SANTA CLAUS

LAW, FOURTH INDUSTRIAL REVOLUTION,
DECOLONISATION AND COVID-19

Editor | Letlhokwa George Mpedi

17

Truth, Lies, Virtual Reality and Storytelling – Santa Claus and Teaching

Dawie de Villiers

1. Introduction

This year parents in thousands of households would have discussed with their children about Santa Claus. I imagined how the discussion might unfold in a South African household in the middle of a pandemic year and thought it might go something like the following:

"Son come here, switch off your computer game and sit down next to me. I want to tell you a story about a man called Santa Claus. He is well known all over the world. His real name was Saint Nicholas, and he is famous for bringing presents to children. His story originated more than 1600 years ago, in Turkey. People wrote songs and poems about him. And you know what, he is still around today in our movies and our traditions. He owns reindeer that can fly while pulling his sleigh loaded full of presents for children all over the world that have been good during the year. Santa comes the day before Christmas and enters homes through the chimneys and leaves the presents next to the fireside. Children leave milk and cookies and sometimes even food for Santa's reindeers. He does not bring just any gifts. He brings what children want because he first invites children to write to him and make a list of the presents that they would prefer. Isn't this a great story?"

"Yes, Dad, but I have some questions. How will he deliver my presents because we do not have a chimney and what about the alarm and will

Bruno chase the reindeer away? Also, what about the lock-down where no one is allowed to travel or visit? Should we leave him a mask and sanitiser next to the cookies? Can I send him a text message or maybe even a voice note? And Dad, you always say that we should never lie, so be honest, is Santa real, and where did you hear this story for the first time?"

"Of course he is real Son. My father told me about him first, and you know your granddad never lies."

"Ok, Dad. But just promise that 'this is the truth, the whole truth and nothing but the truth'"

I found myself wondering how it came to be that most of us impress the need, to tell the truth on our children but at the same time are perfectly at ease in telling them these types of stories. There are good reasons why we tell children not to lie – it can break trust; diminish self-worth and, especially in the case of law, get you into a lot of trouble. At the same time, we do seem to accept that lying is not a precise thing and that 'white lies' or sharing stories such as Santa and the Easter Bunny are intended to benefit the other person and are therefore not quite so emphatically wrong.

This made me reflect on the role of storytelling in teaching law.

When are irony, fiction, virtual reality and especially storytelling a powerful learning tool? All of this can be found in the old and modern story of Santa Claus. There are also several legal lessons to be learnt. The main issue open for discussion is, how law lecturers can use storytelling as a manner or tool in the way in which we explain law principles to our students.

In law, lecturers must learn to adapt the stories we learn as children to the story of our legal system and use aspects of fiction and storytelling to explain reality.

It is during challenges with online-learning that law lecturers are getting aware of the difference between storytelling and story writing. This is especially true when 'irony' is being used as a tool in the teaching environment.

2. *When irony is used to convey a message*

Irony means "the expression of one's meaning by using language that normally signifies the opposite, typically for humorous or emphatic effect."

The term 'irony' has its roots in the Greek comic character Eiron. He was portrayed as a shrewd underdog who by his wit continuously triumphs over the egotistical character Alazon. The Socratic irony of many dialogues derived from this comic origin and became extremely popular. With irony go humour, satire, sarcasm and wit.

The role of these forms of communication has been an issue since the time of the Greek philosophers. Not only was it challenging to identify or detect irony but also even more challenging was to intentionally use it to achieve some or another goal.

It is accepted that the use of irony in the written format like poems or dramas should be distinguished from irony in speech, like in the classroom or courtroom environment. Although the use of irony may pre-dominantly be for entertainment purposes, its value as an educational tool should not be underestimated. One way is to use irony to criticise the current social and legal order. Another is to keep your audience (students) interested while putting them up for the challenge to distinguish reality from fiction and to clarify complex and challenging legal principles.

Lecturers should, however, be aware of the risks when using irony in explaining the law. They may manipulate their students into a specific thinking process that is not comparable to real-life situations. The skill that goes with this is to provide information and withhold it at the same time. This in itself may promote critical thinking, innovative ideas and a "think on your feet approach". It is the law lecturer that thinks outside the box that can use the ironies from the Santa Claus story to link the old with the new. Also, ethical issues (to tell the truth) and unethical issues (the misuse of a granddad) and how a person who commits various crimes became a hero.

The dramatic use of irony invites the listener and or viewer to re-think the relationship between law and justice. Law of evidence lecturers often state that it is more important to acquit ten guilty accused than to convict one innocent person. This is what the higher ideals of our legal system expect from us. This in itself may be the greatest irony and most sincere message of it all.

3. *The use of fantasy (fiction) as part of persuasive storytelling*

When one talks about 'fiction' we are generally meaning that something is not a true account, although it may be rooted in reality. As an example, when a story in a book or film is categorised as being fiction, it is understood as not being based on the truth or on facts. Another example of fiction is a lie that you have been told. The question is whether there is any role for fiction in an educational environment with law students where the determination of the truth is usually held out to be of the utmost importance?

Considering the answer brings one of the Santa Claus movies to mind.

"Miracle on 34th Street" is a 1947 American Christmas comedy-drama. It was written and directed by George Seaton and is based on a story by Valentine Davies. The film starred several famous actors such as Maureen O'Hara, John Payne, Natalie Wood and Edmund Gwenn and won three Academy Awards, one of which was by Valentine Davies – somewhat ironically - for the best writing of an original story.

In summary, the film is a courtroom drama about an apparently harmless old man who is convinced that he is Santa Claus. A sceptical prosecutor is adamant about having him committed to a psychiatric institution because of this ridiculous claim and also, obviously, because Santa Claus does not exist.

Most of the drama happens inside a courtroom where the main issue is the determination of the truth about the existence of a mythical figure that most people in America grew up with. What follows is a confrontation between legal procedure and fiction and some exciting

law of evidence issues. Kris Kringle or 'Santa Claus' is very outspoken in his belief that he is Santa Claus. Fred Gayley, his lawyer, decides to 'prove' the truth of his client's allegation. Documentary evidence is presented that the United States Post Office delivered hundreds of letters addressed only to Santa Claus, to Kringle. This was presented as an official act of the United States government. Because it was accepted as legal, it was also accepted as legally believable.

Outside the court, another drama unfolds. It is an election year and after the judge's campaign manager tells him "no one will re-elect a judge who puts Santa in a psychiatric institution" the judge officially 'recognises' Santa Claus' existence.

Behind the scenes, it is clear that neither Kringle's lawyer nor any other adult believes that Kringle is really Santa Claus. They are, however, prepared to accept that he is 'symbolically' Santa Claus. It is only on Christmas Day that circumstantial evidence from an independent source shows the attorney that reality and Kringle's version correspond. Gayley finally recognises in his last speech that what he thought were different truths are actually the same truth. Interestingly, this insight is discovered by means other than legal procedures and through the use of other evidence and reasoning.

The moral of the story is that truth is not always, or only, found in courtrooms and within legal processes. Rules of the law of evidence are meant to act as limitations to the abuse of the legal system. But as the film shows, lawyers cannot always rely on these in establishing the truth because sometimes their backgrounds, experiences and beliefs may have a significant influence on the outcome of justice. We need to acknowledge the complexity of the interaction of facts and fiction and how it can have an effect on the outcome of judicial processes. Fiction is what we think is untrue, but just because we believe it may be untrue, does not mean it can not hold value to our adaption of the legal system or the way we learn about it.

4. *Storytelling and legal education*

People have been telling stories since the earliest times and the idea of using storytelling to persuade other people is not new. The same is true when using stories in a legal environment. What is however even newer is the recognition of the benefits and advantages of storytelling in a legal, educational context.

A good story does not necessarily need to be factually accurate. Even prominent fictional stories can still be quite persuasive where everyone knows it cannot actually be the truth. Fictional stories are sometimes easier to tell than true ones because where it is supposed to be true people naturally tend to listen a lot more critically. In this case, they look for contradictions and discrepancies, and where they find them, it can weaken the significance of the story. This is not the case if the story is being told as a fictional one as assessing the veracity of the story does not distract the listener.

We all tell our students occasionally "facts are often stranger than fiction". This is why it cannot be said that true stories automatically have more persuasive value. In fact, for many years this belief created some conflict in my decision-making process – should I use fiction or fact to illustrate a point? There were times that I was convinced to stick to real and factually verifiable stories. But even then, it cannot be guaranteed that the story was the 'whole truth'. It is just human nature that in all storytelling, including the reference to the correct version of the story that one tends to exaggerate or adjusts the precise truth. How far one may go will depend on the context and other circumstances surrounding the story at hand.

The use of storytelling in academia can, to some extent, be compared with storytelling in court. The audience will always subject the story to a critical review, which is coloured by their differing views. Whether a judge, magistrate or a law student hears the story, lecturers (or lawyers) must know that their audience is aware of the fact that the storyteller's objective is to persuade and to convince.

The difference probably lies in the understanding that students are aware of the fact that the lecturer is not obliged to tell the 'whole truth'

and that may even lead to scepticism. Another challenge to mention is where lecturers need to cross cultural, language and sometimes even ethical boundaries.

Not all law lecturers may appreciate the role that storytelling can play in legal education. Persuasive storytelling will depend to a large extent on the preference for linking the story to facts, which can be verified, or to fiction where there is no such need. This is, however, not as easy as it sounds. It may even be a tale of deception and a critical reflection on the relationship between storytelling and the law.

As a point of departure, we should acknowledge that by their nature, stories never tell the entire truth. All stories are told from a specific point of view. That may place boundaries on what can be said and whatnot. Change the point of view, and the story will change. What this means, is that stories are imperfect tools and in itself potentially deceptive if misused. Despite this incomplete nature of stories, they can be formidable instruments of persuasion - as long as we remind ourselves of the danger of deception when employing them in teaching. This chapter pursues to investigate the boundaries of legal storytelling in general and storytelling to students in particular.

A rational analysis of legal principles from a persuasion perspective cannot compare with storytelling. Not all lecturers are convinced of the strength of storytelling. This may be because lawyers are trained to prefer an analytical and rational approach to emotion-based decision-making. But when used with caution stories can enrich rather conflict with analytical reasoning.

This is because sometimes legal rules alone tell us very little about the law and the normative understanding thereof. Introducing stories in teaching can bridge this gap and at the same time make the learning experience more entertaining, convincing and relevant, while at the same time persuading our students to accept the need for the rule that is being taught. In this regard, focusing on actual rules only is inadequate for both practical and jurisprudential reasons. Strict compliance with teaching the prescribed rules ignores the background context which gives them meaning and consequently insights for

students as they become aware of the role that individuals or groups played in bringing life and meaning to the stories.

It is essential that any high-level understanding of 'law' should include more than just the standard statements that are expressed in legal rules. Rules more often than not, lack clear definition, depth and applicability unless they are read with the stories and narratives that give them meaning and purpose. It is often said, "One cannot determine the meaning of rules or the priority among rules that conflict until stories put some flesh on the bare bones of those rules."

Legal pragmatists continuously remind us of the importance of stories. Using a narrative approach has become more and more popular in legal scholarship. Although some authors use 'narrative' and 'story' interchangeably, they are not the same thing. With a story, we find a description of something that happened, either as fact or fiction. A narrative on the other hand indicates a broader subject or implication.

Stories can help students appreciate how the law works and offer a specific context for understanding legal problems. But this is not the only value they hold. They are often better than conventional methods of legal analysis. They can build bridges across race, gender, class and sexual orientation.

Returning to my earlier dilemma as to whether it is better to use stories based on fiction or real facts, the answer is not easy. The usefulness of fiction can be compared to using simulation in moot courts or law clinics. It is, however, not precisely the same. With simulation, one requires the participants to do role-playing after been given a set of facts and the instruction to solve a problem or perform some form of lawyering.

Without disregarding any specific form of storytelling, there are of course limits to using stories based on fiction. Suppose a lecturer wants his students to understand what lawyers actually do. In that case, I have found a story based on real facts to be the better option. It is even better if the incident happened to the lecturer, as students will find it easier to believe and relate to the outcome of the event. The reality is that a lawyer may have some idea of what they would do in a specific

situation. But until they are confronted with that situation, they cannot know the answer for certain.

What goes to the heart of lawyering is telling stories, teaching about stories and learning from stories. Unlike in practice, law lecturers do not always need to choose between real life and fiction. We have the best of both worlds and can combine fictional stories with real stories, and they can even complement each other.

It is only when we appreciate the role of storytelling in the classroom that we can understand its role in the judicial process. It is often said that trial lawyers are, and should, view themselves as storytellers. They should, therefore remain conscious of their storytelling role at all phases of the litigation process. With this being said, it is, of course, important to bear the limitations to the storytelling process, such as the available evidence, procedural and evidential rules and the principles of substantive law, in mind.

5. Storytelling into the future with virtual reality

The rise of virtual reality has turned science fiction into fact. What does this mean for teaching law? Does it have a role to play in legal education? Is it a modern form of storytelling worth investigating? We should carefully consider the positive and normative implications of virtual reality technology to see its potentially dramatic impact on the teaching of law.

Virtual worlds are in essence online settings, which allow users to interact with one another in a simulated environment. With the increasing interest in virtual reality software, it is becoming relatively cheap and is readily accessible. Due to the considerable interest in this technology, almost every major player in the global technology market starts to develop and launch affordable virtual reality products. People were talking about the "Virtual Reality Renaissance". Various types of virtual reality headsets with its software, body and hand controllers and even 3D cameras hit the market. Large companies like Facebook, Google and Microsoft predict that the public would love to engage

and interact in virtual social environments that are simulating physical reality.

The virtual reality helmet or headset is probably the most common device with estimates showing that about 70 million units will be sold between 2018 and 2022. These helmets are used to imitate real events through video and audio channels.

It has already been proven that VR technology can be used in teaching successfully to present students with complex information. This has the potential to improve both the quality and efficiency of education.

Virtual reality can be the vehicle to electronically linking students not only with their fellow students and lecturers but also with practising advocates and attorneys.

An argument can be made that there can only be one reality based on real facts and to expand that in our discussions with our students can only confuse them. We, however, do not have a choice but to accept that a concept like extended reality (XR) is here to stay. XR indicates a range of incidents, which blurs the division between the real world and a simulated world. XR can itself be divided into virtual reality and augmented reality or mixed reality. With augmented or mixed reality, the point of departure is still a real-world environment. It is influenced through digital content into a digital environment that substitutes the real world as the only point of reference.

Is it, therefore, possible to tell a story in virtual reality? The answer is yes. It may still be that people putting on a VR headset anticipate some form of a gimmick. It needs not to be like that. The submission is to promote VR and 360-degree video simulations to do a lot more, and the first step should not be too difficult. This is to capture the attention and interest of our students.

Let us be practical. For large groups of students, we need to focus on mobile VR or also known as smartphone virtual reality headsets. These devices are compatible with most android and iPhone smartphones as long as the phones can fit inside the headset. Everything of

technological importance is already on the smartphone uploaded with a VR application. For that reason, the headsets are quite affordable.

So where to find content, to use with the VR storytelling option in the classroom environment? At the moment, apart from VR games, there are limited options for educational or training applications that are available from the Oculus Store, the iOS App store and the Android Play store. The number of new material, however, grows by the minute. Perhaps, in the short term universities need to develop and share their material. For example, the University of Johannesburg's Faculty of Law has recently launched several videos, which can be used in a teaching and learning environment. Instead of only making these available in video format; they could be developed into VR interactive material.

The most essential characteristic of VR storytelling has to do with 'presence'. The sensation of being part of the action is what makes VR distinct and exceptional. If a lecturer can succeed in creating this feeling amongst students who want to be involved, the rest will come naturally. We then have a captive audience that will listen and respond to our new approach to storytelling. The difference with this kind of storytelling is that we can exploit the very nature of VR/360°. That is that our students (viewers) will not only have a passive need to engage actively with legal matters.

The next characteristic of VR 360° storytelling is 'point of view' (POV). As storytellers, we must remain in charge and know when to directly focus on the issue that we want our students to address. Without realising it, our students are put in a position of either seeing things through an identified character's eyes (first-person POV) or of objectively assessing the actions of some other character (third-person POV).

Both options have some important lessons to learn from. If, for example, a crime scene is created, the students can be the detective (first person) or experience it in the third person. They are even then not totally passive, because it may be required from them to critically analyse the characters. They could also be challenged to come up with

innovative ideas of what was good or what went wrong and how they would have acted differently.

The last characteristic of VR storytelling is the importance of 'space'. What the lecturer as a storyteller wants to achieve is to have their ideas, messages, rules, exceptions and applications being put to fair use when filling all available space. How we use the space is more important than any individual character or even the plot of the story. It is only when we can identify all space possibilities and opportunities that we get our students to imagine stories of their own. They can then link that to the legal issues that we eventually want them to better understand.

Virtual reality as a storytelling tool is, however, not so easy as it may appear. With traditional storytelling, the storyteller is entirely in charge, and the students as the audience can decide whether they want to listen, watch or participate. Not so with VR storytelling. Here the storyteller and listener are participants in an interactive process.

The participation may, however, differ in degree. It may be as slight as the moving of the head during a decision-making process of where you want to look. Or it can be as complicated as taking control by way of manipulating virtual appearances through movements of hands or controls. This freedom comes with its challenges because the storyteller may lose control over what they want to achieve with the story. We must therefore acknowledge that this technology is still relatively new and in an experimental phase. Not all law modules may consequently be as susceptible to piloting it immediately.

Reliable research has shown that students have better memory retention and understand a lot better when they actively participate in active learning. This is nothing new.

It was Confucius who said:

"I **listen**, and I forget, I **watch**, and I remember, I **do**, and I understand."

Thousands of years later VR as a teaching method may be just the answer that we were all waiting for. It offers detailed conceptions and recreations through active participation and a better learning

experience. What makes it even more impressive is that it is not like traditional interactive methods. Question and answer techniques with a few students at a time are not inter-active for the rest of the class. With VR, the target audience can be huge groups. Not to mention the advantages that this may bring to situations like our current demands for social distancing.

One good thing that came out of the COVID-19 pandemic is that it made us recognise the flaws and defects in our education system. This may also even be the techniques that we practised and became used to over many years. It also emphasised the inequality amongst our population and that the traditional ways of teaching and learning are not the only ways. VR may just be the tool to bring about changes that all students can benefit from when the technology hopefully becomes more accessible to lecturers and students.

Law schools all over the world have started experimenting with VR technology. This is not to mention the legal industry and law enforcement where it is already in use to re-create crime and accident scenes. It may, however, still take a while before VR is seriously considered as a training tool in many law faculties. At the moment, law schools are experimenting with Virtual reality and Augmented Reality technology. We still do not know for sure how to integrate it into our LLB curriculum. Only the brave will invest and prioritise to be on the cutting edge of this technology. This is, however, not only about a financial investment but even more important is to get energetic and creative writers and storytellers to provide excellent and educationally sound content. That will convince the most sceptical person that this new method of teaching may complement a curriculum and deserves a chance.

If VR continues to become part of our lives, I can imagine the discussion, which I started off taking a different turn.

"Listen, Dad, about Santa Claus. You told me that you have often **heard** about Santa's story. You have **read** books about him. You have **watched** a movie in black and white and then in colour about the man. Now I want us to **do** things together with Santa Claus. So can we please

download our Santa Claus VR App on our smartphones, put it into our VR headsets and join Santa Claus for the ride of a lifetime. Only then will I believe that Santa Claus is real or shall I rather say "virtually realistic".

The Dad then just closed his eyes and saw, even without any VR headset, two ancient people smiling. The one was Santa Claus and the other Confucius.