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From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative, and Law

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ARTICLES

From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative, and Law

Shulamit Almog*

Into what fictive realms can imagination translate you . . . ?

—W.H. Auden, *The Horatians*[1]

INTRODUCTION

El Aleph, a short story by Jorge Luis Borges, was published in 1945.[2] In this story, Borges himself is one of the two central characters. The other is an imaginary poet, Carlos Argentino Daneri, the cousin of Beatriz Viterbo, a woman Borges loved. After Beatriz dies, Borges visits her home each year on her birthday and spends time with Daneri and Beatriz's father. On one of these melancholy occasions, Borges accidentally discovers the

* Senior Lecturer, Faculty of Law, Haifa University. The core of this Article is a paper presented in May of 2002, during the second European Conference of the International Society for Literature and Science, held at the University of Aarhus, Denmark. The author is grateful to the participants in the conference for some insightful remarks, and to Ariel Bendor, Aaron Ben Zeev, Michael Birnhack, and Gabriel Zoran for important comments on early drafts of this Article and for fruitful conversations with them that contributed to the development of the author's ideas. The author would also like to thank Pnina Alon and Lotem Pery for excellent research assistance and Rebecca Toueg for editorial comments.

1 *In* W.H. AUDEN, CITY WITHOUT WALLS (1969).

2 JORGE LUIS BORGES, *The Aleph*, *in* ALEPH AND OTHER STORIES 1933–1969 (Norman Thomas di Giovanni ed. & trans., 1978) (1945).

secret of the Aleph. Daneri, seized with emotion, tells Borges that unscrupulous entrepreneurs intend to destroy his home and deprive him of the Aleph that he had discovered during his childhood in the cellar. Without it, he would not be able to complete the long poem upon which he was working. The Aleph, as he explains to Borges, "is one of the points in space that contains all other points." It is "the only place on earth where all places are seen from every angle."[3]

Borges asks Daneri to show him the Aleph, and is given directions by Daneri as to how the connection is established. Daneri instructs Borges to descend to the cellar, lie flat on his back, focus his eyes on the nineteenth step, and wait a few moments. He does so, and the Aleph appears. How can it be described? Borges writes:

> And here begins my despair as a writer. . . . How, then, can I translate into words the limitless Aleph, which my floundering mind can scarcely encompass? . . . What I want to do is impossible, for any listing of an endless series is doomed to be infinitesimal.[4]

Today, fifty-five years after this enigmatic story appeared, we can all have a personal Aleph. It is not as total as the Borgesian Aleph, but it leads towards an endless space. It is the Internet.[5] The Internet is not only a revolutionary technology.[6] It also represents

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[3] BORGES, supra note 2, at 15, 23.

[4] *Id*. at 26.

[5] For a similar use of the Borgesian Aleph as an image relevant to the Internet age, see generally GEORGE P. LANDOW, HYPERTEXT: THE CONVERGENCE OF CONTEMPORARY CRITICAL THEORY AND TECHNOLOGY 12 (1992).

[6] Today, it is hardly necessary to define the technology known as the Internet. The author will, however, provide a short but elucidating description of the Internet, cyberspace, and the nature of navigating the Web by Justice Stevens:

> The Internet is an international network of interconnected computers. It is the outgrowth of what began in 1969 as a military program called "ARPANET," which was designed to enable computers operated by the military, defense contractors, and universities conducting defense—related research to communicate with one another by redundant channels even if some portions of the network were damaged in a war. While the ARPANET no longer exists, it provides an example for the development of a number of civilian networks that, eventually linking with each other, now enable tens of millions of people to communicate with one another and to access vast amounts

some essential and far-advanced cultural shifts, as well as transformations in some of our social and cultural practices. Such transformations inevitably influence many institutions.

Before elaborating, it is important to understand that the Internet and all the various practical applications derived from it are associated with a broad range of meanings and influences. The use of electronic mail, the search for answers to specific queries, scholarly research, political, commercial, and artistic uses all have unique significances and implications. What follows is not an attempt to assemble the entire cluster of uses under a single overall perspective. Instead, this essay attempts to suggest that one aspect of the Internet experience or the Internet culture is relevant to our narrative competence, cognizance, and ability to become storytellers and story listeners. The Internet initiates and continuously induces important shifts in our storytelling practices and narrative cognizance. These shifts carry significant implications in the domain of law. They influence the way we practice law and the way we perceive it. They affect our comprehension of law and the range of anticipations, hopes, and emotions related to it.

> of information from around the world. The Internet is "a unique and wholly new medium of worldwide human communication."
>
> Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant to this case are electronic mail (e-mail), automatic mailing list services ("mail exploders," sometimes referred to as "listservs"), "newsgroups," "chat rooms," and the "World Wide Web." All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium—known to its users as "cyberspace"—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.
>
> . . . .
>
> Navigating the Web is relatively straightforward. A user may either type the address of a known page or enter one or more keywords into a commercial "search engine" in an effort to locate sites on a subject of interest. A particular Web page may contain the information sought by the "surfer," or, through its links, it may be an avenue to other documents located anywhere on the Internet."

Reno v. ACLU, 521 U.S. 844, 849–52 (1997) (footnotes omitted).

I. LAW AND STORY

Our social existence is organized around narratives.[7] One could describe a significant part of human experience by using the image of an immense reservoir of narrative structures. These structures produce meaning and organize different realms of reality. Each narrative creates a distinct segment that can be grasped within the chaotic whole that surrounds us. Practically, the narrative function is to construct the world "not just according to how the world *is*, but according to its own categories."[8]

Almost any social and cultural construct could be perceived as a collection of symbols that brings about an intellectual and emotional response. But what is it that transforms certain expressions into a discernable collection of symbols? How do disparate expressions cluster together and turn into the representation of a distinct phenomenon? The issue is manifold, but one of the most important factors is narrative.[9] An important function of narrative is the creation of organized constructs out of unorganized data fields.[10] As Jonathan Culler elaborates:

> Stories, the argument goes, are the main way we make sense of things, whether in thinking of our lives as a progression leading somewhere or in telling ourselves what is happening in the world . . . [Life] follows not a scientific logic of cause and effect but the logic of story, where to

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[7] The definition of narrative, its substance, its functioning, and the relationship between it and the plot are issues that have attracted extensive research. *See, e.g.*, MIEKE BAL, NARRATOLOGY: INTRODUCTION TO THE THEORY OF NARRATIVE (Christine van Boheemen trans., 1985) (1980); PETER BROOKS, READING FOR THE PLOT: DESIGN AND INTENTION IN NARRATIVE (1984); JONATHAN CULLER, LITERARY THEORY 83–94 (1997); GERALD PRINCE, NARRATOLOGY: THE FORM AND FUNCTION OF NARRATIVE (1982); SHLOMIT RIMMON-KENAN, NARRATIVE FICTION: CONTEMPORARY POETICS (1983).

[8] ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 116 (2000).

[9] *See* Goran Aijmer, *The Symbolical Project*, 13 CULTURAL DYNAMICS 66, 69 (2001) ("The sphere of symbolic creation suggests studies of how textures of complex iconology are accomplished by an integration of less inclusive icons into ever more comprehensive symbolic clusters. The grammar of such iconic image—making is one of architecture rather than syntax. What we are dealing with is a sort of 'concrete' . . . compositional process, a creation independent of mundane facts.").

[10] *See, e.g.*, BROOKS, *supra* note 7, at 3–36; CULLER, *supra* note 7, at 83–94; MICHAEL ROMER: TELLING STORIES: POSTMODERNISM AND THE INVALIDATION OF TRADITIONAL NARRATIVE (1995) (discussing the centrality of narrative in human experience).

> understand is to conceive of how one thing leads to another, how something might have come about . . . .[11]

The central role of narrative in creating concepts of self and society has become clear in a variety of fields, including those addressing law-related issues, such as race, community, gender, and the practice of law.[12]

The discipline of law and literature constituted a significant contribution to the study of the links between law and narrative.[13] In his seminal work, *The Legal Imagination*, James Boyd White differentiates between "the mind that tells a story" and "the mind that gives reason."[14] A central act within the legal field is to master "both sorts of discourse (both narrative and analysis) and put them to work, at the same time and despite their inconsistencies, in the service of a larger enterprise."[15] The apparently impossible reconciliation between "these discordant modes of thought and expression, these incompatible, uncommunicating, sides of oneself"[16] is one of the central acts of the legal mind, and one of the achievements of the legal imagination. As Binder and Weisberg recently noted, "a

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[11] CULLER, *supra* note 7, at 83–84.

[12] David M. Engel, *Origin Myths: Narratives of Authority, Resistance, Disability, and Law*, 27 LAW & SOC'Y REV. 785, 789–90 (1993).

[13] *See, e.g.*, SANDRA BERNS, TO SPEAK AS A JUDGE: DIFFERENCE, VOICE AND POWER (1999); ROBERT COVER, NARRATIVE, VIOLENCE AND THE LAW: THE ESSAYS OF ROBERT COVER (Martha Minow et al. eds., 1992); BERNARD S. JACKSON, LAW, FACT AND NARRATIVE COHERENCE (1991); LINDA H. LARUE, CONSTITUTIONAL LAW AS FICTION: NARRATIVE IN THE RHETORIC OF AUTHORITY (1995); LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW (Peter Brooks & Paul Gewirtz eds., 1996); GARY MINDA, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END 149–66 (1995); MARTHA C. NUSSBAUM, POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE (1995); DAVID RAY PAPKE, NARRATIVE AND THE LEGAL DISCOURSE (1991); BERT VAN ROERMUND, LAW, NARRATIVE AND REALITY (1997); THOMAS ROSS, JUST STORIES: HOW THE LAW EMBODIES RACISM AND BIAS (1996); BARRY R. SCHALLER, A VISION OF AMERICAN LAW: JUDGING LAW, LITERATURE AND THE STORIES WE TELL (1997); MICHAEL THOMPSON, REPRODUCING NARRATIVE: GENDER, REPRODUCTION AND LAW (1998); IAN WARD, LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES 4–15 (1996); ROBIN WEST, NARRATIVE, AUTHORITY AND THE LAW (4th ed. 1993). *See also* GUYORA BINDER & ROBERT WEISBERG, LITERARY CRITICISM OF LAW 201–87 (2000) (offering a comprehensive survey of the law and literature related narrative discourse).

[14] JAMES BOYD WHITE, THE LEGAL IMAGINATION 859 (1973).

[15] *Id.*

[16] *Id.*

substantial body of research in the sociology of law suggests that the portals of the law are guarded by narrative."[17] According to Amsterdam and Bruner's apt phrasing, "Law begins . . . *after* narrative."[18] Soon after entering law's portals, we inevitably encounter narratives once again; they are present wherever we go within law's domain.

The next section suggests a preliminary "narrative map" that designates narrative spaces in the legal field, and illustrates the breadth of narrative influences and functions. This Article will serve as a typology of the dependencies of law on narrative, and will manifest the ways in which law and narrative continuously intertwine. This map suggests areas of legal practice that implicate two prominent forms of narrativity: generative narratives and functional narratives.

II. GENERATIVE NARRATIVES

Glanville Williams referred to law as "a collection of symbols capable of evoking ideas and emotions, together with the ideas and emotions so evoked."[19] What force managed to unite certain expressions and transform them into "symbols" that represent "law?" Can we locate, define, and describe the elusive moment when law emerged? Derrida aptly expressed this query: "How are we to distinguish between the force of law of a legitimate power

[17] BINDER & WEISBERG, *supra* note 13, at 248–49.

[18] AMSTERDAM & BRUNER, *supra* note 8, at 283.

[19] Glanville Williams, *Language and the Law*, 61 LAW Q. REV. 71, 86 (1945) (It is impossible to make a sharp distinction between the various components included in his definition. "We need not dispute whether it is primarily symbol or primarily idea or primarily emotion; sometimes one, sometimes another aspect may be predominant, but usually all three are inseparably connected."). *See also* PAUL W. KAHN, THE REIGN OF LAW: *MARBURY V. MADISON* AND THE CONSTRUCTION OF AMERICA 3 (1997) ("This myth of law is composed of an aggregation of ideas, values, and symbols linked by historical circumstance."); JOHN B. THOMPSON, CRITICAL HERMENEUTICS: A STUDY IN THE THOUGHT OF PAUL RICOEUR AND JURGEN HABERMAS 6 (1981) (referencing the primary significance of symbols: "I am convinced that we must think, not *behind* the symbols, but starting from symbols, . . . that they constitute the *revealing* substrate of speech which lives among men. In short, the symbol *gives rise* to thought.").

and the supposedly originary violence that must have established this authority?"[20]

Derrida emphasizes that violence characterized the moment of law's creation. The key element is not violence but some kind of enchantment that is sometimes generated by words, by certain uses of language, and by the evocative power of a story. This enchantment pertains to "generative narratives," those stories that depict the transition from lawless existence into an existence that includes law in comprehensible terms. Additionally, generative narratives can shape the way we imagine law and establish our expectations from the law, and they constitute potential ways of changing or reforming law.

There are many modes of generative narratives. Some are present in literature's classics. One of the more famous plots of law emergence is the *Oresteia*, a trilogy by Aeschylus,[21] which is comprised of three plays, *Agamemnon, Choephori*, and *Eumenides.* Orestes, the son of Agamemnon, kills his mother and her lover in revenge for the murder of his father. He is pursued by the Furies, the avenging goddesses, and flees from Argos to Delphi and then to Athens. The goddess Athena proposes settling the dispute by holding a tribunal on the Areopagus, and the first court of justice is founded. Orestes is acquitted and is allowed to return to Argos. Athena has ended the circle of violence from which society had suffered for generations, and has founded a new order: the rule of law.[22]

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[20] Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority,"* 11 CARDOZO L. REV. 919, 927 (1990).

[21] AESCHYLUS, THE ORESTEIA OF AESCHYLUS (George Thompson ed., Adolf M. Hakkert 1966) (458 B.C.E.).

[22] *See, e.g.*, Patricia Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 LAW & SOC'Y REV. 197, 212 (1995) (maintaining that narratives "come to constitute the hegemony that in turn shapes social lives and conduct"). Yet, the same narratives can be subversive, and challenge the dominant social paradigm. The way we perceive narratives depends on existing social conditions, disparities of power, and ideological effect. *Id*. at 222. The complexity of generative narratives and their depth make them more prone to attract opposing, even dichotomizing, readings and understandings. *See, e.g.*, MARIA ARISTODEMOU, LAW AND LITERATURE: JOURNEYS FROM HER TO ETERNITY 58–80 (2000) (reading the *Oresteia* as a subversive narrative).

In what sense is the *Oresteia* relevant to contemporary legal discourse? It is relevant in the same way literary classics are pertinent to human existence. Italo Calvino, while describing this kind of relevance, refers to the classics of literature as works "which exercise a particular influence, both when they imprint themselves on our imagination as unforgettable, and when they hide in the layers of memory disguised as the individual's or the collective unconscious."[23]

Similar qualities characterize generative narratives that originate from other cultural sources, such as scripture, canonical works of philosophy, psychology or political thought, and significant historical events. Following are several examples gathered from contemporary discourse.

Austin Sarat describes how the biblical story of Akedah, the narrative of Abraham and his son Isaac, is "enormously important for the ways this culture imagines law as well as fatherhood."[24] Milner S. Ball tells how biblical stories play an important role in the way we perceive the "real" world of law.[25] Thus, the story of giving the law to Moses at Mount Sinai, and the way in which Moses represents both God and the Hebrew people at the same time, creates a major narrative of legal advocacy associated with the practice of modern lawyers.[26] The story about Rachel weeping for her children, that "transcends both law and morality,"[27] and God's response, creates, according to Ball's reading, a fundamental narrative relevant to "law's capacity to accommodate things too deep for words"[28] and to contemporaneous legal issues,

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[23] ITALO CALVINO, WHY READ THE CLASSICS? 4 (Martin McLaughlin trans., 1999) (1991).

[24] Austin Sarat, *Imagining the Law of the Father: Loss, Dread, and Mourning in* The Sweet Hereafter, 34 LAW & SOC'Y REV. 3, 12 (2000). Sarat also draws on Freudian psychoanalytic theory to analyze how the psychoanalytic narrative of fatherhood "called attention to the complex associations of paternity and legality." *Id.* at 13. *See also* Peter Goodrich, *Maladies of the Legal Soul: Psychoanalysis and Interpretation in Law*, 54 WASH. & LEE L. REV. 1035, 1047 (1997) ("Freud and those who follow him depict a law that is modeled upon the power of the father. They elaborate a symbolic order that is patriarchal in its norms and methods.").

[25] MILNER S. BALL, CALLED BY STORIES 4 (2000).

[26] *Id*. at 9–21.

[27] *Id*. at 89.

[28] *Id*. at 1.

such as the role of emotion in the judicial process.[29] As Ball emphasizes, though the first audience of the biblical narratives is their first communities, Jews and Christians, those narratives have never been limited to religious communities and were not meant to be. Their "fundamental and freeing"[30] qualities are available to any audience, anytime, and to present-day legal discourse.

To use J. Hillis Miller's phrasing, all sorts of generative narratives, whether their source is literary, religious, historic, or any other, manifest "a peculiar and unexpected relation between the affirmation of universal moral law and storytelling."[31] As Miller elucidates, it would seem that the connection of such a law to any particular narrative or to narration at large would be adventitious, or superficial, but in actual fact, ethics and narration cannot be kept separate, "not because stories contain the thematic dramatization of ethical situations, choices and judgments . . . [but] because ethics itself has a peculiar relation to that form of language we call narrative."[32]

In other words, narratives transform abstract constructs or formulas into expressions loaded with ethical meaning. Without the presence of some kind of validating narrative in the background, the law and the norm are like empty shells, with no intelligible ethical substance within.[33]

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[29] Ball intersects the biblical narrative with specific situations, such as a plant closing and the subsequent movement of jobs to Mexico and legal disputes over the sovereignty of native Hawaiians. *Id*. at 81–105.

[30] *Id*. at 6.

[31] J. HILLIS MILLER, THE ETHICS OF READING 2 (1987).

[32] *Id*. at 3. Miller also comments on the complex character of the links between moral law and narrative: "[T]he moral law gives rise by an intrinsic necessity to storytelling, even if that storytelling in one way or another puts in question or subverts the moral law." *Id*. at 2. *See also* Ewick & Silbey, *supra* note 22, at 222 (regarding the subversive potential of narratives).

[33] Here lies another intricate conceptual difficulty, which is highly relevant to both law and literature: What endows a particular articulation authoritative nature? J. Hillis Miller, while addressing the legislative powers of narrative, aptly phrases the question: "Both law and literature depend on resolving (or tacitly avoiding) the vexed question of the validity of example, or, in traditional rhetorical terms, the validity of synecdoche, part standing for whole." J. HILLIS MILLER, TOPOGRAPHIES 82 (1995). Up to a certain point, that mysterious metamorphosis is precisely what law does when it transforms the individual case into norm, or, to use Miller's terms, crowns a synecdoche with general validity.

Law needs narratives in order to resolve oppositions of all kinds and to maintain a constant acknowledgment of its legitimacy and authority. As Robert Cover put it, "For every constitution there is an epic, for each decalogue a scripture . . . law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose."[34] Every legal regime draws legitimacy and authority from some generative narrative.

Generative narratives are continually activated in our consciousness even if no direct reference is made to them during the daily function of law's machinery. Around them, we keep accumulating symbols, knowledge, and other stories, both new and recurring, that are associated with the idea of law.[35] Some version of "generative narrative" continuously maintains our perception of law. Generative narratives contain a unique element of vitality that remains ever operative and that continuously maintains apperception which is, following Paul Lehman, "the uniquely human capacity to know something without knowing how one has come to know it."[36]

Secondary generative narratives shape and define legal categories, or the different legal concepts and principles. Law rests on narrative to make sense of basic, organizing legal ideas. Thus, for instance, in order to conceive the notions of liability and responsibility, we must employ organizing narratives. As Binder and Weisberg explain, "an assignment of casual responsibility involves a short *chain* of casual explanation, a simple narrative linking a harmful result to a blameworthy character."[37] Similarly, there is the narrative of property (this is mine, so I can do *whatever* I want with it), narrative of contracts (I reached an agreement with you, and agreements must be honored), and the narrative of

[34] COVER, *supra* note 13, at 96.

[35] Modes of generative narrative are also created within our personal experience. *Cf.*, Engel, *supra* note 12 (showing how parents of disabled children tell similar stories about the first day of diagnosis). These origin narratives confront law and myth, empower parents, and help them to negotiate their way through legal and educational systems.

[36] PAUL LEHMANN, THE DECALOGUE AND A HUMAN FUTURE: THE MEANING OF THE COMMANDMENTS FOR MAKING AND KEEPING HUMAN LIFE HUMAN 23 (1994).

[37] BINDER & WEISBERG, s*upra* note 13, at 264.

constitutional law (we need to define and protect superior norms to maintain social order), and so on.

Some of the secondary generative narratives are created by historical occurrences. Thus, the constitutional narratives of America include stories about the colonies' quest for religious freedom and the stories of slavery and civil war. It is hard to imagine conveying the principles of American constitutional law without these stories. However, generative narratives often contain a subversive seed, and carry the potential not only to entrench hegemony, but also to deconstruct it. The slavery story, for example, can be perceived as a story that strengthens law, and defines it as a practice that can rectify itself. On the other hand, the same story can be perceived as a constant reflection of law's failure to address injustice.[38] Be that as it may, the opposed understandings illuminate the unique properties of the narrative mode of knowing: its potential to validate, while constantly challenging, our cultural practices.

III. FUNCTIONAL NARRATIVES

Functional narratives are the stories that penetrate and facilitate numerous aspects of daily legal activities. In their classic article, *The Emergence and Transformation of Dispute: Naming, Blaming, Claiming . . .* ,[39] Felstiner, Abel, and Sarat describe legal claims as a process motivated and activated by narrative. In order to pursue a claim despite the burdens and risks involved, claimants must characterize themselves as grievants, identify antagonists and compose a quest in which they are called to enlist and fight injustice. This process of narrative framing is essential to the functioning of the legal machinery.[40] Many other legal activities depend upon the ability to identify plots and manipulate stories or to employ functional narratives.

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[38] ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 201 (1981). For a detailed discussion of the manifold facets of the slavery story, see BINDER & WEISBERG, *supra* note 13, at 268–87.

[39] William L. Felstiner et al., *The Emergence and Transformation of Dispute: Naming, Blaming, Claiming . . .* , 15 LAW & SOC'Y REV. 631 (1981).

[40] *Id.*

Functional narratives come in many variations and their impact can be described in different modes. As an example, the legal argument relies on selective arrangements of events in narrative forms. Competing stories are told about the same events, reflecting competing interests. Thus, for instance, the aim of the prosecutor in a criminal trial is to present a certain chronology of events in a manner that will convince the judge or jurors that the accused indeed carried out a certain crime. The aim of the defense lawyer is to present a different chronology of events which refutes the conclusion that the accused committed the crime. After coming to a decision, the judge creates her own narrative in her judgment.

Functional narratives are used and interpreted incessantly by plaintiffs and defendants, accused and witnesses, lawyers, and jurors. Different functional narratives are employed in different areas of the legal arena. Trial narratives are told differently from plea bargaining narratives[41] and different courtroom actors (judge, jurors, prosecutor, defense attorney, witnesses) manifest different kinds of storytelling and story-listening abilities.[42]

Further demonstrating the inevitability of the narrative mode of knowing within the legal field, judges also activate functional narratives. Adjudication might be described by using narrative terms; a judge who looks at a particular case is actually facing an idiosyncratic story. Taking this story, and discarding several layers of it until the core narrative is exposed, the judge then fits this exposed core narrative to one of the existing narrative templates. For example, there is a narrative template that refers to first-degree murder and another one that refers to manslaughter. The judicial process determines how to treat the unique story and the court decides if it conforms with the murder narrative template or with the manslaughter one. Judging, in this sense, means assessing stories.

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[41] Douglas M. Maynard, *Narratives and Narrative Structure in Plea Bargaining*, 22 LAW & SOC'Y REV. 449, 479 (1988).

[42] W. LANCE BENNET & MARTHA FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE, at ix (1981).

This brings to mind Vladimir Propp's work in *The Morphology of Folktale*, where he isolated and identified the basic units of narratives and the principles of their combination.[43] In a way, some of law's practices are similar. Law takes as basic data all the known stories concerning human behavior, isolates the primary units of those stories, and determines the possible combinations and their ensuing results. Judges compare the narratives brought before them to the primary list of narrative templates. They match disparate stories and discover parallels and similarities, as well as the dissimilarities. Each and every individual case is deconstructed and transformed into a labeled narrative. One story becomes "negligent act," another becomes "criminal offense," and so on. Judging, in a sense, is really a matter of sorting out and identifying narratives and inferring their legal consequences.[44]

In other words, judges confront cases as competing stories, and sift through precedents and through their own internal stories, in search of sufficiently similar narratives, in order to facilitate the categorization of each case.[45] Next, in the written judgment, they transform the chosen story into a new one that combines the template story they chose with the unique character of any specific

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[43] VLADIMIR PROPP, MORPHOLOGY OF THE FOLKTALE (Louis A. Wagner ed., Laurence Scott trans., 2d ed. 1968) (1928).

[44] In this kind of narrative discourse, the surplus information—the data that does not fit the narrative template—is not valueless and has important functions. Each story's particular details endow it with its unique character and special impact. The fact that Red Riding Hood wore a red riding hood is perhaps redundant to the narrative template that is linked to her story, but this detail etches the story in our collective memory. In a similar way, O.J. Simpson's identity is redundant to the several templates that are connected to his case, but the specific identity of Simpson makes those templates stand out and activates our emotional and ideological responses to them. Interview with Gabriel Zoran, Professor of Literature and Comparative Literature, in Haifa, Isr. (Nov. 2001).

[45] One author's description of this process:

> But once you tell your story into the law, it becomes the object of a precise semantic dissection. The whole of the story is of no interest; instead, patient surgeons of language wait and watch, snip and assay, looking for certain phrases, certain words. Particular locutions trip particular legal switches, and set a heavy machine in motion.

D. GRAHAM BURNETT, A TRIAL BY JURY 45–46 (2001). *See also* BENNET & FELDMAN, *supra* note 42, at 64 ("This theory of stories . . . explains how ordinary persons can make sophisticated judgments about complex information . . . ."). Bennet and Feldman contend that stories, for the jury, are much more than a descriptive tool, organizing constructs enabling the evaluating and judging of complex situations.

case. The narratives created at this stage are intended not only to deliver the normative guideline (such as acquittal or conviction and sentence), but also to specify the factual grounds relevant to the normative guideline, and to persuade the audience of its correctness and inevitability.

The judicial style applied in countries with legal systems originating in the common law permits judges, and even appellate judges who generally are not responsible for fact finding, significant freedom of narrative and rhetoric. Judges elaborate upon or redact the survey of relevant facts based on all the circumstances of the case and their personal style and choices.[46] In several Continental legal systems, the judicial style is different. It is as concise as possible, lacks personal tones, and the narrative descriptions tend to be minimalist.[47] This distinction apparently ensues from a basic difference between the Continental and Anglo-American systems of law. Whereas the former is primarily based on doctrine, the latter has developed from "case law" that is based on precedents and judicial decisions. In a legal system with such an orientation, great importance is placed on the details of the narrative that underlie very precedent.[48]

However, even within the systems that tend to minimize the use of overt narrativity in judgments, in legal doctrine, or even in the legal culture at large, the fundamental legal functions of assessing and processing stories are ever present. The difference in external manifestations of narrative style does not influence the

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[46] *See* Bernard S. Jackson, *Narrative Theories and Legal Discourse*, *in* NARRATIVE IN CULTURE: THE USES OF STORYTELLING IN THE SCIENCES, PHILOSOPHY, AND LITERATURE 23–50 (Christopher Nash ed., 1990) (illustrating the connections between the content and materials of the narrative and the legal outcome in English case law); Esin Orucu, *Mixed and Mixing Systems: A Conceptual Search*, *in* STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING 335–52 (Esin Orucu et al. eds., 1996) (elaborating on the manner of writing in the common law legal systems).

[47] *See* MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS 135 (1982) (pointing out the extreme brevity of the statement of facts in the "cryptic" judgments of the French Court of Cassation); Orucu, *supra* note 46 (reviewing the differences in this connection between the common law and Continental legal systems and considering the historical reasons for these differences).

[48] *See* Pierre Bourdieu, *The Force of Law: Toward A Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 822–23 (1987) (describing this distinction between the systems).

essentiality of narrative cognizance within any given legal system.[49]

Undoubtedly, the relationship between law and narrative is manifold and ambivalent. As Sarat points out, the connections between law and language and the perception of the law as a "literary" occupation may be seen by some as threatening because they emphasize the manipulative aspects of the law and raise arguments concerning its unswerving objectivity.[50] Indeed, law as a system of adjudication cannot allow a free narrative flow. A narrator who enters a legal field is never permitted to roll out a story, freely and fully, according to style, need, or talent. Law has numerous tools that assume "narrative monitoring" functions. Among these tools are the rules of procedure and evidence, the rigid structures of legal doctrines and legal documentation, and conventions that form our expectations from law as well as law's limitations. Formally, law is not interested in narratives as such, but in certain facts that generate certain legal outcomes. Yet, in spite of those reservations, it seems that the use of narrative in various forms and manifestations is intrinsic to law.

IV. INTENET AND NARRATIVE: VANISHING STORIES IN VIRTUAL SPACE

People are turning to their computers in their search for knowledge with greater regularity. The Internet offers a reservoir of data, which, for all practical purposes, may be termed infinite, as it is multiplying every minute. In fact, it is impossible to completely "understand" or "grasp" the entire data array.[51] In

[49] It should be noted that a decision to negate a particular dimension of the narrative, such as by "creating" one that is *tabula rasa*, is actually a form of interpretation and manipulation. Since it prevents those exposed to the blank narrative from seeing the facts in a certain manner, it necessarily drives them in a different direction. Thus, "lean" narratives can be as effective, interpretive, and manipulative as "generous" ones.

[50] Austin Sarat, *Editorial Introduction*, *in* THE RHETORIC OF LAW 1 (Austin Sarat & Thomas R. Kearns eds., 1994).

[51] Recently, attempts have been made to measure the amount of information produced in the world each year. A research study carried out by the School of Information Management and Systems at the University of California at Berkeley concluded that the world's total yearly production of print, film, optical, and magnetic content would require

many cases, the Internet is an extremely useful and timesaving practical tool, whether one needs to find information, to communicate, or to engage in artistic endeavors. Furthermore, the Internet is a main source of recreation, as people spend more and more time at their screens in order to be entertained.

Whatever the motivation may be for using the Internet, and whatever link we choose to follow, we are never at the beginning, middle, or end of anything, but always at some contingent point that cannot be located on a chronological continuum, nor in any other kind of defined space or construct. The Web offers a practically endless flux that is entirely at our disposal, although "entirely" in this context could mean nothing. The effect of exposure to the constant flow of data could be the loss of ability to distinguish any defined or meaningful sections within it. This characterization of the Internet is highly relevant to narrative cognizance.

One way to comprehend how narrative works is to focus upon "its apparent claim to rescue meaning from temporal flux."[52] Narrative creates a structure that refers to different dimensions of time, to the link between the past and what exists in another temporal dimension. This creates the narrative's "peculiar relation to beginnings and ends."[53] Even when we deal with a non-linear narrative that makes use of means such as deviations and retreats, the awareness of some kind of temporal axis is preserved. The

roughly 1.5 billion gigabytes of storage. This is the equivalent of 250 megabytes per person for each man, woman, and child on earth. These numbers are increasing and some are even doubled every year. Until 2000, the amount of information accumulated all over the world was 12 billion gigabytes. The Internet is one of the fastest growing media in today's world. The research shows that the static, publicly available Web pages (the "surface" Web) consist of approximately 2.5 billion documents, up from 1 billion pages at the beginning of the year, with a rate of growth of 7.3 million pages per day. The total amount of information on the "surface" Web varies somewhere from 25 to 50 terabytes of information. It seems that we cannot practically handle this amount of information. Hal R. Varian, who carried out this research with Peter Lyman, concludes that we are drowning in a sea of information. Better understanding and better tools are desperately needed if we are to take full advantage of the ever-increasing supply of information and to swim in it, rather than drown. *See* Peter Lyman & Hal R. Varian, *How Much Information?* (2000), *at* http://www.sims.berkeley.edu/research/projects/how-much-info/ (last visited Nov. 19, 2002).

[52] BROOKS, *supra* note 7, at 90.

[53] *Id*.

temporal structures can be intricate. Christain Metz describes the doubly temporal sequence of the narrative: there is the time of the thing told and the time of the telling.[54] This duality enables us to create a special "narrative time," e.g., three years of a hero's life summed up in two sentences, etc., but it also shows the unique ability of the narrative:

> [I]t invites us to consider that one of the functions of narrative is to invent one time scheme in terms of another time scheme—and that is what distinguishes narrative from simple description (which create space in time), as well as from the image (which creates one space in another space).[55]

This distinction, between the story and the image, is highly relevant to the Internet experience. The Web deeply affects our ability to focus upon the temporal. It is the essential character of the Web that denies us the option of finalizing the claim to define meaning out of chaos. The result is deterioration of the ability to create and observe narrative structures that need some sense of temporality.

Contrarily, it has been suggested that the multiplicity, polyphony, and dynamics that characterize the Web are actually fertile grounds for a new kind of narrative discourse. According to this contention, the Internet forms a contemporary, non-linear, even anti-linear narrative, which every user shapes interactively and creatively according to their personal narrative needs, desires, urges, and preferences; in this perception, the Internet is actually a vast "emporium of stories." It offers us choices from an endless range of plots. Every site is, in this sense, a story or many stories presented for our perusal. Indeed, some hypertext theorists, such as Richard A. Lanham[56] and George P. Landow,[57] imagine new forms of discourse that make readers more active participants. Other theorists recognize the danger of getting lost in

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[54] Christain Metz, *Notes Toward a Phenomenology of the Narrative*, *in* THE NARRATIVE READER 87 (Martin McQuillan ed., 2000).

[55] *Id.*

[56] RICHARD A. LANHAM, THE ELECTRONIC WORD: DEMOCRACY, TECHNOLOGY AND THE ARTS (1993).

[57] LANDOW, *supra* note 5.

informational anarchy.[58] This danger is related to the undermining of narrative consciousness initiated by the Internet experience. Even if all the narrative components are floating in virtual space, meaningful narratives are not created in the majority of cases. Generally, the Internet does not turn into an "emporium of stories" because its very nature contradicts narrative discourse.

The Internet urges the user to constantly move forward in order not to miss the next image, the next screen, the next site, the next stimulation. Using the Internet is like being in a perpetual state of searching, in an endless chase that will rarely shape itself into any organizing insight. However, it is important to emphasize that neither the interactivity nor the anti-linearity that characterize certain aspects of the Internet experience necessarily impairs narrativity.

Interactivity could become an enriching element in any narrative. Laurence Sterne writes about the ways in which the narratee's active participation is achieved in *The Life and Opinions of Tristram Shandy*, a celebrated tour de force that is a masterly constructed early hypertext:

> Writing, when properly managed, (as you may be sure I think mine is) is but a different name for conversation: as no one, who knows what he is about in good company, would venture to talk all; so no author, who understands the just boundaries of decorum and good breeding, would presume to think all: The truest respect which you can pay to the reader's understanding, is to halve this matter amicably and leave him with something to imagine, in his turn, as well as yourself.
>
> For my own part, I am eternally paying him compliments of this kind, and do all that lies in my power to keep his imagination as busy as my own.[59]

[58] Henry Jenkins, *The Work of Theory in the Age of Digital Transformation*, *in* A COMPANION TO FILM THEORY 234, 247 (Toby Miller & Robert Stam eds., 1999).

[59] LAURENCE STERNE, THE LIFE AND OPINIONS OF TRISTRAM SHANDY, GENTLEMAN 83 (Ian Watt ed., 1965).

Sterne uses the concepts of "digression" and "progression" to illustrate the intricate course along which he maneuvers his writing. In *The Life and Opinions of Tristram Shandy*, progression, the chronological advance of the main plot along the "King's Highway," is constantly delayed due to innumerable and fascinating detours, leading to side-roads and by-roads called digressions, which Sterne loves: "Digressions, incontestably, are the sunshine;—they are the life, the soul of reading;—take them out of this book for instance,—you might as well take the book along with them;—one cold eternal winter would reign in every page of it."[60]

There is nothing contingent about digressions, however. They must be controlled and carefully planned. Progressions and digressions imply that "when a man is telling a story . . . he is obliged continually to be going backwards and forwards to keep all tight together in the reader's fancy."[61] Keeping "all tight together in the reader's fancy" is the heart of the matter. Narrative that "works," even when it has digressive detouring or "jumpy" dimensions, eventually leads our imagination towards one expression, potent enough to evoke significant ideological and emotional responses. A mere sequence of data, facts, images, or links does not create a story, and does not produce such a response.

Narrative is a construct, although it is potentially hidden and complex. It need not be "orderly," yet it must have some internal order, and must possess proportions that conform to the sphere of human activity. The Internet creates an articulate overflowing of words that lacks internal order. Its proportions and substance prevent us from grasping it as a whole or generating particular narratives from it.[62]

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[60] *Id*. at 55.

[61] *Id*. at 351.

[62] That point could be illustrated by referring to the hermeneutic circle. According to this image, the meaning of a part must be based on the understanding of an entirety in which the part belongs. But if one cannot understand the whole without understanding the parts, and the part cannot be understood without knowing its relationship with the whole, the result is a tautology: one cannot understand the whole without understanding the whole. *See* Hans-Georg Gadamer, *On the Circle of Understanding*, *in* HERMENEUTICS VERSUS SCIENCE?: THREE GERMAN VIEWS: ESSAYS 68–78 (John M. Connolly & Thomas Keutner eds. & trans., 1988) (1954).

There is a significant difference between active and creative "conversation," to use Sterne's expression, and the interactivity associated with the Internet. In the former instance, narrative invokes responses created and constructed for our consumption. The "conversation" that readers conduct with the writer has no influence upon the finality of the text with which they are dealing. The story remains intact, ready to stimulate further "conversations" with further readers. Usually, the interactivity of web users does not evolve into a "conversation" between narrators and readers because it does not stem from a constructed, final narrative. The interactivity of Internet users operates in an open-ended system that denies the possibility of closure and hence, the probability of the creation of an effective story. The never-ending quality of the Internet is actually anti-narrative in nature. Interactivity applied in an anti-narrative environment lacks the potency necessary to create a story.[63]

V. LAW AND WEB

A. *Law in an Anti-Narrative Environment: Overdose of Simulacra and Legal Stories*

What the Internet produces by the endless stream of changing sights, images, and copies is actually an extreme manifestation of simulacra. The perception of the simulacrum was developed by several thinkers, among them Jameson,[64] Baudrillard,[65] and

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[63] It is worth mentioning that some Internet theorists have pursued the notion that a new concept of construct will eventually emerge:

> In this shifting electronic space, writers will need a new concept of structure. In place of a closed and unitary structure, they must learn to conceive of their text as a structure of possible structures. The writer must practice a kind of second-order writing, creating coherent lines for the reader to discover without closing off the possibilities prematurely or arbitrarily. This writing of the second order will be the special contribution of the electronic medium to the history of literature.

JAY DAVID BOLTER, WRITING SPACE: THE COMPUTER, HYPERTEXT, AND THE HISTORY OF WRITING 144 (1991). *See also* LANDOW, *supra* note 5, at 103–07.

[64] Fredric Jameson, *Postmodernism, or the Cultural Logic of Late Capitalism*, 146 NEW LEFT REV. 53 (1984).

Deleuze and Guattari.[66] It refers to contemporary culture as a continuous flow of images or copies "whose relation to the model has become so attenuated that it can no longer properly be said to be a copy."[67] The perception that has often been applied in the field of modern art critique quickly became relevant to popular culture and contemporary culture at large, as well as the domain of contemporary media. When the electronic media provides us with an incessant flow of news, images, pictures, and speech, we are offered endless repetitions. "Reality," "truth," "integrity," and "authenticity" are terms that lose tangible meaning within the simulacrum. The simulacrum also devours narrative structure, which must cling to some primary authentic model in order to be effective, because narrative means representation, not simulation.

The simulacra phenomenon has "pre-Internet" manifestations. In his seminal essay, *The Work of Art in the Age of Mechanical Reproduction*, Walter Benjamin surveys the gradual development of our ability to duplicate:

> The enormous changes which printing, the mechanical reproduction of writing, has brought about in literature are a familiar story. However, within the phenomenon which we are here examining from the perspective of world history, print is merely a special, though particularly important, case. . . .
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> . . . Just as lithography virtually implied the illustrated newspaper, so did photography foreshadow the sound film. The technical reproduction of sound was tackled at the end of the last century. These convergent endeavors made predictable a situation which Paul Valéry pointed out in this sentence: "Just as water, gas, and electricity are brought into our houses from far off to satisfy our needs in response to a minimal effort, so we shall be supplied with

[65] JEAN BAUDRILLARD, SIMULACRA AND SIMULATION (Sheila Faria Glaser trans., 1994) (1981).

[66] GILLES DELEUZE & FÉLIX GUATTARI, ANTI-OEDIPUS (Robert Hurley et al. trans., 1977) (1972).

[67] Brian Massumi, *Realer Than Real: The Simulacrum According to Deleuze and Guattari*, 1 COPYRIGHT (1987), *available at* http://www.anu.edu.au/HRC/first_and_last/works/realer.htm (n.d.).

> visual or auditory images, which will appear and disappear at a simple movement of the hand, hardly more than a sign."[68]

Benjamin also writes about the blurring of distinctions between authors and their audience in the age of mass press, the changes in temporal perceptions caused by the emergence of film, and the way in which sequences of moving pictures distract the mind and affects the ability to develop valid assessments and judgments.[69] All of these characterize the Internet experience. In concurrence with Benjamin's ideas, much as the photographing techniques carried the seed of the cinema technology, the technological developments of the previous century carried the seed of the Internet phenomenon. Yet, the Internet created unique and unprecedented manifestations.[70]

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[68] Walter Benjamin, *The Work of Art in the Age of Mechanical Reproduction*, *in* VIDEO CULTURE: A CRITICAL INVESTIGATION 27, 28–29 (John G. Hanhardt ed., 1986) (footnote omitted).

[69] In another essay, Benjamin writes about the gradual fading of stories, a phenomenon which he relates to the invention of print, and to the blossom of the novel in the modern age:

> [T]he art of storytelling is coming to an end. Less and less frequently do we encounter people with the ability to tell a tale properly. More and more often there is embarrassment all around when the wish to hear a story is expressed. It is as if something that seemed inalienable to us, the securest among our possessions, were taken from us: the ability to exchange experiences.

Walter Benjamin, *The Storyteller: Reflections on the Works of Nikolai Leskov*, *in* ILLUMINATIONS 83 (H. Arendt ed., H. Zohn trans., 1968) (1936).

[70] There are different attitudes to the distinction between the Internet and the technologies that preceded it, and to the need for legal modifications. As Stuart Biegel describes:

> At one end of the spectrum are those who recognize occasional differences, conceding in certain limited cases that some new rules and regulations may be necessary. Others may go much further, arguing that today's networked computer environment is *different enough*—both in its design and in the nature of the online activity that takes place—to merit new and different approaches to regulatory issues that inevitably arise. Finally, at the other end of the spectrum, are those who would go so far as to argue that the online world is metaphysically both a different place and time, transcending commonly accepted notions of geography and duration.

STUART BIEGEL, BEYOND OUR CONTROL? CONFRONTING THE LIMITS OF OUR LEGAL SYSTEM IN THE AGE OF CYBERSPACE 31 (2001) (citing Paul Valéry, *The Conquest of Ubiquity*, *in* AESTHETICS 226 (Ralph Manheim trans., 1964) (1928)).

Baudrillard uses the term "hyperspace" in order to characterize the American deserts he traveled.[71] The essence of this "hyperspace," wrote Baudrillard, is the "disappearance of all aesthetic and critical forms of life in the irradiation of an objectless neutrality."[72] A similar characterization could be attributed to the virtual "hyperspace," the desert of the Internet. In this realm, any claim of authority and legitimacy is in the nature of a *fata morgana*, or mirage. Any moment of authority is an illusionary image that will soon fade and vacate its place for the next image in the endless cycle of the electronic simulacrum.

This loss of authority and legitimacy carries special importance when we reach the realm of law. As Franco Moretti wrote:

> It is not enough that the social order is "legal"; it must also appear *symbolically legitimate*. . . .
>
> . . . It is . . . necessary that . . . one perceives the social norms as *one's own*. One must *internalize* them and fuse external compulsion and internal impulses into a new unity until the former is no longer distinguishable from the latter. This fusion is what we usually call "consent" or "legitimation."[73]

Indeed, the legal system, any legal system, derives its power from symbolic legitimacy based upon social consent and legitimacy that grew and developed during a long and complex "apprenticeship" process. This never-ending process requires the use of stories. Narratives constantly sustain and nourish the law's authority, while the simulacrum that discards narrative structure also discards some of our convictions about law.

In a culture flooded with data that never crystallizes into distinct and particular stories, with images of images, with clichés that derive their "inspiration" from other clichés, law, like everything else, becomes meaningless. When law merges into the hyper-real-domains Web, what follows is the disintegration of

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[71] JEAN BAUDRILLARD, AMERICA 124 (Chris Turner trans., 1999) (1986).

[72] *Id*.

[73] FRANCO MORETTI, THE WAY OF THE WORLD: THE *BILDUNGSROMAN* IN EUROPEAN CULTURE 16 (Albert Sbragia trans., 1987).

legal generative narratives, and the breakthrough of the borders that define functional narratives. Consequently, this affects the ability to take normative stands and assess situations morally and emotionally.

Richard Sherwin, in a work focusing upon the influence of popular culture on law, describes the effects on legal reality of the incessant flow of images, recycled from network to network:

> They conjure a world robbed of personality, motivation, intentionality, and a story robbed of a structure that allows the listener to make sense of human actions and interactions. Such psychological fatality is intolerable to those—judges, jurors, lawyers, victims, suspects, spectators, and media producers—who face the law's demand for public judgment. Without coherent stories, judgment becomes impossible.[74]

Indeed, the diminished use of narrative as a way of perceiving law predates the Internet. However, the "Rule of Web" accentuates such a process and carries it to an extreme.

First, because the Internet is a sprawling medium that expands uncontrollably in all directions, it produces more simulacra than ever before. This inescapable, uncontrollable vastness, this overdose of simulacra, creates the difference and affects culture in unfamiliar ways. Within the flood of simulacra, the narratives of law turn into empty, powerless images.

Internet users differ in another way from mass media consumers; they are not necessarily passive. Many of them make the Web wider while consuming it.[75] They are not only users, but also interpreters and creators of additional virtual simulacra. The immense hypertext to which we are constantly exposed, the global

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[74] RICHARD K. SHERWIN, WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE 130 (2000).

[75] One example of the interactivity that characterizes the Web experience is the Weblogs phenomenon. Weblogs are personal Web sites for expressing feelings and sharing songs, poems, artwork, and thoughts. Today, there are about a half-million Weblogs and a new "blogger" is joining every 40 seconds. Blogger's motives included "need for attention, a mania to share information, and, above all, a desire to be a participant and not a potato." *See* Steven Levy, *Living in the Blog*, NEWSWEEK, Aug. 26, 2002, at 44–45.

electronic data flow, affects the ability to develop narrative knowledge of reality. As a result, the ability to use evaluative, emotional, and critical reflection is influenced. Furthermore, there is a possible link between the decline of story phenomena and two significant Internet-related issues. First is the way in which research engines influence the way we think about law. Second is the accumulating difficulty in applying existing law in the Internet.

Lexis and Westlaw, as well as other electronic networks that serve the legal profession, are emblematic of the electronic revolution.[76] Those devices dramatically transform the ways in which we produce legal insights, answers, and information. In pre-Internet days, when we sought knowledge relevant to a specific legal issue, we were required to go to libraries, where we looked for relevant stories. Often, we had to initially determine the story of a case, and then advance by looking for relevantly similar stories. Mastering such techniques required time and experience, and was often rewarded with serendipitous insights and broad, intricate observations.

Computerized search techniques changed all of this. If the contemporary researcher wants to explore, for instance, the links between constitutional law and tort law, she will not consider narratives in which those two doctrines intersect. She will not search for the "core story" of constitutional tort and how it differs from the one of constitutional rights. She will, instead, type some key words, such as "constitution and tort," and then command the computerized search engine to initiate its rapid Web search. One problem is the random nature of the results she will generate because the vastness of the Web dictates that search engines are only able to cover a fraction of it.[77] In this sense, using the Internet in order to obtain certain information is similar to casual surfing—in both cases the interaction with the Web manifests a haphazard quality. Furthermore, most computer searches use Boolean logic. Michael Heim explains the consequences:

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[76] Richard A. Lanham, *The Electronic Word: Literary Study and the Digital Revolution*, 20 NEW LITERARY HIST. 265, 272 (1989).

[77] *See* Steve Laurence & Lee Giles, *Accessibility and Distribution of Information on the Web*, *at* http://www.wwwmetrics.com (last visited Sept. 28, 2002). 1999 research by NEC reveals that mechanisms cover only 16% of the Web's pages.

> When we pose a question to the Boolean world, we use keywords, buzzwords, and thought bits to scan the vast store of knowledge. Keeping an abstract, cybernetic distance from the sources of knowledge, we set up tiny funnels to capture the onrush of data. The funnels sift out the "hits" triggered by our keywords. . . . We cover an enormous amount of material in an incredibly short time, but what we see comes through narrow thought channels.[78]

The "narrow thought channels" created by the computerized searches do not exhibit the relevant stories; they run through stories, distorting them or missing them altogether.

Highly available Internet search engines keep us away from book libraries, which hold "unsystematic," unfiltered collections of stories. These stories are the essence and logic of law, and we cannot afford to give them up. A research study constructed from Internet search result could be inherently impaired because it lacks the active intervention of imagination that is evoked, among other things, by narratives.[79] That is not to say that we should discount legal search engines altogether, or that a well-tuned search cannot produce adequate findings. But if we want to benefit from the

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[78] Michael Heim, *Logic and Intuition*, *in* COMPUTERS AND ETHICS IN THE CYBERAGE 81 (D. Micah Hester & Paul J. Ford eds., 2001).

[79] Compare Theodore Roszak's notions about necessity of keeping clear borders between ideas and information:

> It is only when we strike a clear distinction between ideas and information that we can recognize that these are radically different levels of discourse requiring different levels of evaluation. In most cases, we may be able to assess the data that flow through the program as either "right" or "wrong," a question of fact that yields to standard research methods. But the ideas that govern the data are *not* information; nor are they sacrosanct matters of mathematical logic. They are philosophical commitments, the outgrowth of experience, insight, metaphysical conviction, which must be assessed as wise or foolish, childlike or mature, realistic or fantastic, moral or wicked. That critical project spans the full range of computer software, from the video game that places the fanciful annihilation of a galaxy beneath the power of a child's thumb to the computerized war machine that places the real choice of genocide before our presidents and generals. . . . The computer can do no better than the quality of the information selected by a human intelligence to be entered into it.

Theodore Roszak, *Computers and Reason*, *in* COMPUTERS AND ETHICS IN THE CYBERAGE 73 (D. Micah Hester & Paul J. Ford eds., 2001).

reservoir of voices and thoughts embedded in stories, we cannot rely on Internet searches as our sole provider of knowledge.[80]

The other issues worth considering in the context of the schism between Internet and narrative are the practical and theoretical difficulties often encountered while trying to apply traditional legal concepts in Cyberspace. Those difficulties are related not only to practical issues, such as the problem to enforce legal norms in Cyberspace, but also to conceptual failure: the inability to accommodate some of our secondary generative narratives in virtual spaces. Consider, for instance, the conventional template narratives of intellectual property, which stem from traditional conceptions of authorship and the presence of an identifiable creator, e.g., artist, author, painter, or actor, whose rights we wish to protect, in certain aspects. But, as Landow points out, contemporary technology both extends conventional conceptions of intellectual property and makes its protection almost inconceivable.[81] He quotes, in this context, the testimony of Steven W. Gilbert before a congressional committee: "When almost any kind of 'information' in almost any medium can now be represented and processed with digital electronics, the range of things that can be considered 'intellectual property' is mind-boggling."[82]

This "mind-boggling" condition we experience does not necessitate relinquishing intellectual property laws. Yet, it does demand new conceptions of copyrights and new compatible secondary generative narratives. The old narrative relates to neither the economic volume nor the influence of modern "Internet innovators," e.g., Microsoft and similar large corporations, nor to the rights of millions of individuals to free access and fair use. It is

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[80] *See* PETER B. MAGGS ET AL., INTERNET AND COMPUTER LAW (3d ed. 2000) (considering whether there is such a subject as "Internet and Computer law"). A recent Westlaw search for the word "Internet" found 1,262 cases in the "allfeds" database and 391 cases in "allstates." A similar search for "shoe" found 28,269 federal and 37,0373 state cases. *Id*. The authors describe the misleading nature of this data. By itself it might indicate that "shoes" are a much more significant legal story than "Internet." This data does imply that there is not anything peculiar about shoes, and that there is, on the other hand, special nature that characterizes the Internet cases.

[81] LANDOW, *supra* note 5, at 197.

[82] *Id*.

not feasible to address the current situation by means of the traditional intellectual rights narrative, which focuses upon the need to protect an individual artist or innovator laboring in their attics. John Perry Barlow states that "there will be no property in Cyberspace" since "[n]o law can be successfully imposed on a huge population that does not morally support it."[83] Others anticipate the emergence of new generative narratives that will capture the complexity of the current situations. Richard Landow, in order to reach such a novel story, evokes memories of an old one—the narrative of feudalism: "Thus dividing the world into the informationally rich and informationally impoverished, one may add, would produce a kind of techno-feudalism in which those with access to information and information technology would rule the world from electronic fiefdoms."[84] In this context, Landow also points to the movie *Blade Runner*, in which giant corporations control information and power.[85] Images borrowed from ancient narratives are juxtaposed alongside those from modern science fiction narratives to promote the conception of a new class of copyright that protects the rights of authors while taking into account emerging needs.

B. Law, Web, and Borders

Another legal difficulty in Cyberspace is the dissolution of territorial borders. Until the advent of the Internet, all legal stories,

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[83] John P. Barlow, *The Next Economy of Ideas*, *at* www.wired.com/wired/archive/8.10/download.html (last visited Nov. 19, 2002). It is interesting to note the way Barlow uses narrative in order to promote his standing. He illustrates the "paradigm shattering" nature of the Napster affair, by looking at the American colonist liberation narrative: "What's happening with global, peer—to—peer networking is not altogether different from what happened when the American colonists realized they were poorly served by the British Crown: The colonists were obliged to cast off that power and develop an economy better suited to their new environment." *Id.* at *1. It is problematic to lean on the colonist narrative in order to conclude that "there will be no property in the cyberspace," because Barlow ignores certain ensuing developments of this narrative. In fact, the American colonists did not sail into a lawless future after detaching themselves from the English crown. They merely exchanged one system of legal sovereignty for another, one constituted independently to suit their needs and supported by new generative narratives. A similar course might evolve in the Internet environment.

[84] LANDOW, *supra* note 5, at 199.

[85] BLADE RUNNER (Columbia TriStar Films 1982).

generative and functional, shared a common attribute of occurring in certain locations, within certain borders. The Internet experience distorts the perceptions of locations and borders, which are essential to law and legal stories. Inevitably, generative and functional narratives firmly established upon the conception of borders are no longer effective. Discussed above, the metaphor of a "narrative map" designates distinguishable narrative spaces in the legal field and manifests the ways in which law and narrative continuously intertwine. Johnson and Post suggest the metaphor of a political map of the world that reflects geographical borders between nation-states and other political entities.[86] There has been, until now, a general correspondence and overlap between a "law map," which delineates areas where different rules apply to particular behaviors, and both the "narrative map," and the "political map."[87] As Johnson and Post indicate, "clusters of homogenous applicable law and legal institutions fit . . . within existing physical borders,"[88] just as different modes of narrative overlap certain areas of law. Yet, this is no longer true in either case. The Internet exists everywhere, but nowhere in particular, and as such, the narrative cognizance declines. Similarly, the notions of borders and national and international sovereignty are impaired: "Global computer-based communications cut across territorial borders, creating a new realm of human activity and undermining the feasibility—and legitimacy—of laws based on geographic boundaries."[89] Again, in both cases one can assume that new rules, motivated and bolstered by fresh narrative modes, narrative capacities, and novel narrative templates, will emerge and redefine borders, spaces, rights, and property templates.[90]

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[86] David R. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1368 (1996).

[87] *Id.*

[88] *Id.*

[89] *Id*. at 1.

[90] *See* NICHOLAS BLOMELY ET AL., THE LEGAL GEOGRAPHIES READER, at xiiv (2001). Narratives are used, even now, in order to grasp conceptual difficulties created by Cyberspace. Thus, Blomley, Delaney, and Ford turn to stories to demonstrate the challenge Cyberspace poses to both the theory and the practice of international legal sovereignty. They parallel the 1884 Mignonette tragedy, *Regina v. Dudley & Stephens*, 14 Q.B.D. 273 (Eng. 1884) (the trial of crew members who killed a cabin boy on the high seas in order to survive), with a 1999 legal narrative about a Florida teenager who sent a

Recently, *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*[91] revealed certain obstacles. Yahoo! asked the United States District Court for the Northern District Court of California to bar enforceability of a French judgment which ordered Yahoo! to block the access of Nazi material,[92] available from Yahoo's major site in California, from French Web users in France. The French ordinance did not consider the United States Constitution and the rights it endows, but the American court decided that the French ordinance was incompatible with the First Amendment.[93] This decision demonstrates the kind of difficulties inherent in the application of basic narrative templates within Cyberspace when relying upon traditional perceptions of sovereignty and borders.

Internet-related practices may distort stories and may affect our narrative cognizance. Yet, narrative cognizance is the tool we must preserve and nurture to face and manage some of the new legal challenges created by the Internet. To illuminate this point further and conclude, let us return now to Borges' *El Aleph*.

The emotional and cognitive responses of the two central characters reflect human response to the Web-like Aleph. Carlos Argentino Daneri represents a lifetime of constant exposure to the Aleph. The result in his case is "mental activity that was continuous, deeply felt, far ranging and—all in all—

threat message to an online chat room. These stories explicate and address the fundamental question, "where is law?"

[91] 169 F. Supp. 2d 1181 (N.D. Cal. 2001).

[92] Licra v. Yahoo!, TGI Paris, Interim Order No. 00/05308, Nov. 20, 2001, *available at* http://www.cdt.org/speech/international/001120yahoofrance.pdf.

[93] Judge Fogel concluded:

> Yahoo! seeks a declaration from this Court that the First Amendment precludes enforcement within the United States of a French order intended to regulate the content of its speech over the Internet. Yahoo! has shown that the French order is valid under the laws of France, that it may be enforced with retroactive penalties, and that the ongoing possibility of its enforcement in the Unites States chills Yahoo!'s First Amendment rights. Yahoo! also has shown that an actual controversy exists and that the threat to its constitutional rights is real and immediate. Defendants have failed to show the existence . . . of a genuine issue of material fact . . . . Accordingly, the motion for summary judgment will be granted.

Yahoo!, 169 F. Supp. 2d at 1194.

meaningless."[94] For years he had been toiling over the composition of a poem called *The Earth*. In this significant undertaking, Daneri attempts "to set to verse the entire face of the planet,"[95] without excluding a single detail. The Aleph is the source of inspiration for this vast and entirely redundant project. In effect, he simply "cuts and pastes" thousands of fragments from the Aleph and transforms them into a simulacrum. This process suppresses any creative growth, as creativeness is replaced by an obsessive, Sisyphean attempt to capture totality, and replicate shreds of it. The product is worthless because it offers mere simulation without genuine presentation or rendition of the original.

Borges, as a character in the story (as well as in real life), represents the opposite experience. In his first encounter with the Aleph, Borges confronts "the rotted dust and bones that had once deliciously been Beatriz Viterbo,"[96] together with "a pack of Spanish playing cards, . . . tigers, pistons, bison, tides and armies,"[97] Each item in this infinite circle loses its uniqueness and becomes identical to the others. Yet, after the initial shock and "infinite wonder, infinite pity,"[98] of his first encounter with the Aleph, the emotional response becomes blunted. The disappearance of differences breeds indifference. The exposure to the Aleph causes emotional paralysis because it damages the specific and particular quality that characterizes every experience:

> Out on the street, going down the stairways . . . riding the subway, every one of the faces seemed familiar to me. I was afraid that not a single thing on earth would ever again surprise me; I was afraid I would never again be free of all I had seen.[99]

The infinity of links also signifies the absence of any context and entails the dullness of significant emotional response. Borges retreats from the Aleph, denying to Daneri what he has seen, and

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[94] Borges, *supra* note 3, at 16–17.
[95] *Id*. at 19.
[96] *Id*. at 28.
[97] *Id*. at 27.
[98] *Id*. at 28.
[99] *Id*. at 28–29.

does not return to it. He tries to forget it, and after a few sleepless nights, he succeeds.

Does Borges' refusal to "surf" represent a technophobic fear of a new technology and his inability to control it and tame it, or does it represent the survival impulse and the sober realization of human limitations? The Borgesian flight from the Aleph signifies, among other things, the dire need to preserve our ability to create and maintain narrative constructs: the vehicles that transform meaningless data into organized, meaningful templates, or into stories. This enables us to preserve the symbolic authority and routine functioning of the rule of law.

CONCLUSION: "THE SAME FEW PLOTS . . ."

"The same few plots, I am sorry to say, have pursued me down through the years," writes the septuagenarian Borges.[100] The secret of narrative is embedded in the human capacity to use and reuse our basic narratives to create new stories, whatever the endeavor—law, literature, film, or any other. In this first decade of the third millennium, Cyberspace raises many questions and dilemmas about law, culture, power, and creativity. In order to grasp, assess, and address these questions, which may be new, we still need stories that are rooted in our personal and collective memories.

The relationships between Internet, narrative, and law are highly dynamic and diffuse. It is too early to conclude that the Internet will become either lawless or storyless. It is possible to presume, however, that the Internet will promote significant changes in the ways we use stories and the ways we understand law. Traditional generative and functional narratives will not be altogether abandoned, but perhaps transformed dramatically. In time, the Web might produce its own generative narratives linked to novel legal doctrines. If narratives are representations of human possibilities, they will inevitably respond to our urgent needs. Actually, that is one of the unique characterizations of the narrative

[100] JORGE LUIS BORGES, DOCTOR BRODIE'S REPORT 10 (Norman Thomas di Giovanni trans., 1972) (1970).

mode—its capacity to ignite shifts of thought and practice. Perhaps the Napster,[101] Microsoft,[102] and Yahoo![103] affairs and their yet unknown sequels will provide the preliminary sources of the next legally generative stories.

Be that as it may, stories and plots will remain as vital for law as they are for many other social institutions. Since the Internet is here to stay, one can anticipate a process that will modify our narrative capacities and needs and connect them to the rule of the Web.[104] Imagination can take us to undreamed-of regions. Human ingenuity, combined with imagination, transferred us all into the realm of the Internet. In order to navigate safely within the space of this novel, fictive-like realm, to perceive beginnings and ends, and to maintain law, we must use stories as our oars and anchors. Although the Internet has an outstanding contemporary quality, the pertinent conflict between chaos and construct is not novel. The vision of erecting a "city, and a tower whose top may reach into heaven,"[105] in which "the people is one, and they have all one language,"[106] has deep roots in human mythology. It is the vision

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[101] *See* A&M Records, Inc. v. Napster, Inc., No. C 99-05183, 2001 U.S. Dist. LEXIS 2186 (N.D. Cal. Mar. 5, 2001).

[102] *See* Microsoft Corp. v. United States, 253 F.3d 34 (D.C. Cir. 2001).

[103] Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 169 F. Supp. 2d 1181 (N.D. Cal. 2001).

[104] *See* JANET H. MURRAY, HAMLET ON THE HOLODECK: THE FUTURE OF NARRATIVE IN CYBERSPACE (1997) (envisioning a "cyberbard," a future storyteller who is "half hacker, half bard," that will carry literary imagination into unknown territories). New insights and new ways to organize knowledge and thought in the Internet era are sought constantly. *See generally* Nick Bingham, *Unthinkable Complexity? Cyberspace Otherwise*, *in* VIRTUAL GEOGRAPHIES: BODIES, SPACE AND RELATIONS 244 (Mike Crang, et al. eds., 1999); CYBERSPACE, CYBERBODIES, CYBERPUNK: CULTURES OF TECHNOLOGICAL EMBODIMENT (Mike Featherstone & Roger Burrows eds., 1995); Marcus A. Doel & David B. Clarke, *Virtual Worlds: Simulation, Suppletion, S(ed)uction and Simulacra*, *in* VIRTUAL GEOGRAPHIES: BODIES, SPACE AND RELATIONS 261 (Mike Crang, et al. eds., 1999); DONNA J. HARAWAY, MODEST_WITNESS@SECOND_MILLENNIUM. FEMALEMAN©_MEETS_ONCOMOUSE™: FEMINISM AND TECHNOSCIENCE (1997); Otto Imken, *The Convergence of Virtual and Actual in the Global Matrix: Artificial Life, Geo–Economics and Psychogeography*, *in* VIRTUAL GEOGRAPHIES: BODIES, SPACE AND RELATIONS 92 (Mike Crang et al. eds., 1999); DAVID R. KOEPSELL, THE ONTOLOGY OF CYBERSPACE: PHILOSOPHY, LAW, AND THE FUTURE OF INTELLECTUAL PROPERTY (2000); PAUL VIRILIO, THE AESTHETICS OF DISAPPEARANCE (Philip Beichtman trans., 1991) (1980).

[105] *Genesis* 11:4.

[106] *Id*. at 11:6.

of controlling totality, which is often juxtaposed with the nightmare of drowning in a limitless vastness.

The illustrated discord between the rule of the Web and the loss of the story is a present-day echo of that ancient meta-story: the annihilation of borders endangers the ability to perceive clearly defined segments of reality, and potentially leads towards a situation in which human beings "may not understand one another's speech."[107] When all stories become one, they become none. However, as one interpretation of that ancient tale suggests, a between the elements of narrative and of chaos must be reached, and therefore is always reached.

[107] *Id*. at 11:7.