime is somehow connected to the race they belong to. Various political leaders supported this narrative and framed the Blacks Community as the culprits in general. Due to a false narrative pushed by the People the Children were convicted as the court ruled them guilty. This costed them years of their life until the actual culprit came out and confessed to the crimes.¹³ The Children were then released of all their charges, and the government provide compensation and a public apology to them.¹⁴ But is a monetary compensation and a hollow apology is sufficient for the important years of life it costed them?

The fact is marginalized groups are overlooked sometimes during legal decision-making processes because of a preferential promotion of more familiar or socially dominant stories, and a neglect to fully consider the realities and evidence presented by marginalized participants. Judges frequently prefer dominant stories during assessments, and this builds legal truth on what is believed, rather than what is demonstrated as fact. However, the *State v Sarvjeet Singh Bedi*¹⁵ illustrates how this balance of power works in reverse, illustrating that the power in constructing narratives is not exclusively decided by social constructs, but also by what story or narrative is most in line with the contemporary social movements in the media at

¹¹ Frederick G. Snyder, *Nomos, Narrative, and Adjudication: Toward a Jurisgenetic Theory of Law*, 40 Wm. & Mary L. Rev. 1623 (1999).

¹² Timothy Sullivan, *Unequal Verdicts: The Central Park Jogger Trials* (1992).

¹³ Sharon L. Davies, *The Reality of False Confessions—Lessons of the Central Park Jogger Case*, 30 N.Y.U. Rev. L. & Soc. Change 209 (2006).

¹⁴ *People v. McCray*, No. 4661/89 (N.Y. Sup. Ct. Dec. 19, 2002).

¹⁵ *State v. Sarvjeet Singh Bedi*, FIR No. 1244/2015 (Metro. Mag. Ct., Tilak Nagar, W. Delhi Sept. 28, 2019) (India).

the time. The case in 2015, in which Sarvjeet Singh was the accused of sexual harassment, became immediately popularized around the world through social media, creating immediate institutional support from political figures, celebrities, and the Police Force, arresting Singh in under 24 hours and branding him a "National Pervert" in the Indian media.¹⁶ This case demonstrates that "truth" is constructed in the form of validation of narratives that reflect institutional or social movement aspirations, where "what is believed" is being asserted over "what is demonstrated as fact," regardless of which party is traditionally seen as 'marginalized.'

"A distinctively epistemic genus of injustice, in which someone is wronged specifically in their capacity as a knower, wronged therefore in a capacity essential to human value."

- Miranda Fricker¹⁷

IV. The Courtroom as Theatre

Narrative jurisprudence is grounded in the assumption that law follows story. In court cases, lawyers have narrations about injury and redress, and judges take over such narrations.¹⁸ The primary article in this is by *Milner S. Ball, The Play of the Thing: An Unscientific Reflection on Courts Under the Rubric of Theatre*¹⁹ since it acknowledges and highlights the courtroom as a stage which is intended to tell a story. The architecture of the court, language and the phases of the judicial proceedings are united to provide dramatic presentation. Such spectacle is deliberate; this makes legal proceedings dignified and legitimate.

It is significant that Ball refers to trials as unscientific, as this implies a purpose other than pursuit of scientific truth: a courtroom is a place of contesting accounts. Both parties give their side of the story with the constraints imposed by the rules of what can be available. In this sense, it does not matter what has come to pass but what can be divulged as the legal truth. Being the most persuasive, the story is not necessarily true. The question, however, is not necessarily what happened, but the account of what happened given by whom becomes

¹⁶ *Indian Media Declared Sarvjeet Singh a "Pervert". Four Years Later, the Court Acquitted Him*, NewsLaundry (Oct. 31, 2019), <https://www.newsLaundry.com/2019/10/31/indian-media-declared-sarvjeet-singh-a-pervert-four-years-later-the-court-acquitted-him>.

¹⁷ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (2007).

¹⁸ Teresa Godwin Phelps, *Narrative and the Legal Discourse*, 42 J. Legal Educ. 143 (1992) (reviewing *Narrative and the Legal Discourse: A Reader in Storytelling and the Law* (David Ray Papke ed., 1991)).

¹⁹ Milner S. Ball, *The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater*, 28 Stan. L. Rev. 81 (1975).

authoritative. There is no such thing as a clear and untouched legal truth that is not ranged within an interpretation; a construct of legal truth is created by the practices of storytelling which are defined by institutional norms, cognitive expectations, and cultural power.

The dramaturgical structure does not imply that judicial power is deceitful and unnatural. Rather, it is a means of getting to know the actual nature of courts. Storytelling, performance and ritual are major components of the legal institutions especially in democratic societies where justice must be seen. The credibility of public trials is attributed to their openness. Nevertheless, one should be aware of the theatrical nature of law. When the priorities become centered on conviction, rather than seeking the truth, the stakes become higher than mere miscarriage of justice, to decline in popularity of the justice system.²⁰

V. Narrative in International Legal Discourse

Narrative does not confine in domestic courts it expands to an international level as well as it would be insincere to idealize narrative as one which is merely emancipatory. An example of the way narrative works in the context of the need to restructure sovereign debt of Iraq by *Hadi Nicholas Deeb* is a description of the process in terms of its emphasis on logic. In his address to the Paris Club, the Iraq finance minister had not neglected economic reasoning in favor of the appeal to the emotions. Instead, it was an amalgamation of the two. The crisis was described as a narrative of trouble, war, brutality, instability, whereas the solution was set out by using if-then forms of consequence-driven thinking. Urgency and moral seriousness were emphasized by emotional language, but the ideology of law, overall, is more in line with detached and referential discourse. Emotion was turned into language of need. The account of the language ideology that Deeb provides is especially informative.²¹ Legal culture socialises a dogma that argument is legitimate and must seem to be rational, non-situational, and general. Attorneys are conditioned to repress blatant ethical impulse towards rational thought. But such repressions are not complete. Emotional reason lives on but is restructured and is masqueraded in the form of rational orders. The appeals to fairness transform into the arguments regarding equity between creditors. Suffering manifestations are threats of instability and universal danger. It is not the narrative most emotionally strong as such, but the narrative that effectively does the right combination of affect and deduction. Disciplined

²⁰ Marett Leiboff, *Towards a Theatrical Jurisprudence* (2019).

²¹ Hadi Nicholas Deeb, *Constructing Restructuring: Legal Narrative, Language Ideology, and the Financial Rehabilitation of Iraq*, 73 *Law & Contemp. Probs.* 109 (2010).

narrative performance is what generates legal truth. This reorganization of Iraq also illustrates the transfer of the narrative of speech to the binding contracts. The preferential treatment of the crisis issue as a global one, the demand to operate in emergencies, the branding of debt as unsustainable was not something that moved around as rhetoric. They influenced the negotiation balance and made the terms of substantive form of restructuring agreements informed. Narrative here presented was natural and not artificial. Language used to systematise perception of problem also systematised the legal solution.

Meanwhile, individual creditor complaints were also normalized and incorporated into form responses to obliterate specific narratives in an institutional level consistency. Laws needed to have the management and sometimes the erasure of other histories. These forces express a strain in the midst of narrative jurisprudence. On the one hand narrative reveals the myth of pure objectivity. Law does not follow a clear reflection of reality since it is the practice of meaning-making, which chooses between competing accounts. Narrative, on the other hand, does not solve the problem of legitimacy. Incomprehensible narratives may be used to explain unfair results. Structural inequalities can be concealed with emotionally crystallizing stories. The very understanding of the fact that law is narrative leaves us without any idea as to what stories should be dominant.

The tension identified narrative jurisprudence is not related to the narration itself, but to the unequal circumstances the competing stories are heard in courtrooms. There can be no court with no narratives, since all claims, defence, and decisions issue from a narration of what occurred and why it is of significance. The major issue of interest remains one of fairness, who can tell their story with the assumed ability to persuade, who has their story assumed to be credible, and whose story is undermined from the outset due to their social status, their education/degrees, or low character. Therefore, the legal truth, in this sense, is really a negotiated result of both power, persuasiveness, and expectations of the audience, more than pure factual determination.²² This means that, even though there can be a degree of persuasion related to the narratives, the decisions must still be based on indisputable evidence, i.e., not based on rhetoric. Thus, the absence of the evidentiary support of the story means that the evidentiary one must still triumph.

²² Harlon L. Dalton, *Storytelling on Its Own Terms*, in *Law's Stories: Narrative and Rhetoric in the Law* 57, 58 (Peter Brooks & Paul Gewirtz eds., 1996).

An institution of justice that is conscious of being theatrical can be more effective in preventing the spectacle illusion crowding out the content, Storytelling in this system helps the process of finding the truth, not replacing it. Narrative jurisprudence shows the story to be part of the law and not an exception. As **Darren Jackson** makes such a convincing case, legal facts, in fact, exist not as an autonomous set of facts; instead, they only attain meaning when understood in a web of narrative connections which organize, interpret and give meaning to events and outcomes. Legal truth is not just a reflection of what happened. It is shaped by how the facts are connected that are approved by legal institutions, all while staying within the boundaries of evidence and procedure.²³ Stories tend to impress the juries and the judges because human thinking is sensitive to meaning, closure and moral understanding instead of the mere aggregation of facts. According to the notions of Robert Cover²⁴ and Peter Brooks, narrative theory demonstrates that the work of law decision making is affected by profound, and sometimes subconscious, narrative frameworks.²⁵ As it might occur in a criminal case, the same sequence of happenings might have a quite different meaning when it is interpreted as a narrative of self-defence, or as a design. In this connection, the effectiveness of legal advocacy does not lie in abandoning the truth, but in the narration of a story that brings facts in a logical, credible, and intelligible morality. The successful story is the one that most closely matches the expectations of the legal imagination

For example, in a criminal trial, the same facts can be given a very different meaning depending upon whether they are understood as part of the narrative of self-defence or premeditation. For example, as was seen in the case of **Butcher v Lachlan Elder Realty Pty Ltd**,²⁶ the interpretation of facts is not only based upon the facts themselves, such as the presence or absence of a disclaimer, but also upon the narrative through which these facts are presented and understood. In this sense, the successful practice of legal advocacy is not about forsaking the truth but rather telling a story that makes sense of the facts in a coherent and believable manner.

A question like whose story wins thus challenging a question of epistemology as well

²³ Darren Jackson, *The Role of Narrative in the Judicial Process*, Address at the Australian Academy of Law Event "The Narrative Voice in Fiction and in Law" (Oct. 27, 2021), <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackson/jackson-j-20211027> (last visited Feb. 20, 2026).

²⁴ Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 Harv. L. Rev. 4, 5 (1983).

²⁵ Robert A. Ferguson, *Untold Stories in the Law*, in *Law's Stories: Narrative and Rhetoric in the Law* 84, 85 (Peter Brooks & Paul Gewirtz eds., 1996).

²⁶ *Butcher v. Lachlan Elder Realty Pty Ltd*. [2004] HCA 60, (2004) 218 C.L.R. 592 (Austl.).

as normativity. In the epistemic sense, the legal truth arises when a story passes institutional tests of coherence and fits into previously existing categories and is an appeal to the prevailing cultural norms. This process, on a normative level, can have a bias towards privileging some voices over others. Sidelined accounts tend to fail to fit into the ideology of legal language. Disjointed experiences of trauma, such as, might seem incongruent or unrealistic when compared to linear requirements of the anticipated manner of a story to be told. Realities of society are complex and may fail to fit in elucidation systems with strict requirements of doctrinal fixity.²⁷

VI. Precedent as Authoritative Storytelling

It is essential in the role of judges. Their views are not just rule-based, but they edit stories. They create the authoritative version of events that is included in the legal memory through the process of selective quotation, characterising facts, and framing of issues. The appellate courts, especially, play the role of the rewriters of trial stories in which they give prominence to some of the attractions and eliminate others. By so doing, they convert a single tale to precedent. Later cases will then resort to this narrative template to support specific patterns of perceiving conflict and responsibility. All this does not mean that law can be reduced to the pejorative sense of an instance of storytelling. Rules, the standard of proofs, and other limitation are important. As we have previously seen in various infamous cases such as the *United States v. Dellinger* or famously known as “*The Trial of Chicago Seven*” where the accused were treated according to the narratives formed by the general public and the public prosecutor, so much so that one of the accused was even denied of appointing a lawyer. This curtailment of basic Human Right was just one of the reasons why this case is so famous. The mockery of justice shown in this case by the judge was politically motivated and was based on the narrative formed by the people. The U.S. court in an appeal decision reversed the conviction of the innocent men who were not even allowed to access their fundamental rights in the trial and sharply criticised the trial judge’s conduct and identifying multiple procedural errors. Many related contempt convictions were also overturned and the government ultimately declined to retry the defendants.²⁸

²⁷ Lisa Kern Griffin, *Narrative, Truth, and Trial*, 101 Geo. L.J. 281 (2013).

²⁸ *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972).

“No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning.”

- Robert Cover²⁹

While the narrative pervasiveness of legal processes becomes increasingly recognised, a critical self-reflection of how we work with these narratives is still underdeveloped. **Richard A. Posner, in his review of "Law's Stories: Narrative and Rhetoric in the Law"**³⁰ is one of the most prominent critics of the book, criticizing notably the book for its absolute lack of "any sustained consideration of the methodological issue by what means is one to study the story element in law?" This points to an important gap: in addition to simply identifying narratives, a strong narrative jurisprudence needs to wrestle with the analytical tools and frameworks for their deconstruction. Posner goes further, noting that even the volume's literary theorists did not regularly address techniques "special to narrative" including choice of narrator, construction of an implied author, or management of time, which are fundamental to our understanding of the way stories are constructed and received.

However, perhaps Richard Posner is correct in emphasizing the importance of methodology, but it is important to make the argument that legal narratives operate differently from literary ones. The context of the courtroom, with all its inherent rules of evidence, procedure and adversarial structure, already set substantial constraints on storytelling that literary analysis cannot capture. Therefore, a too-strict application of literary tools, which have been developed for the field of imaginative literature, might prove counter-productive, and might miss the human/moral dimension that is so special to legal disputes. However, because there are no known specific analytical tools to this specific field of law, narrative jurisprudence might very well lose some of its clarity or become a mere opinion or impressionistic manner due to the lack of enough solid groundwork to understand the truly significant effects that stories told about law have on judges and juries.³¹ A structured, but context-sensitive, methodology is necessary not only to know how this influence operates but also to avoid the manipulation or distortion of legal narratives so that the persuasive power of stories will serve

²⁹ Cover, *supra* note 24.

³⁰ Richard A. Posner, *Legal Narratology*, 64 U. Chi. L. Rev. 737 (1997) (reviewing *Law's Stories: Narrative and Rhetoric in the Law* (Peter Brooks & Paul Gewirtz eds., 1996)).

³¹ Richard A. Posner, *What Do Judges and Justices Maximize? (The Same Things Everyone Else Does)* (Coase-Sandor Inst. for L. & Econ., Working Paper No. 15, 1993).

not undermine justice but advance it.

The legal actors cannot invent facts in ways they deem appropriate. And yet confined as these, narrative work is sure. Dates need to be arranged, motives need to be extrapolated, consequences need to be projected. This desire to objectivity is associated with the need of interpretation. The law when it comes to truth is in a precarious position between correspondence and coherence. Appreciation of this fact does not imply the foregoing of seeking truth. It tends to introduce a more intellectual approach to the stories which make up the result of legal practice, even seen in the initial stages of a legal journey the authoritative present at the first step are the ones who often involve various narratives either from the societal norms or from their own bias. Political pressure and influence also contribute to the pushing narratives of these frontline so-called protectors of the justice and innocents.

VII. False Narratives in Indian Criminal Justice

As we have seen in the case of *Nupur Talwar vs state of Uttar Pradesh* how the lack of evidence opens a scope of pushing a narrative of the person in authority. The narrative here pushed by the UP police that the parents have killed the daughter and the house help as they suspected an immoral relationship between them, the UP police pushed their narrative of “Honor Killing” done by the parents to protect their image in the society strongly so much so that the parents had to face judicial custody and mental agony all because of a false narrative formed by the UP police and backed up by the general consensus of the public, the media and the public trials convicted them of murder of their underaged daughter even before a full-fledged inquiry was done. Although these narratives were later found shallow and opinionated, they still caused the parents of the daughter to suffer and were held into custody until proven innocent.³² These narratives not only cost the suffering of one individual it affects the whole society at large and impacts the respect and credibility of the justice system in the eyes of a commoner.

The cognitive analysis of *Steven Winter* enriches this description by stating the reason why narrative persuasion is so effective. Embodied schemas, such as movement toward a goal, imbalance and restoration, conflict and resolution, are depended upon to guide human cognition in the process of comprehending events. Legal lawsuits are automatically coded in

³² *Nupur Talwar v. State of U.P.*, Crim. Appeal No. 293 of 2014 (Allahabad High Ct. Oct. 12, 2017) (India).

such terms. An injustice is a disturbance of balance. There are a brave character and an evil character. A judgment restores balance. These structures are not arbitrary conventions, and they are patterns of analysis that render stories available. A litigant who manages to position herself as the legitimate heroine in the agonistic game, and the opponent her as the cause of inconvenience, identifies her narration with these deep narrative preconceptions. It is usually the story which feels most comfortable in these cognitive models which wins. Legal truth is unavoidable since it will fulfil the patterns of knowing that are antecedent to conscious thought. Narrative dominance is not a question of cognitive fit, however. Cultural power also influences it.³³

Legal truth extends beyond agreement observability with empirical reality and ocular regulate, entails a dynamic and flowing concept that is created by the discourses that society and legal construct consider sound, rational, and perhaps credible. The courts thus need to become more cognizant of the contribution made by cognitive schemas and cultural assumptions to the determination of plausibility, and legal education needs to question the linguistic ideology according to which certain forms of expression are superior to others. Legal truth is not simply a naked determination of fact, nor is it intentionally created, but as a consequence of an organised competition narrative embodied in the institutions of the expectations, collective patterns of thinking, and power allocations. The case of *Vishnu Tiwari vs State of Uttar Pradesh* gives this precarious construction clear definition, because of its tragic case. Tiwari was convicted based on a tale that was riddled with inconsistencies and had no firm evidence attached to it yet managed to suggest than prevailing assumptions about the case sufficient to make their way to the lower courts and resulted in a quarter century of unreasonable imprisonment. His acquittal as a result of careful re-examination of the evidence and the incompleteness of the original prosecutor narrative is indicative of the fact that judicial truth is highly relative to what story is being told and how it is being told and whether it can withstand the rigours of the hardest examination. So, to know law is not to know its statutes and precedents, but to know the power of its stories who is to tell them, and who are made authoritative and the result of this when they succeed.

VIII. Conclusion

The question produced by this article Whose story wins? eventually makes it clear that

³³ Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 Mich. L. Rev. 2225 (1989).

the question is not rhetorical, but it is foundational. The courts do not exist in the world of pure reasoning. They are operating with cultural systems, institutional restrictibility, and cognitive schemes that irresistibly influence the interpretation of facts and authorized accounts. Legal truth is not an unsullied finding, nor is it a debunked simulation but, so, is a skilled piece of work created at the point of evidence, persuasion and institutional judgement. The recognition of the narrative aspects of adjudication does not in any way downplay the gravity of the law. Quite on the contrary, it explains its accountability. There are always decisions to be made in every trial: Which facts do we want to foreground, which inferences to make, what do we want to characterise conduct, what do we want to frame motive, whether we want to sequester events in the story of an initial account. Judges are not appeals to rules that they write out authoritative versions of events. Those versions are refined and stabilised by appellate courts and turned into templates of specific narratives into precedent. Such narrative forms also eventually influence the legal imagination more generally, which reduces the way future conflicts are experienced and settled.

The thing is that it is not storytelling that is dangerous, but unconscious storytelling. When hegemonic social suppositions about race, gender, morality or class quietly apply to plausibility tests, some descriptions will become received as natural and others branded exaggerated, emotive or unreliable. Testimonial injustice is not created by direct rejection but is created by having grey spots on credibility. This imbalance can be further enhanced by media pressure, political climates and institutional defensiveness. There the coherence of persuasion can counteract the weakness of evidence, and the coherence imposed by familiarity with a story by the sheer force of narrative can take the place of the critical inquiry.

Narrative is liberatory as well, however. Traditions of counter-storytelling show that contesting the dominant narratives may reveal concealed assumptions and extend the accounts of experiences that the law is aware of. A judiciary that is interested in the narrative forms can develop the practice of critical listening that asks the question of why one story appears to work, what kind of background assumptions are provided to attempt to make the story work, and which voices are left out. It does not presuppose that such awareness will make us forego evidentiary rigor. Instead, it strengthens the art of proving something because it divides the area of persuasion and the proven fact. The law is in a precarious existent between coherence and correspondence. It tries to replicate reality but necessarily, it organizes it. The understanding of this duality can be used by the legal actors to undertake adjudication with

increased humility and methodical clarity. This is not to kill narrative which is an impossible mission but to make sure that storytelling is not lost but is grounded on evidence and framed within procedural fairness. Ultimately, legal truth is conditioned by the narratives that the institutions are ready to listen to, to be tested, and legitimised. To pose the question of whose story is the winner is to challenge the moral undertakings of the proper legal system itself. Justice is reliant not on the nescience of narrative, but on the integrity with which the narrative is being received, scrutinized and, where transpiring, challenged.