Legal and Literary Fictions

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If law and literature share certain kinds of imaginative capacities, as much recent scholarship contends, legal fictions seem to offer a promising means of exploring this kinship, and particularly its narrative dimensions. Commentators on legal fictions often apply the term to doctrines that make the law’s image of the world seem fanciful or distorted, with fascinating and often worrisome consequences that form the contours of a story, as the fictional premise yields one bizarre result after another. Jeremy Bentham famously criticized legal fictions of all stripes, insisting that they were invariably “employed … with a bad effect” and that their polluting effects went far beyond the fiction’s immediate purpose: “[E]verything is sham that finds its way into that receptacle, as everything is foul that finds its way out of Fleet-ditch into the Thames.”¹

More recent commentators do not necessarily share Bentham’s antipathy to legal fictions as a class, but many nevertheless share the view that legal fictions proceed from a false premise to produce results that percolate throughout the legal domain, generating an array of consequences that may have no clear stopping point. One scholar, for example, associates legal fictions with “seriously flawed” assumptions whose “premises … inform and shape doctrine in diverse areas of the law.”² Another writes that “legal fictions allow the courts to tell a story that is imagined,” thereby serving to “set norms for human behavior and social conduct” and “work[ing] as support

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structures to the law” that may “transform into binding legal principles” and influence “arguments about fundamental legal, historical, and sociological truths about human ontology.” A third warns that fictions in law are dangerous because “any deviation from the principle of meaning what one says must be carefully circumscribed. Without limitations set on the use of false statements, we run the risk of linguistic anarchy.” In these accounts, the falsehood at the fiction’s base carries a risk because of its unpredictable career: once it has been launched, it may entrench itself in various legal domains that carry its implications even further. This uncertainty about what the hypothesis will yield explains why legal fictions are sometimes analogized to literary narratives, whose allure similarly consists in showing how an event may set off a whole chain of results, some predictable and others unforeseen. In what follows, I will challenge this view of legal fictions, arguing on the one hand that these concerns about the premise’s consequences apply to legal facts and doctrines generally, instead of being restricted to the ones that are usually characterized as fictions, and on the other hand that the conventional definitions of legal fictions, if taken seriously, demarcate a small group of legal rules and doctrines with an unusually constrained narrative structure that differentiates them from literary fictions rather than suggesting a kinship between the two.

My aim is to refocus the discussion of legal fictions and their significance for literary scholars. To that end, I develop three arguments in the course of this chapter. First, I suggest that narrative logic is an essential and commonplace feature in law, rather than being confined to a particular set of doctrines. It is a mistake to think of doctrines that appear fanciful or manifestly imaginative as somehow exceptional, because the law’s usual processes of reasoning by analogy have similarly narrative qualities. Second, I suggest that if certain legal fictions have a distinctive

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narrative form, it is because they proceed by arbitrarily curtailing the chain of causal effects that flow from the premise, displaying a highly artificial kind of truncated causation that we rarely, if ever, find in imaginative literature. Finally, if law only occasionally manipulates narrative logic in the fashion that distinguishes this group of doctrines, we may ask what value there is in applying the label of legal fiction to anything else. Returning to the examples that most frequently attract the interest of modern commentators, I propose that these doctrines are seen as displaying their artifice in a way that other doctrines do not, and that this feature explains why they provoke so much concern. Their ostentatiousness makes these doctrines seem brazen about their fabricated status—and thus emphatically capricious and fallacious—even if they otherwise resemble the seemingly prosaic and inconsequential doctrines that surround them. Because all doctrines are similarly consequential (or have the potential to be), the difference is one of neither degree nor kind, but instead of visibility. In bringing their artificiality to the surface, the more ostentatious doctrines call attention to the creative operations that pervade the legal realm but that usually pass unnoticed in the guise of merely technical routines.

I. The Plot of the Law

In scholarship that weaves together strands from legal and literary texts, the term “legal fiction” is usually connected to narrative inquiry. In this usage, a legal fiction begins as a metaphor, asserting an equivalence, and yields a series of far-reaching implications that radiate out from the premise. Corporate personhood is called a legal fiction (according to this view) because the label is taken to present corporations as embodied entities. This proposition may lead to conjectures about exactly which human traits might be attributed to a corporation, or what other entities are also endowed with these traits. The ultimate product might be a world
populated by animate objects, like an eighteenth-century “it-narrative” gone wild.⁵ Examined through a critical lens, the imaginative world inhabited by these legal persons would open up the kinds of questions about “character-space” and competition that Alex Woloch considers, as aspects of sparsely and densely populated novels, in *The One vs. The Many*.⁶ The world that legal doctrine creates—and the world of legal doctrine itself—might thus be considered not only in terms of narrative structure but also in relation to character, perhaps the most important means of creating that structure, and one that has not commanded much attention in narrative studies of legal texts.

Again, civil death is called a legal fiction because it treats convicted criminals as if they were dead for certain legal purposes, rendering them incapable of bringing a civil action, for example.⁷ Once recognized as figurations of the undead, they might be thought to take on other zombie-like features as well, and that suggestion might raise any number of comparisons with recent novels and television series, and might also prompt reflection on how law, as well as literary fiction, can manipulate the flow of time and even its direction. Temporality, like character, has long been an object of literary research on order and causation in narrative, but

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rarely figures in discussions of legal narrative. The examples of corporate personhood and civil death show how ways of linking doctrines to literary genres, and to familiar questions in the study of narrative more generally, have a crucial role to play in research on legal doctrines and devices, whose distinctive narrative attributes seldom receive more than passing notice, even in work that investigates the law’s imaginative dimensions. At the same time, these inquiries do not need to rely on the legal fiction as a framing device, because they find their root in the analogical basis of legal reasoning as a routine practice.

Lon Fuller, in one of the best-known discussions of the subject, explains that a legal fiction is “adopted by its author with knowledge of its falsity. A fiction is an ‘expedient, but consciously false, assumption.’” Fuller adds that a fiction “is not intended to deceive”; rather, he writes, its falsity is tolerated because the fiction is “recognized as having utility.” What, then, is the falsity in the doctrines just mentioned? Both could be described as correct statements of law that do not purport to describe non-legal phenomena. Corporations are classified as “legal persons”—that is, they have standing to be parties in legal disputes. Convicted criminals are deprived of certain legal rights. Whether there is a falsity depends on whether the doctrine is seen as making a claim about natural (non-legal) persons or whether the doctrine simply is the legal conclusion (“corporations have standing”; “convicted criminals may not bring civil actions”). Just as some philosophers of aesthetics argue that whatever is asserted in a story is “true in the fiction,” we might say that the doctrine simply sets out what is “true in law” and

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that it does not purport to go outside the law. I will argue for this view, but will also consider the implications of the account that would characterize corporate personhood and civil death as legal fictions.

It will help to contrast those examples briefly against a few of the kind that Fuller and others have offered when considering legal fictions as consciously false assumptions. A concise illustration is found in the doctrine of filius nullius (“child of no one”), which was used to deny illegitimate children any share in a father’s estate, if the father died intestate. The proposition might be articulated in precisely this fashion—as a doctrinal statement about the legal result. In some instances, however, courts felt it necessary to reach that result by way of the assertion that, for the purpose of this legal question (and for this purpose only), the child has no father.12 Similarly, according to the “attractive nuisance” doctrine, when a hazardous object on a land owner’s property injures a child, the owner is made liable on the ground that the child was “invited” onto the property.13 Rather than simply explaining that strict liability applies in such cases, courts achieved the same result by way of a factual claim that, like the claim about illegitimate children, has only this one legal effect. In both examples, this claim advances a (consciously false) assertion about the world outside the courtroom as a means of reaching the legal conclusion, rather than moving directly to the conclusion.14

12 Pierre J.J. Olivier, Legal Fictions in Practice and Legal Science (Rotterdam: Rotterdam Univ. Press, 1975), 133. That this kind of fiction also has literary implications—albeit of a different narrative status that is usually supposed—may be seen from discussions such as Homer Obed Brown, “Tom Jones: The ‘Bastard’ of History,” boundary 2 7 (1979): 201-34 (p. 203); and Michael Neill, “‘In Everything Illegitimate’: Imagining the Bastard in Renaissance Drama,” Yearbook of English Studies 23 (1993): 270-92.


14 Of course, one might also say that it is “true in law” that the child has no father, and hence this statement has the same status as the assertion that corporations are legal persons. As will become clear, however, the need to advance this provisional claim about the child, as a means of reaching a generalizable doctrinal truth about inheritance and
narrative structure that differs significantly from that of the examples presented at the outset. After looking more closely at the view that would treat those earlier examples as legal fictions, I will return to the kind of legal fiction that Fuller and others have explored.

In the cases of corporate personhood, civil death, and the like, the significance of the legal fiction lies not only in its starting point but also in what flows from it. When considered in this way, the fiction holds the seed of a plot. The latent narrative potential of the doctrinal premise explains why legal fictions are sometimes likened to literary fictions. That analogy would reveal something important, if corporate personhood were unusual in its ability to spawn a series of other legal consequences, such as that corporations have the same rights of speech and expression as other legal persons (and thus various other rights, in turn, entailed by that proposition). The plot of corporate personhood might thus recall the plot of *Frankenstein* or *The Matrix*, which describe the conflicts that arise when human attributes are conferred on artificial creations. However, corporate personhood is not unusual in that respect. Given that common-law judgments present themselves as rooted in precedent and are written in anticipation of their own use as precedents, this narrative potential is an ordinary feature of the common-law mode of conflict resolution, not a distinctively imaginative quality of a certain subset of judgments or doctrines. To single out, as fictions, a few that are wrapped in openly metaphorical language would implicitly reaffirm the view that other doctrines, sparer of their means and more banal in their mode of expression, are meager fare for the legal narratologist. As a tool for legal analysis, the work of critics such as Woloch would thus be reserved for doctrines whose names happen to call attention to their status as products of invention, fabrication, and imagination. The law’s imaginative domain is vast and so far has been largely exempt from narratological inquiry, which

intestacy, bespeaks such a different understanding of the claim’s truth-status that it seems misleading to call it “true in law.” The point of a doctrinal proposition is its generalizability, and that is what makes it “true in law.”
should operate on a much wider range of materials than those that are seen as highlighting their fictional qualities. To question the characterization of corporate personhood as a legal fiction, therefore, is not to limit the scope of narrative inquiry in legal analysis, but to broaden that scope to include areas not usually considered to exhibit such self-consciously literary features as metaphor. As to legal fictions in particular, I will argue that if they display a generative potential that invites analogy to literary fictions, that kinship owes more to the ways in which both fictional modes solicit a particular kind of attention, than to a shared ability to spin out narrative arrays.

According to one view, then, a legal fiction proceeds from a stipulation that generates absurd or at least implausible results—such as that corporations are legal persons, or that under the law of *feme covert*, “the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband,” or that control of an object, even without physical custody, is deemed to be possession under the doctrine of constructive possession. The fiction articulates a hypothetical which, once it has been postulated, may deliver all kinds of unanticipated consequences. The potential dangers of this process are a frequently rehearsed theme in the commentary on legal fictions. One version of this warning was quoted at the outset; another version may be found in Lord Mansfield’s insistence, in 1761, that “fictions of law hold only in respect of the ends and purposes for which they were

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16 Geoffrey Samuel offers a penetrating analysis of the fictional nature of legal concepts and doctrines as a general matter, in “Is Law a Fiction?” in *Legal Fictions in Theory and Practice* (note 13), 31-54.

invented” and should not be extended to achieve “purpose[s] not within the reason and policy of the fiction.”18 This warning reflects the intuition that fictional premises are easily accepted and, if they are not properly monitored, may be readily integrated with existing assumptions. That intuition has been borne out in research by cognitive psychologists on fiction and imaginative engagement, showing that “[r]eaders will initially accept the assertions in a fictional work as true and will … reject those assertions only if [the reader is] motivated and able to evaluate their veracity.”19 Whereas Coleridge described a “willing suspension of disbelief,” implying that readers must exercise a certain kind of effort to become capable of assenting to the fiction’s premise, this research suggests that belief comes readily, and that active effort is required to reject the premise—just as the commentators on legal fictions suggest, when emphasizing the need to be vigilant in circumscribing the fiction’s ambit.

As noted earlier, the common-law method of problem-solving depends fundamentally on the suggestive powers of a premise to yield new and unanticipated analogies. Consider the case of a court that takes the equitable doctrine of patent abuse and applies the doctrine to copyrights. Patent abuse (or patent misuse) is an affirmative defense that can be used to mitigate damages when a party is charged with infringement. The defense applies when the patent owner has engaged in an antitrust violation or has improperly sought to expand the scope of the patent or its term. While there is disagreement about the use of this defense in copyright cases, some federal circuits have permitted it.20 This extension from patent to copyright does not appear to present an

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20 For patent abuse, see, e.g., Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488, 493 (1942); for copyright abuse, see, e.g., Practice Mgmt. Info. Corp. v. Am. Med. Ass’n, 121 F.3d 516, 521 (9th Cir.1997), amended by 133 F.3d
inviting opportunity to study the workings of the legal fiction (e.g., a fiction premised on the assumption that copyrights are patents). Instead, the example offers a mundane illustration of what courts do all the time: they take existing doctrines, seek to discern their grounds and limits, and then decide, in light of those considerations, how the doctrine applies in a new context. For one who understands legal fictions as having distinctive imaginative qualities, perhaps the answer would be that copyrights, patents, and their owners’ abusive efforts all lack any such quality, because they are creations of law to begin with. Accordingly, a court has not done anything very imaginative by changing the scope or application of a doctrine that never had any basis outside the law, whereas corporate personhood appears more self-consciously creative precisely because it seems to refer to non-legal entities. Legal fictions, it might be argued, are fictional because they identify legal actors, or objects of legal analysis, in ways that are inconsistent with our experience when we consider them from a non-legal perspective. That would explain why doctrinal modification, as in the case of patent abuse, has no fictional quality, but the label could apply to the corporate person.

This explanation quickly crumbles, however. First, as noted above, non-legal persons do not figure in the doctrine of corporate personhood. Moreover, in most of the analyses that actually refer to non-legal entities, when articulating the kind of equivalence we have just observed, no legal fiction is created. Consider the case of a court that must decide whether steamboat operators are liable for property theft onboard. The New York court that addressed this question in 1896 had already held that innkeepers were liable for the losses of their guests because of policy concerns about the dangerous temptations that might otherwise motivate the

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1140 (9th Cir.1998). Robert Spoo has shown how copyright misuse could apply to the conduct of the James Joyce estate; see Spoo, “Three Myths for Aging Copyrights,” 31 Cardozo Arts & Ent. L.J. 77, 101-04 (2012).
staff to rob their guests with impunity.\textsuperscript{21} The court concluded that the same concerns applied to steamboat operators and their passengers. The owners of inns and steamboats, according to the court, had the same opportunities to steal from their customers, and in both cases the better policy was to make the owners liable for all thefts, regardless of who actually committed the crime, because the alternative would inevitably prompt the management to prey on their guests (or passengers). The case has become a classic in discussions of legal reasoning,\textsuperscript{22} but nowhere in the commentary on this case has anyone suggested that the court created a legal fiction in which steamboats are inns.

Indeed, commentators have refrained from characterizing the opinion in this fashion even though the court, in formulating the analogy, observed that “[a] steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, is, for all practical purposes, a floating inn.”\textsuperscript{23} While the opinion traffics in non-legal entities such as steamboats and inns, this formulation is simply a way of asserting an identity between them in light of a particular legal problem. The court does not assume that steamers are inns, but instead reasons that they present the same policy concerns. Courts routinely speak in this fashion when they consider extending or modifying doctrines, but commentators have not treated the process as an exercise of the capacity for fiction-making, even though any comparison inevitably requires an element of creativity or imagination, and often encompasses non-legal entities. In short, analogies and equivalences—both mundane and far-fetched—are essential ingredients of legal reasoning, and the lines of argument they will ultimately support are rarely discernible in advance. Judgments, like Tribbles, are born pregnant, always capable of spawning. The doctrines most often classified

\textsuperscript{23} Adams, 369.
as legal fictions are not unusual, either in their ability to drive a plot or in their means of slotting non-legal phenomena into legal analyses.

II. The Artificial Limits of Legal Fictions

If plot-like structures abound in legal analysis, the falsity at the fiction’s base, and particularly the role that the falsity plays in advancing the fiction’s utility, may offer a more promising means of understanding what differentiates the “consciously false assumptions” cited earlier—the examples of filius nullius and attractive nuisance. Those examples require the court to disregard a fact that it already knows (that is, the person seeking a share of the intestate estate is actually the decedent’s child, and that the land owner never invited the plaintiff onto the property).24 In these examples, the legal fiction proves singularly immune to the logic of plot. The falsehood yields exactly one conclusion, and is barred from yielding any others that might seem to follow. The claimant who is called filius nullius, for example, cannot parlay that ascription into the result that he is free to marry one of his half-siblings (since they are unrelated), nor, at common law, was the father even entitled to disclaim responsibility for supporting the child.25 Similarly, the fact of the property owner’s invitation cannot be used for other evidentiary purposes, such as to show that she was already acquainted with the plaintiff before the accident occurred. This truncated form of causation, in which the stipulated fact motivates a single conclusion and excludes any others, distinguishes legal fictions (on Fuller’s definition) from literary fictions.26

24 Michael Neill (note 12) succinctly makes this point when he observes that “[t]he filius nullius … was not so much the son of nobody, as the heir of nobody” (p. 273).
To be sure, literary texts often achieve similar effects by using narrators and characters who strategically withhold information. However, this method nevertheless assumes that the concealed details, once released, will ramify out to the full extent of their explanatory reach. They do not operate selectively to yield one result while being cordonned off from others, unless the plot itself justifies this constraint (for example, by keeping some characters unaware of the revelation and therefore unable to act on it). While there are numerous works of fiction in which the ordinary logic of entailment goes haywire, one would have to search far and wide for a literary plot in which an event produces results along a particular vector, while all other consequences that would normally follow are arbitrarily disallowed. Even in recent research on “unnatural narrative,” which studies narratives featuring “scenarios and events … [that are] impossible by the known laws governing the physical world, as well as logically impossible ones,” scholars have discussed examples in which the principles of causation are revised (for example, by making time go backwards) but none in which they are curtailed in the manner of a legal fiction. A narrative exhibiting this feature would provoke the reaction that philosophers have called “imaginative resistance”: readers would refuse to accept this truncated view of causality, even though “for the most part we have no trouble fictionally entertaining all sorts of far-fetched and implausible scenarios.” Nothing in the argument here requires that an “unnatural narrative” could not readjust causal logic in this fashion, but it is telling that few if

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any stories have tried the experiment.29 Without a significant amount of explanatory preparation, bafflement would be the likeliest result. Far from cutting the chain of causal inference, the trend in recent fiction has been in the other direction—that is, to minimize the information offered directly to the reader, while leaving increasingly more to be inferred from the details that are presented explicitly.30 This method depends precisely on letting the reader see how far implications will carry.

By contrast, the facts that come into being through the doctrines of filius nullius and attractive nuisance generate only one result—the legal consequence for which they were created in the first place. This feature also distinguishes legal fictions from various other legal devices that they resemble in certain respects. Presumptions of law, for example, are used to create facts, but once they have been accepted, they may be integrated with all the other facts that form part of the evidentiary record and were established by legal proof.31 The same treatment applies to deeming provisions, which stipulate that a certain entity or action is to be treated as if it were something else; the result is that not only the legal consequence, but also the stipulated fact, may be used to achieve any other relevant purpose. Thus, for instance, once control is deemed to be sufficient for possession, the fact that a party “possessed” an item might help to show not only that the party used it to commit a crime, but also that she owes taxes it, or that it is an asset of her bankruptcy estate. These legal devices obey the same narrative logic that typically governs

29 Stories with “plot holes” are perhaps the most obvious counterexamples, but the tendency to diagnose them as flaws shows that readers reject such efforts rather than taking them to exemplify an unfamiliar but intriguing kind of causal logic. Some examples are discussed in Marie-Laure Ryan, “Cheap Plot Tricks, Plot Holes, and Narrative Design,” Narrative 17 (2009): 56-75.

30 Much of the research on this topic has been done by scholars interested in how fictional characters are presented as inferring each other’s mental states, and how they are to be inferred by the reader. See, e.g., Alan Palmer, Fictional Minds (Lincoln: Univ. of Nebraska Press, 2004). Mark McGurl has discussed the process by which minimalism came to be treated as a sign of literary craftsmanship in M.F.A. programs towards the end of twentieth century. McGurl, The Program Era: Postwar Fiction and the Rise of Creative Writing (Cambridge: Harvard Univ. Press, 2009) (esp. pp.292-320).

imaginative literature, offering premises to be integrated with other details to see what conclusions they will yield. The consciously false assumption in Fuller’s definition of the legal fiction obeys a markedly different logic.

III. The Language of the Legal Fiction

If legal fictions prove to be most unusual when considered as narrative formations, perhaps the consciousness that accompanies the consciously false assumption offers a more promising means of explaining why corporate personhood, *feme covert*, and numerous other doctrines are so frequently characterized as fictions, and why this tendency is significant. Perhaps, when commentators quote Fuller’s definition, the important aspect is not so much the falsity of the doctrine’s premise as the consciousness that attends its use, which for some is an index of the self-consciousness they discern certain doctrinal formulations. That is, the court that adopts a “consciously false assumption” conveys something about its own attitude toward the law and the judge’s ability to manipulate the law at will, and this understanding of the court’s demeanor means that the terms can be flipped: when a court uses language that openly displays a doctrine’s artificiality, the court is resorting to a fiction.

Fabrication is the very stuff of law, and it may seem paradoxical to single out, as particularly notable, the instances that call attention to their artifice (through the use of personification, or deeming provisions, or terms like “constructive”), when the more successful contrivance is the one that conceals its imaginative origins. This tendency is not paradoxical, however, if the self-consciously inventive style that these doctrines affect is taken to reflect a kind of fascination with the law’s constructive abilities. Literary scholars, no matter how attuned to the ways in which texts muse self-consciously about their fictionality, would not regard this as a definitive trait of literary fictions, such that a story counts as a fiction only if it is presented
self-consciously. Rather, in the case of literary self-consciousness, a text that lays bare the means of its own fashioning offers a means of exploring its attitude towards its imaginative status. Similarly, then, perhaps various doctrines that have often been called legal fictions might be arranged according to the ways in which they signal or conceal their imaginative origins. A spectrum that encompasses modes of legal fictionality might reveal otherwise obscured connections between the more openly creative doctrines and the ones tacitly relegated to the category of legal truths or facts (or merely lackluster technicalities). This approach would continue to highlight the concern with contrivance and creativity that accounts for so much of the scholarly research in this area, while dispensing with the suggestion that a doctrine’s name, or expressly constructive effect, determines its status as a fiction.

When we consider a doctrine such as corporate personhood in this fashion—as a display of fictionality—its distinctive features are illuminated at least as well by analogy to works like Duchamp’s “Fountain” (1917) as by the label of fiction. Duchamp transfigured the urinal, endowing it with a new significance and soliciting a kind of attention that it would not receive when seen as merely a commonplace object. Presented as art, the urinal invites us to consider it as a part of a system and to interpret it in relation to other objects in the system. Moreover, in failing to decorate or alter the urinal (except for the addition of the date and the signature “R. Mutt”), Duchamp highlighted the gesture itself, the movement of the urinal from its familiar location to the gallery, as the act that invests the object with this meaning. Similarly, doctrines like corporate personhood show us how law takes seemingly ordinary terms and attaches them to a system where they take on a different meaning, yielding new and often unforeseen results as they interact with the rest of the system. The artifice is readily visible when the terms are widely used outside of the courts, while there may seem to be no artifice at all in terms cultivated within
the legal sphere, such as “patent” and “copyright.” Precisely because legal language varies in the means and degrees by which it exhibits its own artifice, these doctrines might be considered along a spectrum of fictionality rather than simply labeling some as fictions tout court.

Finally, even for those who remain unpersuaded that the legal fiction (as opposed to legal fictionality) should be identified with a distinctive narrative structure, this analysis may nevertheless help to show that narrative merits more attention in the study of legal fictions. Commentators generally treat the falsity of the doctrinal name (or of its premise) as the only feature worth examining, before turning to the dangerous consequences that the falsehood might engender. This approach assumes that the study of narrative is largely irrelevant, because only one narrative structure is possible—namely, a tragi-comic one in which the absurd premise is fully exploited, harming whatever it encounters. In short, “fiction” is simply equated with “narrative,” as if the latter could offer no particular methods of analysis. The tools developed by students of “unnatural narrative,” and by other narrative scholars, can help us look more closely at the forms of legal artifice, such as the different tools by which the law seeks to effect its exclusions and the different temporal rules by which they operate. This kind of research might yield new discoveries both about relations between legal and more conventionally aesthetic modes of fictionality, and also about unrecognized affinities among familiar legal devices.