ADOPTING THEORETICAL AND METHODOLOGICAL LENSES TO SEE A FORM OF POST-TRUTH LEGAL RESEARCH AS A COLLECTION OF MULTIFOCAL LAW NARRATIVES

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ABSTRACT

The primary purpose of this paper is to invite the reader to wear theoretical and methodological lenses in order to see post-truth legal research in the form of a collection of multifocal law narratives. This paper will exemplify how wearing lenses of postmodernism and narrative jurisprudence enables legal researchers to undertake a combination of doctrinal and non-doctrinal methods to interpret the meaning of statutory provisions in a contemporary context. The vision represented through a collection of images invites legal researchers to reimagine a collective engagement in the post-truth world through seeing what a form of legal research could look like.

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I INTRODUCTION

The primary purpose of this paper is to invite the reader to wear theoretical and methodological lenses in order to see post-truth legal research in the form of a collection of multifocal law narratives.[1] In this paper, I am broadly conceptualising a narrative as anything that is narrated,[2] which implies a narrator telling a story.[3] I am defining a post-truth world or space as one that includes multiple truths without the need for any one truth to win over another and assert a hegemonic position as Truth. Within postmodernism, 'Truth' with a capital 'T' as emblematic of 'the' hegemonic truth is replaced with plural truths and possibilities.[4] This paper will exemplify how wearing lenses of postmodernism and narrative jurisprudence enables legal researchers to undertake a combination of doctrinal and non-doctrinal methods to produce a collection of multiperspectival law narratives. In so exemplifying, this paper articulates tenets of my doctoral research (hereinafter 'the research') as post-truth legal research. The purpose of the research is not to assert one answer to the research question akin to a winning argument in a court of law, but to explore that question, and open a dialogue about it.[5] The post-truth legal researcher may indeed 'look at law as a dialogue between subjects themselves',[6] as 'knowledge of law, and legal reality, is produced by legal subjects'[7] narrating law. Although legal subjects need not be legal practitioners, they are, of course, practitioners of everyday life.[8] This paper suggests that doctrinal methods may be complemented by non-doctrinal methods in post-truth legal research that seeks to interpret the meaning of statutory provisions in a contemporary context, particularly where that meaning has not (yet) been subject to judicial interpretation.

Since a picture defies the broad definition of narrative, I would like to suspend the reader's disbelief to show her a self-made collection of images throughout this paper to demonstrate the theoretical and methodological stance of treating law as narrative knowledge. The vision represented through these images invites legal researchers to reimagine a collective engagement in the post-truth world through seeing what a form of post-truth legal research could look like. The text of this paper forms my narration of these images, but the reader's seeing of these images enables her to take a vantage point from outside the narrative form being represented in order to arrive at her own interpretations and appreciation of the theoretical and methodological frames underpinning it.

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[1] The genesis for exploring what legal research could look like in a post-truth world stems from the theme of the Australasian Law Academics Association Conference in July 2019, where I presented a version of this paper: '"Real" Laws in the Post-Truth World: 2019 Australasian Law Academics Association Conference', *School of Law and Justice at SCU* (Web Page) <https://sljresearch.net.au/alaa2019>.
[2] M Fludernik, *An Introduction to Narratology* (Routledge, 2006), cited in M Amerian and L Jofi, 'Key Concepts and Basic Notes on Narratology and Narrative' (2015) 4(10) *Scientific Journal of Review* 182, 183.
[3] Ibid 187.
[4] Marett Leiboff and Mark Thomas, *Legal Theories: In Principle* (Lawbook Co, 2004) 230.
[5] Margaret Davies, *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge, 2018) 117.
[6] Ibid.
[7] Ibid 118.
[8] James A Holstein and Jaber F Gubrium, 'Active Interviewing' in Jaber F Gubrium and James A Holstein (eds), *Postmodern Interviewing* (SAGE Publications, 2013) 67, 73.

Before viewing the collection of images, it is important to unpack the lenses through which to view a form of post-truth legal research as a collection of multifocal law narratives. I am constructing these lenses through the theoretical and methodological design of the research. Kiley extends the metaphor of lenses to the 'critical aperture' of 'narrativity' in articulating the purpose of his paper, '[t]o attempt a focal fit between multiple literary and legal theoretical lenses'.[9] The purpose of this paper is indeed to 'attempt a focal fit' between postmodernism and narrative jurisprudence as lenses for the post-truth legal researcher and her reader to de-centre any claims to singular legal truth in making space for plural legal truths and possibilities. In the postmodern tradition of Lyotard, all kinds of knowledge are produced and told as narratives.[10] Narratives are further distinguished by type, be they grand or micro narratives.[11] Law may be understood to purport a grand narrative, particularly via the application of the 'rule of law'. Dicey's articulation of 'the rule of law' indeed holds that the law applies equally within a jurisdiction, and that no one is above the law.[12] Grand narratives are perhaps surreal abstractions, offering dreamlike beginnings, middles and endings for equal application. On the other hand, Lyotard suggests that micro narratives are small stories told by individuals that hold truth(s) in specific localities.[13] Put simply, scholars of narrative jurisprudence conceive of law as narrative.[14] Olson implores that '[n]arration plays a central role in legal discourse and permits law to be communicated, adjudicative acts to be justified, and their principles to be explained'.[15] Moreover, the beauty of narrative jurisprudence lies in the reach of its methodological arm to extend the arena of law beyond the bounds of the legal system, but to the narrations of law that circulate around it by individuals who need not play roles as parties to a case.[16] The perspective imbued in narrative jurisprudence is '[t]o see law and narrative as mutually interdependent', which 'opens the door to considering aesthetics, poetics, and other aspects of form as essential characteristics of sound legal decision-making'.[17] Sources of law stories are limitless, whether they be, say, derived from written legal doctrine, oral stories, biographies or poems — so long as they are *about* law.[18] In sum, a postmodern approach views knowledge *as* narrative,[19] and narrative jurisprudence views law *as* narrative.[20] Accordingly, postmodern legal research may enmesh forms of grand and micro law narratives.

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[9] Dean Kiley, 'Real Stories: True Narratology, False Narrative and a Trial' (1996) 12 *Australian Journal of Law and Society* 37, 38.
[10] Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, tr Geoff Bennington and Brian Massumi (University of Minnesota Press, 1984).
[11] Ibid.
[12] AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th ed, 1959), cited in Elizabeth Ellis, *Principles and Practice of Australian Law* (Lawbook Co, 3rd ed, 2010) [1.50].
[13] Lyotard (n 10).
[14] David O Friedrichs, 'Narrative Jurisprudence and Other Heresies: Legal Education at the Margin' (1990) 40 *Journal of Legal Education* 3, 17–18.
[15] Greta Olson, 'Narration and Narrative in Legal Discourse', *The Living Handbook of Narratology* (Web Page, 31 May 2014) <http://www.lhn.uni-hamburg.de/node/113.html>.
[16] Friedrichs (n 14) 18.
[17] Robin Wharton and Derek Miller, 'New Directions in Law and Narrative' (2019) 15(2) *Law, Culture and the Humanities* 294, 299.
[18] Friedrichs (n 14) 18.
[19] Lyotard (n 10).
[20] Friedrichs (n 14) 17–18.

A philosophical frame of law espoused by contemporary legal theorist Margaret Davies supports the combination of these theoretical and methodological lenses. Davies articulates a philosophical view of law as being plural and materialised by individuals in specific circumstances.[21] The ontology of law is plural, according to Davies, which, in essence, connotes 'a way of thinking which acknowledges diversity, and does not try to reduce its theoretical object to a system or a unity'.[22] Far from being statically accessible or known, law does not exist as written legal rules, but rather comes to life through plural interpretations, followings, uses, or lack of following or use by individuals in any given circumstance.[23] Furthermore, Davies also proposes that the epistemology of law is material, as law is made material or mobilised by individuals.[24] Davies points to the shortcomings of an exclusive doctrinal analysis, asserting that 'analytical legal theory has sometimes failed to see law as thoroughly enmeshed in social life and therefore it has failed to see the need for multidimensional theoretical approaches'.[25] A further problem in exclusively undertaking a doctrinal analysis in legal research is to be 'blind to the extra-judicial or extra-legislative content that "pours in" to the law via literary and other narrative forms of cultural production'.[26] One solution to the problems of the myopia of exclusively undertaking doctrinal legal methods is to concurrently undertake non-doctrinal methods. Davies indeed argues that '[m]ultiperspectival legal theory' can be inspired by moving away from the 'internal and expert perspective' and towards 'the knowledges',[27] beyond the 'four corners'[28] of that perspective. While formal law as mediated by doctrinal methods contained by legal rules obscures or renders individual legal subjects 'almost invisible',[29] non-doctrinal methods have the potential to reveal and render visible real individuals as research participants. Davies' writing is instructive:

> [R]ather than ask how a reified and singular 'law' sees subjects, we need to be able to see the diversity — the radical and constitutive difference — of socially situated subjects and their relationships as the starting point for law.[30]

I contend that complementing a doctrinal analysis of law with non-doctrinal methods enables both the legal researcher and her reader to see plural law narratives and to think about how this plurality can germinate new ideas about what law means or includes.[31] Producing a legal research piece as a narrative in the genre of a collection of short stories,[32] comprising both a grand law narrative and micro law narratives, is perhaps 'far more interesting'[33] than proffering

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[21] Davies (n 5).
[22] Ibid 10.
[23] Ibid 53.
[24] Ibid 55.
[25] Ibid 128.
[26] Wharton and Miller (n 17) 302.
[27] Davies (n 5) 128.
[28] Wharton and Miller (n 17) 303.
[29] Davies (n 5) 116.
[30] Ibid 118.
[31] Ibid.
[32] Amerian and Jofi (n 2) 190.
[33] Davies (n 5) 118.

a singular approximation as to how the law in question is most likely to be answered in a court of law. The interplay or tension between the grand law narrative and the micro law narratives provides a fertile post-truth space within which the legal researcher and her reader may interpret 'a much more expansive definition of legality and a more nuanced analysis of everyday narratives of law'.[34] To foreshadow the effect of the research, 'a variety of normative lenses other than the state law itself' provide ways of refracting the state law,[35] and so seeing through those lenses potentially materialises that law in (un)intended ways. Equipped with the rationale for wearing these theoretical and methodological lenses, I hereby unveil the collection.

II VIEWING 'THE COLLECTION'

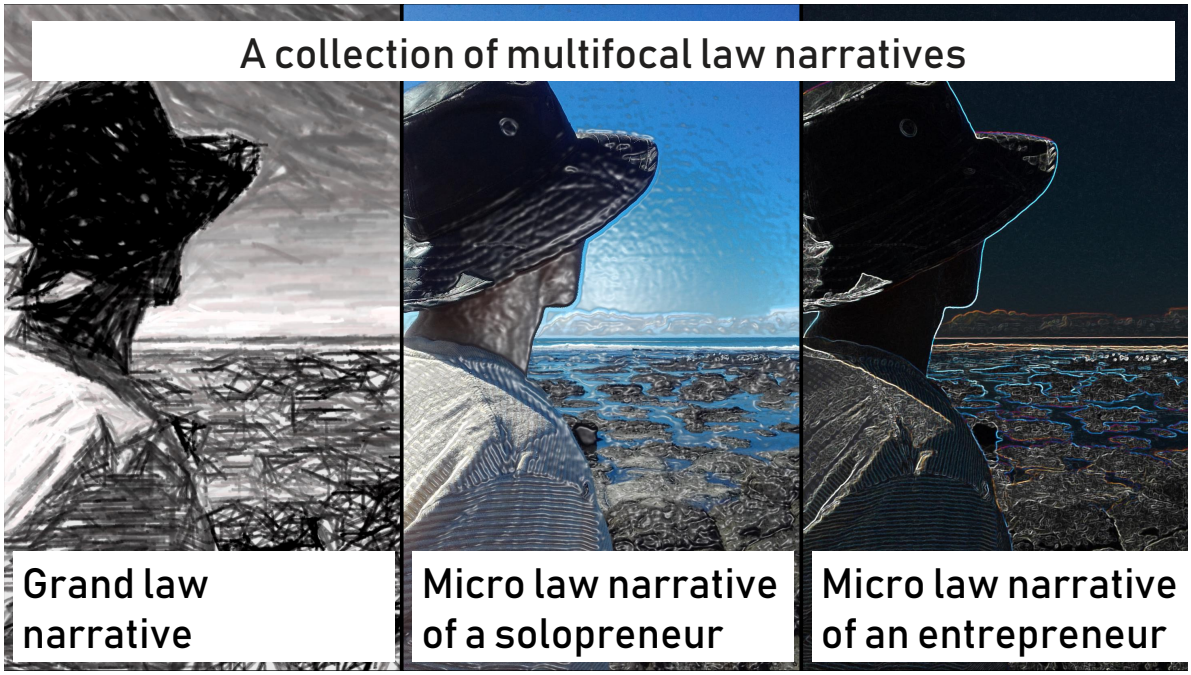

Image 1: 'The Collection'

The setting of these images is Flat Rock at low tide, the unofficial most easterly point of the Australian mainland, which is located in the Northern Rivers region in the far north-east corner of New South Wales. This region is known as a 'lifestylepreneur' region, with rates of entrepreneurship twice to three times the national average.[36] I am situating the research in this region because of this prevalence of entrepreneurship, and the theoretical impetus to elicit micro law narratives from a locale of study. The research question guiding the research is: does the reach of either or both of the self-duties under ss 19 and 28 of the *Work Health and Safety*

[34] Ibid 121.
[35] Ibid.
[36] Jasmine Burke, 'Northern Rivers an Entrepreneurial Hotspot', *The Northern Star* (online, 22 August 2017) <https://www.northernstar.com.au/news/northern-rivers-an-entrepreneurial-hotspot/3214861>.

Act 2011 (NSW) extend to touch the wellbeing of people who work for themselves in small business in the Northern Rivers, why or why not, and if so, how?

The research objectives are three-fold: (1) to undertake doctrinal methods in applying legal rules of statutory interpretation and the doctrine of precedent to arrive at a doctrinal analysis of the most likely position a court would take in relation to the research question; (2) to undertake experiential methods in conducting active interviews with 30 people who work for themselves in small business in the Northern Rivers to elicit interpretations as to whether work health and safety means or includes wellbeing, why or why not, and if so, how; and (3) to undertake narratological methods of: (a) crafting a grand law narrative in presenting the results of the doctrinal methods; (b) crafting micro law narratives in presenting the results of the experiential methods; and (c) analysing those grand and micro law narratives. Methods of narrative analysis include thematic analysis. An important caveat is that, while thematic analysis enables the researcher to synthesise themes, the variations among and between these themes are of equal importance in the postmodern paradigm. This is in accordance with Fontana's notion that the value of postmodernism lies in turning our attention to fragments, 'seeking to understand them in their own right rather than to gloss over differences and patch them together into paradigmatic wholes'.[37] The resultant production and interpretation of a collection of multifocal law narratives thus materialises law as plural narrative knowledge.

Having viewed the collection of images from afar, it is important to take closer vantage points in order to see the nuances of how the theoretical and methodological frames produce the form of each image as representative of the form of law narratives at play in the research.

[37] Andrea Fontana, 'Postmodern Trends in Interviewing' in Jaber F Gubrium and James A Holstein (eds), *Postmodern Interviewing* (SAGE Publications, 2013) 51, 52.

Image 2: 'A Grand Law Narrative'

The black and white sketch purports to be 'A Grand Law Narrative', and is produced by traditional doctrinal methods of statutory interpretation and case analysis. In returning to Lyotard's postmodern tradition, grand narratives are perhaps surreal abstractions, offering dreamlike narratives with intended storylines for equal application in a jurisdiction. A law is a written reflection of Parliament's intention, and perhaps at best is a hope, a sketch for the behaviour of a jurisdiction.[38] The result of following the legal rules of statutory interpretation will invariably be to produce a grand narrative of what the interpreter interprets as the most likely meaning of a law, which purports to apply universally within a jurisdiction in accordance with the rule of law. This enables the legal researcher to apply a doctrinal lens to her work to ensure that her reading of law does not misread or misinterpret that law in deviating or venturing too far from Parliament's intention.

A reading of the intrinsic material in the *Work Health and Safety Act 2011* (NSW) ('the Act') purports a grand law narrative of the New South Wales Parliament's intention in enacting the Act. The purpose of implementing traditional legal methods of statutory interpretation is, according to the golden rule as subsumed in the various interpretation Acts across Australian jurisdictions, to ascertain Parliament's intention.[39] Section 3 sets out the object of the Act, of which s 3(1)(a) is particularly instructive for the research:

> (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by—

[38] Andrei Marmor, *Interpretation and Legal Theory* (Hart Publishing, 2nd ed, 2005) 139.
[39] For example, *Interpretation Act 1987* (NSW) s 33.

> (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant …[40]

The inclusion of welfare in the phrase 'health, safety and welfare' in s 3(1)(a) of the Act[41] provides an inroads for an examination of Parliament's intention in respect to the creation of the self-duties under the Act, and the scope of those duties.

Section 19(1) of the Act sets out the content of the 'primary duty of care':

> (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
>
> (a) workers engaged, or caused to be engaged by the person, and
> (b) workers whose activities in carrying out work are influenced or directed by the person,
>
> while the workers are at work in the business or undertaking.[42]

Pertinently for the research, the note in s 19 stipulates that a 'self-employed person is also a person conducting a business or undertaking for the purposes of this section'.[43]

In addition, a self-employed person is likely to satisfy the definition of worker in s 7.[44] Johnstone and Tooma provide clarity that a person conducting a business or undertaking 'who is a natural person can, at the same time, be a worker'.[45] Accordingly, it is possible for a natural person who is a self-employed person to be both a person conducting a business or undertaking and a worker under the Act, attracting the primary duty of care and the duties of workers.

Section 28 sets out the duties of workers. Section 28(a) is particularly instructive for the research:

> While at work, a worker must—
> (a) take reasonable care for his or her own health and safety …[46]

Accordingly, the intrinsic material of the Act writes a grand law narrative in which a self-employed person owes herself two self-duties in respect to her health and safety at work as per ss 19(1)[47] and 28(a).[48] However, this narration is silent as to whether the scope of any or both of these duties extends to reach her wellbeing at work. Under the definitions section, 'health' means physical and psychological health.[49] However, the Act does not define 'safety' or

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[40] *Work Health and Safety Act 2011* (NSW) s 3(1)(a) ('*WHS Act*').
[41] Ibid.
[42] Ibid s 19(1).
[43] Ibid s 19.
[44] Ibid s 7.
[45] Richard Johnstone and Michael Tooma, *Work Health and Safety Regulation in Australia* (Federation Press, 2012) 58.
[46] *WHS Act* (n 40) s 28(a).
[47] Ibid s 19(1).
[48] Ibid s 28(a).
[49] Ibid s 4.

'welfare'. Furthermore, what physical and psychological health means or includes is, arguably, ambiguous. The ambiguity created in an overlay of ss 19(1)[50] and 28(a),[51] with the object enshrined in s 3(1)(a),[52] provides space for interpretation in asking what the expressions 'health and safety'[53] and 'health, safety and welfare'[54] mean or include in the contemporary context.

At first reading, wellbeing is excluded from the narrative as written by the intrinsic material in the Act.

A cursory search reveals that the question of whether or not 'work health and safety', or 'work health, safety and welfare', means or includes work wellbeing has not (yet) been judicially determined in the jurisdiction of New South Wales in respect of ss 19 or 28.[55] The practical limitations of this question in respect to self-employed persons is highlighted by the fact that the prosecutor is unlikely to prosecute for breaches of a self-duty in respect to wellbeing if it is unclear in the first instance as to whether or not the scope of that duty extends to wellbeing.

However, some recent cases illustrate judicial consideration of the effect of s 19 in respect to wellbeing, notwithstanding Parliament's intention. In *Margaritte Joanne Colefax v Secretary, Department of Education (No. 3)*,[56] the Respondent made an argument in respect to the intention of 'their policies and procedures and codes of practice', asserting that they 'are just "guidelines", and can therefore be ignored and set aside or varied'.[57] However, the New South Wales Industrial Relations Commission noted that employees of the Respondent 'rely on' the Respondent's 'policies and procedures and codes of practice … to protect their health, safety, wellbeing, recovery, rehabilitation, and return from injuries, illnesses and disabilities'.[58] Accordingly, the Commission contemplated that the effect of the Respondent's documents includes 'health, safety, [and] wellbeing'.[59] This reasoning provides a judicially contemplated inroads within which to explore the effect of the work health and safety legislative scheme[60] in respect to individuals, notwithstanding the intentions of the drafters of that scheme and resultant documents.

The facts reported in the Supreme Court of New South Wales in *Duffin v Mount Arthur Coal Pty Ltd*[61] also provide an interesting judicially considered inroads within which to consider a

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[50] Ibid s 19(1).
[51] Ibid s 28(a).
[52] Ibid s 3(1)(a).
[53] Ibid ss 19(1), 28(a).
[54] Ibid s 3(1)(a).
[55] '4 documents found for ("whasa2011218 s19" AND wellbeing)', *AustLII* (Search Results, 4 May 2020); '103 documents found for ("whasa2011218 s19" AND well-being)', *AustLII* (Search Results, 4 May 2020); '0 documents found for ("whasa2011218 s19" AND wellbeing)', *AustLII* (Search Results, 4 May 2020); '7 documents found for ("whasa2011218 s28" AND well-being)', *AustLII* (Search Results, 4 May 2020).
[56] [2019] NSWIRComm 1000 (21 January 2019).
[57] Ibid [15].
[58] Ibid.
[59] Ibid.
[60] Ibid [13].
[61] [2020] NSWSC 229 (16 March 2020).

duty holder's interpretation of his legislative duty. I will let the following extract from the case speak for itself:

> Jock …: I want you to change your medical certificate to say that you can't work in the pit anymore because I have a duty of care for your well-being and safety.
>
> Plaintiff: What the fuck's this about Jock?[62]

The central rationale for undertaking a combination of doctrinal and non-doctrinal research methods is that this combination enables legal researchers to produce a collection of law narratives that engage not only in a Parliament's intention in making statute law, but in interpretations of legal subjects who materialise — or do not materialise — a statutory provision in their daily lives. The experiences of research participants as storied via non-doctrinal methods provide a way for the legal researcher to consider not only the purpose of law as intended by Parliament, but the possible effects of law as materialised by legal subjects, which may include uses of law (un)intended by Parliament, or warnings against that use.

Internationally recognised work health and safety expert Michael Tooma provides commentary for duty holders to contemplate how to comply with work health and safety duties in respect to mental health in the contemporary context. Tooma cites the World Health Organization's definition of mental health, which imbues a metonym of mental health as a 'state of well-being'.[63] Cloaked in Tooma's language, it is possible to conceive of compliance with work health and safety law as encompassing a 'systematic'[64] and 'holistic … approach to mental health'.[65] In commenting on how duty holders can implement such an approach, Tooma implores:

> If we are to tackle mental health problems, we must embrace an organisation's role in promoting well-being programmes seeking to build worker mental health resilience through a focus on nutrition, exercise, sleep and mindfulness.[66]

According to Tooma, these 'are complementary initiatives' to those that are designed to reduce stress, and accordingly are 'mitigation strategies you adopt to reduce … the exposure to the work related chronic stress' and 'build resilience to the adverse impact of stress'.[67] With Tooma's commentary, it appears that promoting wellbeing has entered the arena of work health and safety law as a method of managing risks to mental health in the contemporary context.

Nonetheless, it remains important to consider whether, why or why not, and if so, how, some legal subjects are adopting any such reading in their interpretations and (in)actions. Under the rules of statutory interpretation, the statutory interpreter may consider extrinsic material to

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[62] Ibid [143].
[63] World Health Organization, *Investing in Mental Health* (2013) 7, cited in Michael Tooma, *Michael Tooma on Mental Health* (Wolters Kluwer, 2020) [1-030].
[64] Ibid [1-060].
[65] Ibid [4-060].
[66] Ibid.
[67] Ibid.

determine the meaning of a provision that is ambiguous or obscure.[68] Although the list of extrinsic material included in s 34(2) of the *Interpretation Act 1987* (NSW) is not exhaustive, it establishes a formality that is unlikely to include the interpretations of legal subjects in a contemporary context. Hutchinson implores:

> [L]egal research currently has an opportunity to be liberated from the chains of its previous narrow doctrinal framework. This constitutes a blossoming of the legal research environment and a move away from a constrained and outdated paradigm.[69]

Unshackled from the chains of a grand narrative of law espoused by statute, the post-truth legal researcher may adopt methodologies that enable legal subjects to become legal narrators in sharing the stage of interpretation.

III ENVISIONING 'NON-DOCTRINAL METHODS'

Inviting legal subjects to become narrative subjects of reading — and writing — law narratives enables the legal research to traverse multifocal perspectives. According to Wharton and Miller:

> Notions of legal subjectivity underlie depictions of the subject in narrative, whether that narrative subject acts within commonly adapted legal bounds placed on individual agency, or whether that subject transgresses or transcends such limits.[70]

Accordingly, none of the perspectives advanced by a collection of legal subjects and a resultant collection of micro law narratives need take a winning or grand stage as limited by the legal bounds of a court of law. This approach is particularly useful in the research that explores the subject matter of wellbeing, which eludes a single accepted definition in the scholarly literature. Dodge and her co-authors conducted a review of definitions of 'wellbeing' and proposed a definition for 'universal application'.[71] This definition is analogous to a seesaw, in which wellbeing occurs at a set point or balance between, on the one side, psychological, social and physical resources, and, on the other, psychological, social and physical challenges.[72] However, this definition reads as a grand narrative, which other definitions may nonetheless displace. Schulte and his co-authors also conducted a review of definitions of 'wellbeing', but concluded that 'true' wellbeing requires 'autonomy'.[73] This conclusion reads as an opening for micro narratives of wellbeing as told by individuals in specific situations.

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[68] *Interpretation Act 1987* (NSW) s 34.
[69] Terry Hutchinson, 'Developing Legal Research Skills: Expanding the Paradigm' (2008) 32 *Melbourne University Law Review* 1065, 1087.
[70] Wharton and Miller (n 17) 298.
[71] Rachel Dodge et al, 'The Challenge of Defining Wellbeing' (2012) 2(3) *International Journal of Wellbeing* 222, 230.
[72] Ibid.
[73] Paul A Schulte et al, 'Considerations for Incorporating "Well-Being" in Public Policy for Workers and Workplaces' (2015) 105(8) *American Journal of Public Health* 31, 41.

Equipped with these multifocal lenses, we can see that this collection houses at least two more images.

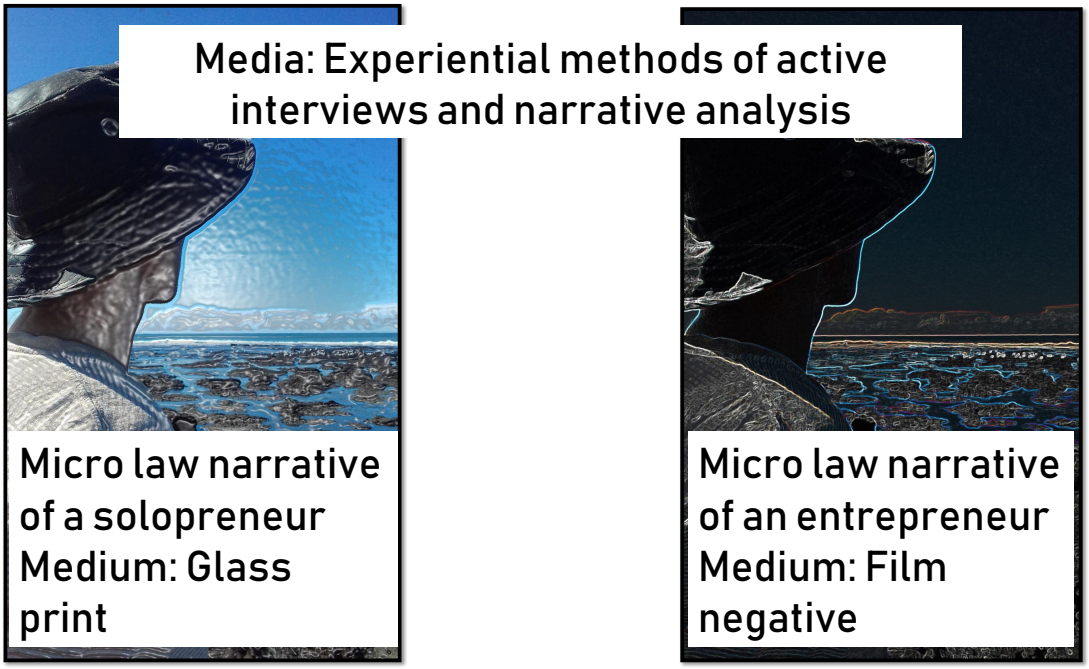

Image 3: 'Experiential Methods'

Micro narratives are perhaps realist specifications, with individualised storylines that applied — or could apply — to individuals in specific situations. 'Micro law narrative of a solopreneur' is a glass print, representing the transparency of the reality of the solopreneur who follows, or even uses, the primary duty of care to ensure his own wellbeing at and through his chosen work. In contrast, 'Micro law narrative of an entrepreneur' is a film negative, representing the situation of lack: of the entrepreneur not following, let alone using, the duty for his own wellbeing.

Who narrates law is a question left open for those who tell law narratives. Legal researchers are invariably legal narrators; and the narrators from whom they choose to elicit legal narrative knowledge invariably shape the perspective and content of the narratives they reproduce in their research. If a legal researcher confines the purview of her research piece to a doctrinal analysis, for example, her resultant legal narrative will be constituted by the narratives told by parliaments and courts inside the official law books, but will be necessarily penned by her, through the lens of her interpretation(s) of those books. If a legal researcher expands the purview of her research piece to non-doctrinal methods, she effectively opens the door for her resultant legal narrative to be constituted by a multitude of narrators, including living legal subjects. The inclusion of the perspectives of legal subjects in legal research allows the legal researcher to work beyond the 'four corners'[74] of the law books, and, in so doing, to bring a three-dimensionality to her research piece that would otherwise be marginalised. This three-

[74] Wharton and Miller (n 17) 303.

dimensional view operates as a post-truth space within which to break the fourth wall, in borrowing from the Tom Stoppard variety of drama, and invite and take seriously the perspectives of those who follow or use — or do not follow or use — a particular law in their daily lives. Following law implies compliance with the existence of a legal obligation; whereas using law implies adoption of law for a purpose beyond which it was intended.

The purpose of the experiential study is to elicit micro law narratives from research participants in a locale of study. I am producing the micro law narratives represented by these images by conducting active interviews with a number of research participants who satisfy the recruitment criteria of being a self-employed person. The research participants and I are necessarily active in making meaning about the dialogue.[75] I am crafting a micro law narrative from the written transcript of each audio-recorded interview in the words of each participant. Seidman advocates that qualitative interview researchers can craft profiles or vignettes as an engaging way of presenting their interview data that enables interpretations to be made about this data by readers.[76]

Having viewed each image in the collection more closely, it is important to understand how the research objectives interlace with the production of each image. The purpose of crafting and interpreting micro narratives is to enlarge the arena of legal sources to include the voices of individuals who would otherwise be marginalised or excluded from the legal system. This is especially important when exploring not only the mandatory reach of a duty in accordance with Parliament's intention, and whether people are following that duty, but perhaps the voluntary use of that duty, in accordance with an individual's intention that surpasses Parliament's intention. If a self-employed person wants to ensure her own wellbeing at her work, and/or take reasonable care for her own wellbeing at work, she could use one or both of her self-duties under ss 19 and/or 28 for those purposes.

Experiential legal research can play a theoretical role in disentangling the legal rules as to how to interpret law from the meanings of law in a contemporary context. This is particularly important for legal research that is underpinned by theoretical understandings of law that do not rest on the formal application of legal reading rules, but on the real (dis)application of law in everyday life. Opening legal research up to include non-doctrinal methods opens a post-truth space for legal researchers to elicit and engage in perspectives of law from legal subjects with multiperspectival vantage points that may break the fourth wall, so to speak, of the law. Eliciting the perspectives of legal subjects as legal narrators enables the production of a legal research piece as a multifocal law narrative that need not assert any single winning argument in a court of law.

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[75] Holstein and Gubrium (n 8) 73.
[76] Irving Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (Teachers College Press, 3rd ed, 2006) 121–2.

IV THE INTERPLAY

Equipped with theoretical and methodological lenses, each reader ultimately sees the interplay between the grand law narrative and micro law narratives from her own perspective. The goal of narrating law and as such producing legal research as a form of law narrative via multiperspectival narration transcends the goal of doctrinal legal research to argue the most likely conclusion for a court to reach. In surpassing a quest for the most likely answer or one legal truth, post-truth legal research borrows its purpose and effect from the literary world. Perhaps ironically, '[a] major point of literature is to wake one's conscious and stir one's sense of justice'.[77] I say ironically because of the purported purpose of law to achieve justice. Perhaps one way of the legal researcher working towards justice is to leave the task of ascertaining the meaning(s) of the law narrative she produces to her reader. The form of legal research as a multiperspectival law narrative provides an opening for the post-truth legal researcher, her participant narrators of law and her readers to 'engage in dialogue with each other in the context of established conventions or texts'[78] that underpin the grand law narrative. Legal research in the form of a multiperspectival law narrative positions each reader in the place of literary and legal interpreter, actively materialising her own narration(s) of law from invariably plural perspectives. This goal is particularly pertinent given the subject matter of wellbeing attracting the above-mentioned reflexive definition of 'autonomy'.[79]

[77] Thomas Morawetz, *Literature and the Law* (Wolters Kluwer, 2007) xxii cited in Greta Olson, 'Law is not Turgid and Literature not soft and Fleshy: Gendering and Heteronormativity in Law and Literature Scholarship' (2012) 36(1) *Australian Feminist Law Journal* 65, 77.
[78] Davies (n 5) 117–18.
[79] Schulte et al (n 73) 41.

V 'A PASTICHE'

Image 4: 'A Pastiche'

This paper has transparently articulated how a combined theoretical and methodological frame enables me to produce legal research in the form of a collection of a grand law narrative and micro law narratives, generating a fertile post-truth space for interpretation between them. Although this paper is limited in illustrating one form of post-truth legal research through one research project, it contributes to the knowledge base of 'a new research world', which '[t]oday's lawyers are moving into', 'in which it is necessary to know, use and be able to critique a whole variety of methodologies in addition to the known doctrinal methodology'.[80] Further legal research that contemplates and articulates its form as post-truth legal research is needed to enhance and diversify this knowledge base. With no singular, fixed understanding of law in any given circumstance, the post-truth legal researcher and her reader might envision legal scholarship as a pastiche: collections of grand law narratives and micro law narratives that operate alongside each other and, in so doing, de-centre any one claim to a winning legal truth.

The benefits of producing a pastiche may nonetheless permeate the formal bounds of the legal system. While law narratives 'are not mere ornamentation of judicial process', they are 'perhaps as influential in shaping the judicial process as the doctrine of *stare decisis* or the rules of evidence'.[81] Producing legal research in a narrative form

[80] Hutchinson (n 69) 1084.
[81] Wharton and Miller (n 17) 299.

> could also foster greater mindfulness and clarity in legislative and judicial decision-making by creating a broader awareness of how deeply legal narratives draw upon and how profoundly they influence the creation of a collective socio-cultural identity.[82]

Moreover, from a vantage point outside the legal rules of statutory interpretation, the legal researcher and her reader can appreciate — and play active roles in interpreting — a plurality of law narratives without the need for any one narrative to 'win'. Kiley writes: 'Perhaps answers don't fit the game. Perhaps the stakes are too divergent. That's why we have literature.'[83]

The reader's wearing of the theoretical and methodological lenses through which to see the form of the research echoes my adoption of theoretical and methodological frames through which to produce the research. In wearing these lenses, the reader is privy to a post-truth space through an overlay of or interplay between a grand law narrative and micro law narratives that engage in the research question. This demonstrates a 'performative view of law [that] sees imagined law and its material performance as co-emergent, constantly in dialogue'.[84] The beauty is that, like art, producing legal research as multifocal law narratives is 'finally, subjective'.[85] This subjectivity invites multiple interpretations,[86] which allow multiperspectival law narratives to continue to be read — and written — well beyond the post-truth legal researcher's last word.

[82] Ibid 304.
[83] Kiley (n 9) 45.
[84] Davies (n 5) 143.
[85] Friedrichs (n 14) 18.
[86] Leiboff and Thomas (n 4) 235.