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LET'S TALK ABOUT LEX: NARRATIVE ANALYSIS AS BOTH RESEARCH METHOD AND TEACHING TECHNIQUE IN LAW

Abstract

Law is saturated with stories. People tell their stories to lawyers; lawyers re-tell their clients' stories to courts; legislators develop regulation to respond to their constituents' stories of injustice or inequality. This article describes an approach to first-year legal education that respects this narrative tradition. In particular, it outlines the curriculum design and assessment scheme that deploys narrative methodology as the central teaching and learning device.

This narrative approach to legal education is a fresh twist on the teaching-research nexus. The link between teaching and research has occupied growing interest in the scholarship of higher education. Initially cast as a clash of civilizations, more recently, teaching and research are seen as inter-related and complementary: research outputs can inform curriculum content, research skills can be incorporated in the course design, research on teaching effectiveness can guide course instruction, and research-specific values of critical inquiry and evidence-based reasoning can steer the learning approach. However, this article argues that a narrative approach to legal education goes further than this. It does more than simply *incorporate* research into teaching; it *transforms* a recognised qualitative research method — narrative analysis — into a teaching technique.

I Introduction

Law is narration: it is narrative, narrator and the narrated. As a narrative, the law is constituted by a constellation of texts — from official sources such as statutes, treaties and cases, to private arrangements such as commercial

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contracts, deeds and parenting plans. All are a collection of stories: cases are narrative contests of facts and rights; statutes are recitations of the substantive and procedural bases for social, economic and political interactions; and private agreements are plots for future relationships, whether personal or professional. As a narrator, law speaks in the language of modern liberalism.[1] It describes its world in abstractions rather than in concrete experience, universal principles rather than individual subjectivity.[2] It casts people as 'parties' to legal relationships, structures human interactions into 'issues' or 'problems', and tells individual stories within larger narrative arcs such as 'the rule of law' and 'the interests of justice'.[3] As the narrated, the law is a character in its own story. The scholarship of law, for example, is a type of storytelling with law as its central character. For positivists, still the dominant group in the legal genre,[4] law is a closed system of formal rules,[5] with an 'immanent rationality'[6] and its own 'structure, substantive content, procedure and tradition,'[7] dedicated to finality of judgment.[8] For scholars inspired by the interpretative tradition in the humanities, law is a more ambivalent character, susceptible to influences from outside its realm and masking a hidden ideological agenda under

1 Takao Tanase, *Community and the Law: A Critical Reassessment of American Liberalism and Japanese Modernity* (Luke Nottage and Leon Wolff trans, Edward Elgar, 2010) 6–9.

2 In a literature too voluminous to cite, critical theorists, from feminists and critical race scholars to postmodernists, have sharply rebuked law's claims to neutrality and objectivity. The criticism is that these claims cloak the law in a false universality when, in fact, it privileges the interests and world-view of dominant groups in society. See, eg, Rosemary J Coombe, 'Context, Tradition, and Convention: The Politics of Constructing Legal Cultures' (1990) 13(2) *APLA Newsletter* 15.

3 This does not necessarily make the narrative perspective interesting or compelling. For example, in what could easily apply to most positivist accounts of law, Fineman criticizes 'bland portraits' of workplaces that focus on governance structures, hierarchies, resources and processes — where the 'human' is abstracted ('human resources', 'human capital'), boxed and categorised into 'variables', and subsumed under larger categories such as entities, firms, production and profits. For Fineman, this misses the point that an organization — and, by analogy, so too law — is a site rich with emotional subjectivity. See Stephen Fineman, *Understanding Emotion at Work* (Sage, 1993) 1.

4 According to Epstein, 'huge portions of legal scholarship … are devoted to the routine tasks of lawyers.' Richard A Epstein, 'Let "The Fundamental Things Apply": Necessary and Contingent Truths in Legal Scholarship' (2002) 115 *Harvard Law Review* 1288, 1288.

5 Ian Duncanson, 'Degrees of Law: Interdisciplinarity in the Law Discipline' (1996) 5 *Griffith Law Review* 77, 78–9.

6 W Bradley Wendel, 'Explanation in Legal Scholarship: The Inferential Structure of Doctrinal Legal Analysis' (2011) 96 *Cornell Law Review* 1035, 1073.

7 Alan M Dershowitz, 'The Interdisciplinary Study of Law: A Dedicatory Note on the Founding of the NILR' (2008) 1 *Northwestern Interdisciplinary Law Review* 3, 4.

8 Richard K Sherwin, *When Law Goes Pop* (University of Chicago Press, 2000) 12.

its cloak of universality and neutrality.[9] For social scientists, law is a protagonist on a wider social stage, impacting on society, the economy and the polity in often surprising ways.[10]

New law students enter this complex web of intersecting narratives when they enter law school. Little wonder the first-year experience in law has been described as a 'struggle'![11] Like all first-year university students, new law students confront the shock of the new: navigating a new campus, choosing and enrolling in courses, locating classrooms, finding new friends and establishing new social networks, buying armloads of textbooks, making sense of subject outlines, balancing work with study and completing multiple assignments on time.[12] They must also experience the growing pains associated with intellectual development,[13] from assuming responsibility for their own learning, to accepting that there are no 'right' or 'wrong' answers or 'good' or 'bad' positions but judgements to make and defend through analysis, reasoning and argument.[14] But beyond this is the sink-or-swim immersion in a swirl of legal stories. To survive, new students need to achieve literacy in the language of law. But this raises the question: how do law schools prepare students to 'talk about lex'?

This article argues that the solution to the problems narratives create in law lie in harnessing its inherent narrativity. More specifically, the article submits that narrative analysis, a well-established qualitative research method, can be re-interpreted and applied as a teaching-and-learning technique to empower novice law students to embrace and engage in the plots, characters, settings and themes of the law. Indeed, such a narrative approach to legal education can furnish an effective

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9 For a tripartite classification of legal research into doctrinal, humanities-informed and social-scientific models, see Mathias M Siems and Daithí Mac Síthigh, 'Mapping Legal Research' (2012) 71 *Cambridge Law Journal* 651. This is one of the few articles to attempt to identify patterns and trends in legal research. The bulk of the literature is concerned with the tug-of-war between black-letter positivists and interdisciplinary scholars: see, eg, Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction to the Conduct of Legal Research* (Pearson Education, 2007) 35–7. For a representative criticism of the black-letter law tradition, see Deborah Rhode, 'Legal Scholarship' (2002) 115 *Harvard Law Review* 1327. For an attack on the incoherence of much interdisciplinary legal research and a spirited defence of doctrinal scholarship as a mature, settled science, see Charles W Collier, 'Interdisciplinary Legal Scholarship: In Search of a Paradigm' (1993) 42 *Duke Law Journal* 840.

10 Paddy Hillyard, 'Invoking Indignation: Reflections on Future Directions of Socio-Legal Studies' (2002) 29 *Journal of Law and Society* 645.

11 Dominic Fitzsimmons et al, 'Optimising the First Year Experience in Law: The Law Peer Tutor Program at the University of New South Wales' (2006) 16 *Legal Education Review* 99, 99.

12 Kirk Kidwell, 'Understanding the College First-year Experience' (2005) 78 *The Clearing House: A Journal of Educational Strategies, Issues and Ideas* 253, 253.

13 William G Perry, *Form of Intellectual and Ethical Development in the College Years* (Holt, Rinehart and Winston, 1970); William G Perry, 'Cognitive and Ethical Growth: The Making of Meaning' in Arthur W Chickering and Associates (ed), *The American College* (Jossey-Bass, 1981) 76.

14 Kidwell, above n 12, 254.

entry into the professional and disciplinary traditions of law for new students. There are two chief reasons why. First, a narrative approach can lend coherence to the assortment of topics that typically inform an introductory law course. Such topics include the design, history and contexts of the legal system; the structure of the legal profession and basics of professional practice; and the research, analysis, interpretation and application of primary legal texts.[15] This is important because, unlike substantive law courses, introductory law courses cannot draw on doctrine to provide a unifying theme or overarching structure. Instead, story-telling devices, such as narrative arcs, character development and plot progression, can lend logic to the sequence of topics. Second, a narrative approach can give effect to the central pedagogical principle that students should be at the centre of their learning experience.[16] This is achieved by students re-telling and re-framing law stories as their legal knowledge grows and their mastery of legal skills grow more sophisticated.

Beyond the pedagogical benefits, a narrative approach to the first-year learning experience is a fresh contribution to the teaching-research nexus.[17] The higher education literature argues that research should 'infuse' teaching by informing curriculum content, incorporating research skills within the course design, guiding effective teaching and even imparting research-specific values of critical inquiry and evidence-based reasoning.[18] A narrative approach to teaching law takes the next step: it 'fuses' narrative analysis, a recognised qualitative research method, with teaching delivery. As a qualitative research method, narrative analysis unmasks the cultural and social meanings people apply to their social worlds.[19] Re-interpreted as a teaching approach, the narrative method deploys hypothetical stories as the device by which students plot the design, operation and society-wide impact of the legal system. By adopting and adapting a research method to a teaching approach, this article rejects the rather negative portrait in the literature of a tension between research and teaching

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15 So much is clear from the table of contents in the following sample of introductory law texts: Catriona Cook et al, *Laying Down the Law* (LexisNexis Butterworths, 8th ed, 2012); Elizabeth Ellis, *Principles and Practice of Australian Law* (Lawbook Co, 2009); Nickolas James and Rachel Field, *The New Lawyer* (John Wiley & Sons, 2013); Kathy Laster, *Law as Culture* (Federation Press, 2nd ed, 2001); Claire Macken and Madeleine Dupuche, *Foundations in Australian Law* (Lawbook Co, 2012); Patrick Parkinson, *Tradition and Change in Australian Law* (Lawbook Co, 4th ed, 2010); Michelle Sanson et al, *Connecting with Law* (Oxford University press, 2nd ed, 2010); Prue Vines, *Law and Justice in Australia: Foundations of the Legal System* (Oxford University Press, 2nd ed, 2009). A notable exception is Stephen Bottomley and Simon Bronitt, *Law in Context* (Federation Press, 3rd ed, 2006), which is less about legal institutions and method and more about perspectives on law.

16 John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (Open University Press McGraw-Hill Education, 4th ed, 2011).

17 Angela Brew, *Research and Teaching: Beyond the Divide* (Palgrave MacMillan, 2006).

18 Lesley Willcoxson et al, 'Enhancing the Research-Teaching Nexus: Building Teaching-Based Research from Research-Based Teaching' (2011) 23 *International Journal of Teaching and Learning in Higher Education* 1.

19 Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (Sage, 3rd ed, 2002) 116.

in the legal academy[20] — that of an unhappy marriage-of-convenience that requires strategies and plans to keep together.[21] Instead, this article demonstrates that teaching and research can co-exist naturally, happily and effortlessly.

To be sure, story-telling is not new in legal education. In Socratic classes, for example, professors devise hypothetical scenarios to test student understanding of legal doctrine. In the more traditional lecture-tutorial format that dominates the delivery of legal education in Australian law schools,[22] the tutorial usually features a client problem that students seek to resolve by reference to the lecture material. In law examinations and assignments, students are required to advise fictional clients.

This article, however, describes a more ambitious narrative approach to law teaching, one in which stories frame the *overall* curriculum rather than illustrate *individual* doctrinal points. Part II of this article concretely illustrates this technique. Specifically, it describes how *Australian Legal System*, a compulsory introductory law course in the Faculty of Law at Bond University, integrated course-length client stories within its curricular and assessment design. Part III then explores the theoretical basis for this approach. Focused on narrative analysis, a well-recognised research method in the social sciences,[23] this part outlines the key elements to

20 Griggs is particularly despairing of the research-teaching nexus in law: 'The hypothesis that the university academic must have both a research and a teaching component to their work is under attack … Today, we observe, at times with concern, moves by senior university management to create teaching intensive and research intensive positions, the establishment of research-only centres, and a bifurcation that good teaching and good research don't always need to be seen as the hand that fits the glove.' Lynden Griggs, 'Foreword — Special Issue on the Research/Teaching Nexus' (2012) 22 *Legal Education Review* 237.

21 Sarah Ailwood et al, 'Connecting Research and Teaching: A Case Study from the School of Law, University of Canberra' (2012) 22 *Legal Education Review* 317; Marina Nehme, 'The Nexus between Teaching and Research: Easier Said Than Done' (2012) 22 *Legal Education Review* 241.

22 Kirsten Anker et al, 'Evaluating a Change to Seminar-Style Teaching' (2000) 11 *Legal Education Review* 97, 97.

23 See generally Jane Elliott, *Using Narrative in Social Research: Qualitative and Quantitative Approaches* (Sage, 2006). Elliott distinguishes between the *cultural* and the *social-scientific* study of narratives: at 3, 5. In the former, humanities scholars apply literary methods to explore the artistic, ideological and thematic properties within the fictional and non-fictional narratives. In the latter, social scientists apply a narrative-based analytical method to develop insights into the social world. Like Elliott, I adopt the social-scientific view of narrative analysis. My aim is to explore the prospects of adapting the social-scientific method to legal education in a way that empowers novice students to make sense of how law functions in the professional world (of lawyering) and the social world (of constituting a normative order). This is not to suggest that the alternative — insight into the multiple representations and meanings of the law — is less deserving, but, as Clarke argues in a different legal field, critique should never preface contextual understanding: see Donald Clarke, 'Puzzling Observations in Chinese Law: When is a Riddle Just a Mistake?' in C Stephen Hsu (ed), *Understanding China's Legal System* (NYUP, 2003) 93, 112–13.

narrative analysis, its applicability to the discipline of law and its potential for re-interpretation as a teaching and learning method. Part IV evaluates the teaching and learning benefits of a narrative approach to legal education. This part demonstrates that a narrative-informed curriculum is consistent with good practice in higher education because it entrenches student-centred learning, embraces the full power of the cognitive-apprenticeship model of student learning and ensures authenticity in the learning experience. A mix of evaluative data, from student surveys and unsolicited student feedback to an analysis of mid-semester student assessment, lends empirical support to these theoretical claims. Finally, Part V considers the implications this approach has for the teaching-research nexus in law.

II The Course

Australian Legal System is a compulsory first-semester subject for LLB and JD students in the Faculty of Law, Bond University. The course is available in each of Bond University's trimesters (since students may enter Law School at any time during the year); and, since 2012, the course is further divided into two: a masters-level learning experience for postgraduate JD students and an undergraduate course for the LLB cohort. This means that up to six teachers may design and deliver *Australian Legal System* in any given calendar year. Although there is general consensus among the teaching staff about the core skills and content that the course is expected to convey, [24] individual teachers may, and do, differ in their approach, emphasis and assessment, depending on their scholarly and professional experiences and personal preferences. This part describes my own approach to the curriculum design since I first coordinated the course in the January trimester of 2010.

Stories are the heart and soul of my version of *Australian Legal System*. Both my curriculum design and assessment scheme in the subject deploy narrative methodology as the central teaching and learning device. Throughout the course, students work on resolving the problems of four hypothetical clients. Like a murder mystery, pieces of the puzzle come together as students learn more about legal institutions and the texts they produce, the process of legal research, the analysis and interpretation of primary legal sources, the steps in legal problem-solving, the principles of legal writing style, the practical skills and ethical dimensions of professional practice, and critical inquiry into the normative underpinnings and impacts of the law. The assessment scheme mirrors this design. In their portfolio-based assignment, for example, students devise their own client profile, research the client's legal position and prepare a memorandum of advice.

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[24] The consensus is that the course should cover Australia's system of government, including the Australian Constitution; the Australian court system; navigation and analysis of statutes, including principles of statutory interpretation; the interpretation and evaluation of case law, including the role of the doctrine of precedent in lending coherence to the Australian common law system; and legal research and writing. Most teachers also cover the legal profession, professional responsibility and ethical practice, some basic professional legal skills (such as negotiation, client interviewing or court advocacy) and Australian legal history.

My first foray into a narrative approach to legal education was in 2004. I used a single hypothetical client — a victim of sexual harassment — for a two-week intensive pre-law program for Indigenous students at the University of New South Wales. The technique proved successful in engaging students, many from disadvantaged backgrounds, in legal analysis and problem-solving and giving them a sense of accomplishment when they were able to answer the client's legal problem at the end of the program.[25] Importantly, this experience provided me with the inspiration to develop and expand the concept for a full-semester first-year law course.

I expanded both the number and complexity of the client problems in *Australian Legal System*. This was to deliver a more comprehensive introduction to law as both a field of professional practice and a scholarly discipline in its own right. The course now had four clients. Some client scenarios were simple: a single complainant, a single defendant, a single issue. Others were more complex, involving more parties or more than one legal problem. In each year, the first client problem served as the 'demonstration' client. This is the client who I, as the teacher, used as a model to demonstrate particular legal skills each week (such as research into statutes or preparing a case note). In weekly two-hour seminars (of approximately 25 students) and one-hour tutorials (of approximately 11 students), students worked in small groups to apply these skills to the other three client problems. Consistently with the cognitive-apprenticeship model of learning,[26] the demonstration client allowed students to observe how experts use particular legal skills before practicing them on their own terms. They received feedback on their work both from peer discussion and teacher support during the small-group learning activities and, later, during the whole-of-cohort debriefing sessions at the close of each class.

The client problems covered an array of legal fields: human rights, corporate and commercial law, professional responsibility and public law. For example, the 2014 course included problems about religious vilification, the law of unjust enrichment, the implications of academic dishonesty on admission to the legal profession, and grants for first-homeowners. In previous years, the client stories have covered disability discrimination, the obligations of sleeping directors, strata title, the obligations of lawyers to avoid conflicts of interests, the standing of local councils to sue for defamation, and the constitutionality of liquor restrictions in Indigenous communities. The choice of client stories was more than simply an exercise in imagination or personal preference. As far as possible, my selection of client problems was designed to raise legal issues that might appeal to a diverse range of students, achieving a fair mix of social and commercial disputes. I was also conscious of ensuring that the cases would resonate with novice students who had no disciplinary background in the law and limited personal experience with corporate, commercial and property transactions. This is why, for example, I chose not to expose students

25 Sean Brennan et al, 'Indigenous Legal Education at UNSW: A Work in Progress' (2005) 6(8) *Indigenous Law Bulletin* 26.

26 Allan Collins et al, 'Cognitive Apprenticeship: Teaching the Crafts of Reading, Writing, and Mathematics' in Lauren Resnik (ed), *Knowing, Learning, and Instruction: Essays in Honour of Robert Glaser* (Lawrence Erlbaum, 1990) 453.

to technical areas of law (such as equitable choses in action), advanced business structures (such as trusts) or complex transactions (such as hostile takeovers). Instead, my client scenarios involved social, economic or political stories, such as the sexual harassment of a female IT consultant, the ability of a young client to access a first home owner grant and the power of state governments to restrict liquor supply and ownership in Indigenous local communities. Such stories would be comprehensible to most people who read the daily press or watch the nightly news.

Further, the client problems were designed so that students could exercise the full panoply of legal research, analytical and critical-thinking skills. These skills include: finding cases, statutes and regulations; isolating ambiguity in statutory language and using canons of statutory interpretation to resolve such ambiguity; exploring the implications of court hierarchy and judicial reasoning on the legal persuasiveness of common law judgments; engaging practice-oriented oral and writing skills; raising questions of professional responsibility and ethical decision-making; and debating the power and limits of law in achieving justice. For example, the 'demonstration' client for the 2012 and 2013 versions of the course was a private school at which two science teachers, one a Sikh, the other a Scientologist, both complained that they were vilified by the headmaster at a staff meeting on the basis of their faith. From this client problem, students learnt how to:

- locate the relevant legislation on religious vilification and to find the key sections that furnish the scheme of regulation;
- identify and resolve any ambiguous language in the statute (such as whether the words 'humiliate', 'intimidate', 'offend' and 'insult' in s 18C of the *Racial Discrimination Act 1975* (Cth) cover any mere slight or only serious smears);
- research precedents that judicially interpreted the legislation;
- identify the ratio, obiter and reasoning in the relevant case law and evaluate the persuasive strength of each case;
- apply the legislative and judicial law to provide legal advice to the client;
- compare the advantages and disadvantages of formal litigation to alternative forms of dispute resolution;
- respond ethically to follow-up instructions from the client to negotiate a settlement as 'ruthlessly' as possible;
- contextualise the Australian response to religious vilification by comparing it with that of other major legal systems; and
- explore the tension between regulating for a tolerant society and ensuring freedom of political and artistic speech, and critically evaluate whether Australian law strikes an appropriate balance between these competing policy goals.

The assessment scheme replicated this curriculum design, requiring students to demonstrate their learning on their own terms. The major assignment, a portfolio-based client file worth 30 per cent of the final grade, entailed students designing their own client problem after consultation with the course coordinator. In the portfolio, students presented a research journal in which they documented their research strategy to locate the relevant law; a statutory scheme analysis in which they isolated any applicable statute and the relevant sections that regulated the problem and, where appropriate, identified and interpreted any vague or ambiguous language; a case note summarising the best, most recent case on point; and a memorandum of advice setting out their legal opinion of the dispute. During the semester, students observed how to complete each of these steps with the 'demonstration' client and practised with the other course clients in small-group learning activities. The client file assignment, therefore, reinforced this learning scheme by encouraging students to demonstrate independently their learning in the context of a new client problem of their own design. The end-of-semester examination introduced the students to another new client. A week in advance of the examination, I provided students with a 'document file' containing a brief profile of the new client (but not the client's problem) and extracts of legislation, cases and other legal materials necessary to provide the client with advice. In the examination, students were told the problem for which the client sought legal advice and were expected to apply the legal material disclosed in the 'document file' to provide the advice. They also had to write a brief essay reflecting on the broader contextual, ethical or policy issues that arose from the client's situation.

In short, stories saturate the curricular and assessment design of my first-year law course. They provide the narrative hook into the course themes; they shape the narrative arc in which different topics — from statutory interpretation to the doctrine of precedent — comprise course plot-points; and they lend narrative authenticity to the learning environment because students assume the role of lawyers in resolving the course clients' problems. The client stories also ensure deep learning outcomes. This is because client stories are subject to 're-narration' by students. As students achieve a deeper understanding of the legal system, they re-frame their thinking about the client problem and re-tell the story within the disciplinary traditions of law. They do so from multiple points of view: from the practical (the processes for finding the law that resolves the client dispute and the techniques for analysing the relevant primary sources), to the professional (the ethical dimensions to advising the client), to the scholarly (the values that give shape to the law and the broader implications that law has on society). This is important given that law is both a professional field as well as a research discipline. More crucially, re-narration empowers the students to tell their own journey of learning and discovery about law. To borrow from *To Kill a Mockingbird*, it allows the students to 'stand in [the] shoes' of the legal system and 'walk around in them'.[27]

27 Harper Lee, *To Kill a Mockingbird* (HarperCollins Publishing, 1960) 463.

III The Method

The social world, not just the domain of law, is a nexus of narratives. Social science researchers study these stories because they offer insights into how people understand and experience the world.[28] As William Cronon explains: 'Narrators create plots from disordered experience, give reality a unity that neither nature nor the past possess so clearly. In so doing, we move well beyond nature into the intensely human realm of value.'[29] Narrative analysis enjoys prominence in the social sciences literature. Following a long tradition in literary studies dating back to Russian formalism in 1928, narrative analysis emerged in social sciences in the 1980s and entrenched itself as a popular method by the 1990s.[30]

Put simply, narrative analysis is the analysis of people's stories.[31] Data typically comes from oral sources, such as interviews,[32] observations of conversations in self-help groups,[33] oral histories and sermons.[34] But written sources may also reveal narratives, such as diaries,[35] letters,[36] trial transcripts and newspaper accounts.[37]

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28 Lewis P Hinchman and Sandra K Hinchman, 'Introduction' in Lewis P Hinchman and Sandra K Hinchman (eds), *Memory, Identity, Community: The Idea of Narrative in the Human Sciences* (State University of New York, 1997) i, xvi; Catherine Kohler Riessman, *Narrative Analysis* (Sage, 1993) 2.

29 William Cronon, 'A Place for Stories: Nature, History, and Narrative' (1992) 78 *Journal of American History* 1347, 1349.

30 Barbara Czarniawska, 'The Uses of Narrative in Social Science Research' in Melissa A Hardy and Alan Bryman (eds), *Handbook of Data Analysis* (Sage, 2004) 649, 649–50; Elliott, above n 23, 5.

31 Alan Bryman, *Social Research Methods* (Oxford University Press, 2nd ed, 2004) 412; W Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (Pearson, 6th ed, 2006) 474–475; Patton, above n 19, 115–116.

32 Elliott, above n 23, 5.

33 Phoebe Morgan, 'Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women' (1999) 33 *Law and Society Review* 67.

34 Keith Punch, *Introduction to Social Research: Quantitative and Qualitative Approaches* (Sage, 2nd ed, 2005) 217.

35 Patricia Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Harvard University Press, 1991).

36 Riessman, above n 28, 69.

37 Catherine Burns, 'Constructing Rape: Judicial Narratives on Trial' (2004) 24 *Japanese Studies* 81; Catherine Burns, *Sexual Violence and the Law in Japan* (RoutledgeCurzon, 2006); Richard Delgado, 'Storytelling for Oppositionists and Others: A Plea for Narrative' (1988) 87 *Michigan Law Review* 2411; Richard Delgado, 'Beyond Critique: Law, Culture, and the Politics of Form' (1991) 69 *Texas Law Review* 1929; Richard Delgado, 'Campus Antiracism Rules: Constitutional Narratives in Collision (1991) 85 *Northwestern University Law Review* 343; Richard Delgado, 'Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence' (1995) 68 *Southern California Law Review* 545; Richard Delgado, 'Making Pets: Social Workers, "Problem Groups", and the Role of the SPACA — Getting a Little More Precise about

Although most researchers locate narratives within qualitative data,[38] Jane Elliott has recently proposed that quantitative data collected using sample methods, especially longitudinal data, may also be rich with narrative potential.[39]

Epistemologically, narrative analysis assumes that meanings are fluid and contextual, not fixed and universal:

> [N]arrative knowledge tells the story of human intentions and deeds, and situates them in times and space. It mixes the objective and the subjective aspects, relating the worlds as people see it, often substituting chronology for causality. In contrast the logico-centric knowledge looks for cause-effect connections to explain the world, attempts to formulate general laws from such connections, and contains procedures to verify/falsify its own results.[40]

There is no set procedure for analysing and interpreting narratives. Researchers agree that narrative 'imposes order on a flow of experiences' and its analysis involves mapping out 'how it is put together, the linguistic and cultural resources it draws on and how it persuades a listener of authenticity'.[41] They differ, however, on how to do this.[42] Techniques range from formal analytic narrative, narrative explanation, narrative structural analysis and sequence analysis to poetics, hermeneutic triad and deconstruction. As Peter Abell notes, '[a]lthough the term narrative and cognate concepts … are widely used … no settled definition is yet established.'[43] Barbara Czarniawska goes further:

> In my rendition, narrative analysis does not have a 'method'; neither does it have a 'paradigm', a set of procedures to check the correctness of its results. It gives access to an ample bag of tricks — from traditional criticism through formalists to deconstruction — but it steers away from the idea that a 'rigorously' applied procedure would render 'testable' results.[44]

One of the strengths of narrative analysis is that it provides rich insight into social life.[45] This is because of the authenticity that comes from respondents

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Racialized Narratives' (1995) 77 *Texas Law Review* 1571; Kim Lane Scheppele, 'The Re-vision of Rape Law' (1987) 54 *University of Chicago Law Review* 1095; Kim Lane Scheppele, 'Foreword: Telling Stories' (1988) 87 *Michigan Law Review* 2073; Kim Lane Scheppele, 'Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth' (1992) 37 *New York Law School Law Review* 123.

38 Bryman, above n 31, 412.

39 Elliott, above n 23, 60–96.

40 Riessman, above n 28, 15.

41 Ibid 2.

42 Czarniawska, above n 30, 660.

43 Peter Abell, 'Narrative Explanation' (2004) 30 *Annual Review of Sociology* 287, 288.

44 Czarniawska, above n 30, 660.

45 Ibid, 649–650; Punch, above n 34, 217.

being empowered to tell their own stories in their own words. It also comes from analysing stories holistically rather than fragmenting the data.[46] However, as Elliott notes, narrative methods are more useful for constructivist research questions (what an experience means to subjects) rather than realist questions (what is the state of reality).[47] Narrators necessarily distort reality because they are making sense of, rather than reporting on, the real world.

In legal scholarship, unlike in the social sciences, narrative analysis occupies only niche status. It appears only in some feminist legal writing[48] and critical race theory.[49] This is puzzling, because narrative analysis seems well-suited to much work on law: policy-driven legal research is directed to understanding the normative framework and utility of the law; socio-legal scholarship is concerned with how society experiences and engages with the law; and the legal literature on human rights is interested in law's impact on disadvantaged or vulnerable groups. And as Michael Patton observes, '[t]he central idea of narrative analysis is that stories and narratives offer especially translucent windows into cultural and social meanings.'[50]

For legal education, the potential for narrative analysis is even more potent. Harnessed as a legal education tool rather than a scholarly method, narrative

46 Punch, above n 34, 217.

47 Elliott, above n 23, 24–7.

48 Barbara Flagg, 'Women's Narratives, Women's Story' (1990) 59 *University of Cincinnati Law Review* 147; Angela Harris, 'Race and Essentialism in Feminist Legal Theory' (1990) 42 *Stanford Law Review* 581; Scheppele, 'The Re-vision of Rape Law', above n 37; 'Scheppele, 'Foreword', above n 37; Scheppele, 'Just the Facts, Ma'am', above n 37.

49 Delgado, 'Beyond Critique', above n 37; Delgado, 'Campus Antiracism Rules', above n 37; Delgado, 'Rodrigo's Final Chronicle', above n 37; Delgado, 'Making Pets', above n 37; Harris, above n 48; Williams, above n 35. To be fair, legal scholarship is also embracing the study of narratives within the cultural legal studies movement. An example of this is the interdisciplinary study of law and popular culture. For a literature review, see Douglas J Goodman, 'Approaches to Law and Popular Culture' (2006) 31 *Law & Social Inquiry* 757. However, popular culture studies remain marginalised in a legal academy where the 'hegemony' of black-letter doctrinal analysis still anchors legal education and research (see Steve Greenfield and Guy Osborn, 'Law, Legal Education and Popular Culture' in Steve Greenfield and Guy Osborn (eds), *Readings in Law and Popular Culture* (Routledge, 2006) 1, 1–3). Further, where legal scholars have engaged with popular culture, they have largely employed humanities-style textual analysis, focusing on the semiotic, ideological or jurisprudential messages embedded in its texts (see, eg, Naomi Mezey and Mark C Niles, 'Screening the Law: Ideology and Law in American Popular Culture' (1986) 28 *Colombia Journal of Law and the Arts* 91; William P MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford University Press, 2007) 5). They have largely ignored its socio-legal potential for explicating the social operation of law (cf Lawrence Friedman, 'Law, Lawyers and Popular Culture' (1989) 98 *Yale Law Journal* 1587). For the distinction between social-scientific and humanities approaches to narratives, see above n 23.

50 Patton, above n 19, 116.

analysis offers students a window into the world of the law. Law, after all, is a story-teller. It re-frames people's stories according to legislative and judicial standards. It intervenes in people's personal and professional lives according to its own living logic that — with each amendment to a statute by Parliament or a re-interpretation of past precedent by a superior court — is open-ended and evolving. And it creates its own set of values from among the vast array of available choices for determining relationships, rights and remedies. In legal education, a narrative-centred law curriculum allows law teachers to 'reverse-engineer' the law. Rather than describing or theorising the law in terms of its abstract properties, it empowers students to see how law's institutions, texts, practices and norms function in specific practical contexts.

Moreover, by making use of course-length client problems, a narrative approach to legal education provides a holistic, rather than fragmented, view of the legal system. As students become more sophisticated in their understanding of legal institutional design, textual analysis, legal reasoning, professional practice and legal scholarly inquiry, they can see the larger narrative arc within which the law locates each specific client story. They observe how the law applies different lenses — doctrinal, ethical, material or cultural — to give each story its significance. For example, in the 2011–13 versions of *Australian Legal System*, one client is a law graduate seeking admission to the legal profession with a record of academic dishonesty on her university transcript. Students learn to find and interpret the legislation and regulations that determine admission to the legal profession and the case law that defines and illustrates these provisions. They identify the rationale behind the requirement that law graduates disclose to admitting authorities any prior acts of plagiarism and they link this rationale to the broader role lawyers play in society and their professional responsibility and ethical obligations. They then debate the competing policy goals at stake, such as the integrity of the legal profession, consumer protection in the multi-million dollar legal services industry, and the rights of young people to make — and learn from — their mistakes. This simple story of a plagiarist law graduate opens up larger narratives about law's regulatory reach, cultural values and professional practices.

IV The Benefits

A narrative approach to curriculum design promotes student learning. The narrative method deployed in *Australian Legal System*, for example, takes seriously the central pedagogical principle that students should be at the centre of their learning experience.[51] The curriculum and assessment design does not position the teacher as the master story-teller; instead, students are at the forefront of the narrative. *They* are the lawyers, *they* are the ones assisting clients with their legal disputes, and, as students acquire more knowledge of the design of the legal system and the skills of research, analysis, writing, problem-solving and critique, *they* are the ones who prepare the legal opinions.

51 Biggs and Tang, above n 16.

For students, this brings the law to life:[52]

> Professor Wolff … brought with him a fresh new teaching style that I was not to see again throughout the rest of my degree. Professor Wolff structured the ALS course material around several fictional clients … The actual content of ALS focuses on core legal skills necessary for first year law students to succeed at law school. The content deals with statutory interpretation, legal research and writing, and the overall design of the Australian legal system. Professor Wolff brought those areas of law to life by introducing each topic then applying what we learned to his fictional clients. (JD student, 2010)

> It was only later that I could truly appreciate the uniqueness of your teaching style — namely, the use of fictional clients throughout the entire course. As opposed to relying on a text book to dictate the flow of your course material, you actually used your imagination. It proved to be an effective learning style for me as the answers were not to be found by accessing one source but the many resources that we were discovering along the way. … The written assignment, involving the creation of my own fictional client, was a very useful and practical experience. In allowing me to focus on an area of law that I found interesting, it provided me with an enjoyable (if stressful) experience of researching the law from the Constitution to the criminal courts. (JD student, 2010).

> The client story based method of teaching legal concepts has helped me to understand the concepts much more easily and quickly because I can apply it to the real world and see its use in context. It reminds me a little of mathematics[:] you can learn the formula but unless you use it in context and practise it, it won't make nearly as much sense or sink in as easily. (LLB student, 2012)

> I have found the use of the clients in ALS extremely useful and interesting. Personally I struggle absorbing large amounts of theory and concepts that one receives in normal lectures. I find the Client studies most useful in applying the theory that we are taught. It really broadens my understanding of how the legal system works and how the rules are applied. The hands on aspect also makes the course a whole lot more exciting and fun. (LLB student, 2012)

Further, client stories lend structure to the learning experience. One of the disadvantages of designing an introductory law curriculum is the lack of an overarching theme that can give it unity or coherence. This is because the subject is a launching pad: an academic preparation for the substantive law courses students will take for the rest of their law degree. It is not a self-contained treatment of any given content, skills or theory. As such, the topics are typically wide-ranging: legal history, the legislature, the judiciary, legal research and writing, the structure and design of primary legal texts, legal analysis and problem-solving, professional responsibility

52 The student quotes in this section are edited only for length. Punctuation and phrasing are not edited for grammar or style.

and ethical practice, and the descriptive and normative properties of the law.[53] Textbook writers use a variety of techniques to give thematic shape to a first-semester law course.[54] Some emphasise the historical trajectory of the law,[55] others focus on its normative or theoretical underpinnings,[56] and an emerging approach is to focus on threshold learning outcomes.[57] But there is no escaping the impression that an introduction to Australian law is, by necessity, a grab-bag of topics.[58]

Course-length client stories, by contrast, lend structure to the material. This is because each topic becomes a new plot-point in the legal re-narration of each client scenario. Students begin with research into the basic legislative framework (if applicable) to each client problem. They then flesh out the meaning of these regulations using statutory interpretation techniques and case law research. Next, they apply this primary legal material to advise the client, explore the ethical dimensions of any advice they give and follow-up instructions they might receive, and critically evaluate the influences, impacts and processes of the law. Finally they debate whether they achieved justice both for the client specifically and other stakeholders.

This increasingly more sophisticated foray into law's processes and operations means that students are constantly revisiting their clients' cases. As they do so, they extend their *quantitative* knowledge of legal doctrine and skills, and, by integrating this new knowledge into their existing stock, they deepen their *qualitative* understanding of the law.[59] According to the teaching and learning literature, quality student learning is achieved when students re-structure their existing knowledge in light of new content and skills.[60] Students themselves recognise this:

> Professor Wolff's novel approach to teaching ALS at Bond was successful in overcoming one of the principle problems that most law students encounter in their first semester; namely a sense of confusion and frustration at being unable to relate what they are learning in introductory courses to what they will be doing for the rest of their law studies. By setting up a series of fake

53 See Cook et al, above n 15; Ellis, above n 15; James and Field, above n 15; Laster, above n 15; Macken and Dupuche, above n 15; Parkinson, above n 15; Sanson et al, above n 15; Vines, above n 15.

54 Some texts, however, merely introduce the Australian legal system without any overarching theory. See, eg, Cook et al, above n 15; Macken and Dupuche, above n 15.

55 Parkinson, above n 15; Vines, above n 15.

56 Bottomley and Bronitt, above n 15; Laster, above n 15.

57 James and Field, above n 15.

58 For example, the two textbooks which take an explicitly historical approach to explicating the Australian legal system add chapters on, *inter alia*, statutory interpretation and the doctrine of precedent, not because they cohere with their historical account but because they are essential topics to cover in any introductory law course: see Parkinson, above n 15; Vines, above n 15.

59 Biggs and Tang, above n 16, 90.

60 John Biggs and Kevin Collis, *Evaluating the Quality of Learning: The SOLO Taxonomy* (Academic Press, 1982).

> clients, Professor Wolf introduced his students to a range of different legal areas (encompassing torts, restitution), and demonstrated efficaciously how students could directly apply the skills they were learning in ALS to different client scenarios. By taking this approach, ALS did not seem like a disjointed subject that was taken independently of other legal studies, but rather, Professor Wolff was able to integrate the skills learnt in ALS to the kind of scenarios that students might encounter later in their law degree. Above all, Professor Wolff should be commended for his enthusiasm, creativity, and ability to introduce students to the reality of legal studies, without making the process too overwhelming or incomprehensible. (LLB student, 2011)

> As a student, the methodology Leon uses brings the law to life and makes the Australian Legal System subject engaging. Leon is able to link concepts such as statutory interpretation, the doctrine of precedent and legal problem solving together by using 4 mock clients. Leon's approach to ALS works simply, by making the course identical to working in the legal profession. By using 4 mock clients with a variety of different problems, Leon is able to neatly intertwine all legal skills and principles resulting in a course which is concise and coherent. (LLB student, 2012)

A common refrain in the student testimonials is the authenticity of the learning environment. By allowing students to play the character of lawyers in the clients' stories, they become involved in the curriculum. The learning activities engage cognitive, performative and affective skills students know they will need to become professional lawyers. This ensures that their learning is 'meaningful' and 'worthwhile', thereby enhancing intrinsic motivation to learn:[61]

> I was just thinking the other day about how the client-based structure of the course is a great idea. The structure helps me become more engaged in the course materials because everything is linked to real-world type cases. Overall, the client-based structure is an effective way to provide students with a practical and interesting learning experience. (JD student, 2012)

> I thought your design of the *Australian Legal System* course … has certainly been a unique experience compared with the other courses I have taken in my legal education. Although I was initially unsure what to think of the fact that we would be 'assisting' three fictional clients throughout the course of the semester, with hindsight I believe [that] this may have been the best way to teach the material. Since the clients were fictional, the different problems they had and the facts of their situations were constructed in a way that allowed us to explore all of the major topics of ALS; at the same time, this was the first taste of what being a practicing lawyer would be like, and so the course had a much more practical feel to it than I imagine it otherwise would have. Also, since the scenarios were constructed, they involved much more interesting and remarkable situations than I imagine most actual clients would have. This made

61 Biggs and Tang, above n 16, 37.

> a course that could easily have been dry and monotonous much more enjoyable. In addition, since both the assignment and the final exam involved assisting fictional clients, it ensured that we were not simply tested on our ability to rote learn, but rather our ability to think like a real lawyer and to apply all the skills and concepts we had learned in the course in a meaningful way. I think that many courses do not put enough emphasis on this. The fact that your ALS class did, and since it is a course taken at the beginning of the law degree, really helped demonstrate what a future career as a lawyer would be like. I found this was very useful way of learning the material, as well as offering an insight into what being a practicing lawyer would be like. (JD student, 2010)

V The Implications for the Teaching-Research Nexus

A narrative approach to the first-year experience in law also makes a contribution to the literature on the teaching-research nexus. The nexus between teaching and research has attracted a sizable corpus of scholarship in the higher education literature.[62] Initially, the relationship was cast as a 'clash of civilisations': quantitative studies, for example, demonstrated a low correlation between research performance and teaching effectiveness;[63] and qualitative studies conceptualised teaching and research as distinct enterprises.[64] More recently, a rapprochement is emerging. The case is now put that teaching and research lie on a 'continuum';[65] that they share a 'vital link'.[66]

Unlike the broader higher education literature, the discipline-specific literature about the teaching-research nexus in law is sparse. And what little there is seems remarkably downbeat about the nature of the relationship. For example, Michael Chesterman and David Weisbrot, in their intellectual history of law schools in Australia, draw a negative correlation between teaching and research in law, arguing that Australian law schools' mission to train the next generation of professionals 'has been a major factor contributing to the predominantly positivist, unquestioning character of much of Australian legal scholarship.'[67] For Lynden Griggs research and teaching *ought* to go hand in glove:

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62 For extensive literature reviews, see Ruth Neumann, 'Researching the Teaching-Research Nexus: A Critical Review' (1996) 40 *Australian Journal of Education* 5; Willcoxson et al, above n 18.

63 Angela Brew and David Boud, 'Teaching and Research: Establishing the Vital Link with Learning' (1995) 29 *Higher Education* 261.

64 John Hattie and Herbert M Marsh, 'The Relationship Between Research and Teaching: A Meta-Analysis' (1996) 66 *Review of Educational Research* 507.

65 John Hoddinott and Brad Wuetherick, 'The Teaching Research Nexus' (2005) 46(1) *Education Canada* 32, 32.

66 Brew and Doud, above n 63.

67 Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50 *Modern Law Review* 709, 710

> At one stage it would have been said that every academic is by definition a researcher — that a research component is fundamental to the ethos of a tertiary institution and, specifically, the development of the teaching criteria for assessment and the setting of levels within that assessment. After all, how could one be comfortable that the grade for a particular piece of work was set at the appropriate level unless the assessor was knowledgeable in the research area? How could a marker confidently conclude that a student has applied the law correctly to a problem-based scenario if they were not an active researcher in the relevant area of law? Universities were not to be seen as a college of teaching experts, but as experts teaching and disseminating the fruits of their research labour. It was the research component that allowed an institution to be its own benchmark and standard setter.[68]

But, in practice, the nexus requires strategies, both at the faculty and university level, to ensure its connectedness.[69]

This article, however, has shown that research and teaching can inform and inspire one another with little more than the creative industry of the individual researcher-teacher. It does not require the heavy hand of regulation or policy for active researchers to invest their research practices (and not simply the fruits of their research) into their teaching programs.

VI Conclusion

Narratives are everywhere in law: stories of disputes source the common law; chronicles of inefficiency, injustice or unaccountability inspire legislative reform; and debates about the findings, explanations, meanings, scope, influences and impacts of the law inform legal scholarship. The reverse is also true: law is everywhere in stories. Popular culture is replete with legal references. From *To Kill a Mockingbird* (1962) to *The Lincoln Lawyer* (2011), Hollywood movies depict lawyers as heroes. From *LA Law* (1986–1992) to *The Good Wife* (2010–), high-rating television series use the court-room to debate contemporary social and political issues. And from Bob Dylan's *Blowin' in the Wind* (1963) to Christina Aguilera's *Beautiful* (2003), chart-topping popular music lyrics frequently champion civil rights. It is even possible to argue that law *itself* is narrative. Using its own vocabulary, grammar and idiomatic expressions, the law is a story-teller: it re-casts characters into plaintiffs and defendants; it re-orders sequences of events into legal issues; and it re-sets scenes by imposing its own architecture of normative values.

Legal education can do more with this inherent narrativity. In this article, I have argued that a first-year law course can make innovative use of course-length stories to introduce new law students to the institutions, texts, practices and norms of the legal system. Such a narrative approach to the curriculum can connect seemingly

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68 Griggs, above n 20, 237. See also Nehme, above n 21, 242.

69 Nehme, above n 21. See also Ailwood et al, above n 21.

disparate topics into a coherent plot. Further, it can immerse students in the learning experience, both by making them characters in the stories (as the hypothetical clients' legal advisors) and also as omniscient narrators (exploring the doctrine at work in the specific problem as well as law's broader influences, impacts and processes). Finally, it is a fresh twist on the teaching-research nexus, re-inventing an established research method into a device for learning and teaching the law.