Revista Direito e Praxis 15 anos

[Unpublished articles]

The law of the oppressed: storytelling in (poetic) legal arguments

O direito do oprimido: contação de história em (poéticos) argumentos jurídicos

Taís Penteado[1]

[1] FGV Law School, São Paulo, São Paulo, Brazil. E-mail: tais.penteado@gvmail.br. ORCID: https://orcid.org/0000-0003-0329-3681.

Artigo recebido em 19/12/2022 e aceito em 30/06/2023.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

Abstract

Storytelling as a method for knowledge production has long been introduced and adopted in legal settings, particularly by critical legal scholars. The contributions of the method have been acknowledged, but it has also been criticized. The present paper is interested in one criticism: the idea that the verifiability of personal stories is impossible and, hence, that storytelling-based legal arguments are unacceptable or weak. This paper does not offer one final answer to this criticism, but it provisionally suggests that, if storytelling-based legal arguments are analyzed in a holistic manner, we can see that even if the stories that, at their core, cannot be verified– or, in the limit, even if they are not true – the broader social claims that derive from them and that anchor the legal argument, can – and should.

Keywords: Storytelling; Critical legal methods; Outsider jurisprudence; Equality.

Resumo

Storytelling como método de produção de conhecimento há muito tempo foi introduzido e adotado em ambientes jurídicos, particularmente por estudiosos críticos. As contribuições do método foram reconhecidas, mas o método também foi muito criticado. O presente artigo se interessa por uma crítica: a ideia de que a verificabilidade de histórias pessoais é impossível e, portanto, de que os argumentos jurídicos baseados em storytelling são inaceitáveis ou fracos. Este artigo não oferece uma resposta final a essa crítica, mas sugere provisoriamente que, se os argumentos jurídicos baseados em storytelling forem analisados de maneira holística, podemos ver que, mesmo que as histórias que, em seu cerne, não possam ser verificadas – ou, no limite, ainda que não sejam verdadeiras – as reivindicações sociais mais amplas que delas derivam e que ancoram a argumentação jurídica, podem – e devem.

Palavras-chave: Storytelling; Métodos jurídicos críticos; Teorias críticas do direito; Igualdade.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

1. Introduction[1]

In 1975, amidst the terror regime that took place during the Brazilian military dictatorship, playwriter Augusto Boal published the first edition of "Teatro do Oprimido: E Outras Poéticas Políticas"[2] ("Theater of the Oppressed: And Other Poetic Politics") (BOAL, 1993). The book is a collection of essays, divided in four parts. The first three are dedicated to criticizing previous conceptions of theater – specifically the Aristotelian, the Machiavelian and the Brechtian. The fourth advances a new theatrical method: the poetics of the oppressed.

Part four begins with the following brief introduction[3]:

> In the beginning, theater was the dithyrambic song: free people singing in the open air. The carnival. The feast.
> Later, the ruling classes took possession of the theater and built their dividing walls. First, they divided the people, separating the actors from the spectators: people who act and people who watch. The party is over! Second, among the actors, it separated the protagonists from the masses: coercive indoctrination began! (BOAL, 1993, p. 119)

This passage embodies Boal's main ideas: the ruling class appropriates power. Then, it captures the means to exert power, excluding others. Finally, it produces and imposes narratives. The solution, he suggests, appears in the next passage:

Now the oppressed people are liberated themselves and, once more, are making theater their won. The walls must be torn down. First, the spectator starts acting again: invisible theatre, forum theater, image theater, etc. Secondly, it is necessary to eliminate the private ownership of characters by individual actors: Joker System.

Here, Boal exposes the emancipation process. The oppressed re-appropriate narratives regain the means, and then, achieve protagonism – in theater, and society.

Boal's theater of the oppressed arose from Paulo Freire's – another Brazilian author - ideas on critical pedagogy, presented in the groundbreaking book entitled Pedagogy of the Oppressed (FREIRE, 2005). Freire's educational philosophy - built from his experience of trying to end illiteracy among children and grandchildren of former

[1] This paper was produced with the support of Fundação Getúlio Vargas, through the Mario Henrique Simonsen Teaching and Research Scholarship, Coordination of Superior Level Staff Improvement (CAPES), through the CAPES-PROSUP Scholarship and São Paulo State Research Foundation (Process n. 2022/04851-1). The author would like to thank Professor Gerald Torres, for his reading and comments to this work.
[2] In English, "Theatre of the Oppressed". Augusto Boal, Theatre of the Oppressed (Theatre Communications Group, 1993).
[3] "Theatre of the Oppressed". Augusto Boal, Theatre of the Oppressed (Theatre Communications Group, 1993) 119.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

enslaved people in Brazil - is predicated in liberating subaltern individuals from conditions of oppression. Mostly, by challenging the idea that teachers should preach, and students listen without critically reflecting about what is being said (FREIRE, 2005, p. 72)[4]. The focal point of the pedagogy of the oppressed is to break the binary of protagonist/spectator and confer the latter the conditions to expose counternarratives that could serve the process of knowledge-production through consciousness-raising[5].

What both theater and pedagogy of the oppressed have in common is the insight that some narratives have prevailed over others and that this hegemony has served the powerful in the detriment of the powerless (MANOJAN, 2019, p. 127). The remedy for that, accordingly, would be to free the oppressed from the place of depositaries of narratives and give them the tools to both expose and perceive world realities. A pervasive question always arises in this point. In a world of hegemony, how can counter-narratives even be possible? The answer given in both pedagogy and theater of the oppressed is simple: exposing lived experiences and thinking about power from there.

Boal and Freire are talking about theater and education, of course. But they might as well have been talking about the law. Law has been created and time and again appropriated to serve those that occupy positions of power in complex and deep ways.[6] But, paralleling the insights of both the pedagogy and the theater of the oppressed, oppressed groups and critical legal theorists associated with outsider jurisprudence have resisted.[7]

Outsider jurisprudence branches – such as Critical Race Theory, Feminist Legal Theory, LatCrit and ClassCrit - have given us many insights. Among them, the idea that, although purporting to be neutral and being treated as neutral, law is built and interpreted from the point of view of power and, as such, serves the purpose of

[4]In Freire's words, "In the banking concept of education, knowledge is a gift bestowed by those who con- sider themselves knowledgeable upon those whom they consider knowing nothing. Projecting an absolute ignorance onto others, a characteristic of the ideology of oppression negates education and knowledge as processes of inquiry. The teacher presents himself to his students as their necessary opposite; by considering their ignorance abso- lute, he justifies his own existence."

[5] According to the Internet Encyclopedia of Philosophy, Paulo Freire's "goal was to eradicate illiteracy among people from previously colonized countries and continents. His insights were rooted in the social and political realities of the children and grandchildren of former enslaved peoples". At https://iep.utm.edu/freire/

[6] The idea that law is a domination tool has been a common ground in critical theories. In the Marxist tradition, see BEIRNE; SHARLET, 1980; in the Feminist tradition see MACKINNON, 1989, p. 157, in the Critical Race tradition see FREEMAN, p. 1978 and more recently, on the Law and Political Economy movement, BRITTON-PURDY et al, 2020.

[7] Here I use "outsider jurisprudence", coined by Critical Race Theory author Mari Matsuda (1987) and adopted by other authors in the field, as a category that encompasses branches of critical theories of law that share methodological as well as substantive insights. See Section I.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

reinforcing subordination. Power is not an abstraction: it is an interlocking system of converging structures (COMBAHEE RIVER COLLECTIVE, 1977) that create concrete social relations and that have real impact on the establishment of rules, the conditions in which rules are applied and the legitimating narratives that sustain them (GUINIER; TORRES, 2002, p. 110). These insights about the relationship between law and power have only emerged because of a distinctive factor: the development and adoption of a methodology that favors a ground up knowledge production model.

Ditching abstractions, critical theories depart from the perspective of the oppressed to challenge and reconstruct law (MOREIRA, 2018, p. 75). Not only its application, in a liberal fashion, but its most fundamental categories, concepts, values and principles, in a radical fashion. This critical methodology has many expressions – consciousness raising, asking the "woman question", looking to the bottom – and it has in its core a search for experiences that problematize social relations of power.[8] One way of doing that – advanced and adopted within Critical Race Theory - is by telling stories, or, as it has been called, storytelling (or counter-storytelling). To tell stories is not new: stories have been an important way of resisting, in many settings and many places.[9] What is new about storytelling in outsider jurisprudence is its application as an interpretative method in law. Storytelling operates on the same level as analogy or other fancy-latin-named methods that tell us what the law is or what it should be.

The contributions of storytelling have been acknowledged, but the method has also been criticized. Traditional scholars accuse storytelling of being self-serving and partisan – and, as such, incapable of offering the neutral answers that liberalism praise so much. This paper, however, is interested in the problematization that came from non-traditional scholars: the impossibility of verifiability of stories and, hence, the weakness of storytelling-based legal arguments.

Verifiability is important for outsider scholars because there might be conclusions about the law that arise from experiences with which we, nevertheless, disagree with. And, unlike in "traditional" scholarship in which we can question the methodology and the data collected (e.g. did you interview people? Which questions did you ask? Which language did you speak?), it is hard to tell when and how it is possible to question personal experiences. In fact, it is not farfetched to say that it is impossible. This paper does not

[8] A detailed description can be found in Part I.
[9] Classic examples can be found in MORAGA; AZALDÚA, 2015.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

offer one final answer to this criticism of storytelling as a legal method. However, it provisionally suggests that, if storytelling-based legal arguments are analyzed in a holistic manner, we can see that even if the stories that are at their core cannot be verified– or, in the limit, even if they are not true – some of the broader social claims that derive from them and that anchor the legal argument, can – and should.

The paper is structured as follows: Part 2 presents storytelling as a legal method and places it in the broader realm of outsider jurisprudence – particularly Critical Race Theory. Part 3 explores the criticism directed at the impossibility of verifiability, as well as some previous responses to it developed by outsider scholars. Part 4 develops the tentative response to the problem, by analyzing the conditions of sustainability of two claims developed by Critical Race Theorists – Mari Matsuda's challenge of free speech doctrines and Patricia Williams' challenge of equality views that permeate anti-affirmative action decisions. The paper concludes in part 5, with some thoughts on the place stories have in legal arguments.

Before starting, a bracket is in order. This paper aims to show how storytelling-based arguments can be verified. This can be read as an incentive for deconstructing critical thinking. However, the intent is the opposite: to make critical arguments stronger, to avoid their appropriation for the maintenance of the status quo.

2. Storytelling as Critical Legal Method

For many years, legal scholarship has been concerned with narratives. The interest in stories and the law is transversal to many different intellectual movements that, in different ways, try to investigate how they permeate legal discourse, law-teaching and law in general (RIDEOUT, 2015, pp. 248-249). This paper, however, is interested in the place of stories in one of them: Critical Race Theory. Critical Race Theory is a body of scholarship characterized by its distinctive methodology – to reflect about the law as it happens in the lives of real people -, its substance – seek antisubordination –, and its posture – engagement with social change (WILLIAMS, 1987). This paper is about method

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

– which, in the end of the day, is what enables antisubordination through structural social change[10].

Method "organizes the apprehension of truth; it determines what counts as evidence and defines what is taken as verification" (MACKINNON, 1982, p. 527). In the context of liberal legalism, doing in law have, for many years, been restricted to traditional methods, such as deduction, induction, and analogy – methods of interpretation that arise from the premise that answers about the law are to be found in the existing law. Those methods, however, have long been challenged by critical thinkers that have realized that structural change could not happen through the mobilization of the same instruments that arose from and perpetuated the system of oppression they sought to challenge (BARTLETT, 1989, p. 836). The insight that the "master's tools will never dismantle the master's house" (LORDE, 2018)– that equally permeates the pedagogy and the theater of the oppressed - has been transported to law. This critical insight has put traditional methods into question in two dimensions: first, they were seen as insufficient to deal with problems. Secondly – and more importantly – they were seen as insufficient to the extent they did not allow one to grasp problems that should be addressed in the first place. For instance, no law in the world would be able to deal with segregation or sexual harassment if sexual harassment and segregation were not perceived as problems to begin with.

The view of liberal legalism – as well as its premises, like objectivity and neutrality, its categories, like rights, and its methods - as constitutive of subordination has led to its rejection by many legal scholars (TUSHNET, 1984, p. 1363). However, other scholars have taken a different position: law could be a relevant instrument of transformation if the methods of legal knowledge-production and interpretation were revised, allowing for radical changes in law that would go beyond the drive of assimilation that permeated much of the liberal discourse (CRENSHAW, 1988). The former authors have mostly engaged in a deconstructive project (DELGADO, 1987, p. 302). The latter, on the other hand, have gone beyond to propose a positive reconstructive agenda (MACKINNON, 1989, p. 81).

If the poetics and pedagogy of the oppressed adhere to the idea that theater and education are means that should be appropriated by the people, in outsider jurisprudence, law is one of the chosen means. And in all three cases, the means should

[10] These three factors are at the core of many other movements, like LatCrit, ClassCrit and Feminist Legal Theory, that have been encompassed by the larger umbrella of "Outsider Scholarship" (COOMBS, 1992).

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

be mobilized by the people for "its own ends", "in its own ways" (BOAL, 1993, p. 139). "Its own ways" means, of course, through its own methods.

Critical methods are not imposed in a top-down fashion. In fact, critical methods are themselves constructed from the bottom-up. From the realities of the oppressed, theories were forged, and, with them, theories about the methods that helped the oppressed know what they came to know (MACKINNON, 2000, p. 688)[11].

In general lines, the core idea of critical methods is to look at law in context, without abstracting the operation of the institution from the "position of the least advantaged" (MATSUDA, 1987, p. 325). These methods are derived from an epistemological stance that takes the perspective of those at the bottom as a privileged source of knowledge (MATSUDA, 1987, p. 325).

The critical lens (comprised of both epistemology and method – if it is possible to make such a blunt distinction) has been exported to many areas of knowledge[12], but what is particular to Critical Race Theory (and other critical theories) as applied to law, though, is the fact that it becomes not only a way of reflecting about the law as an institution from the perspective of an external observer (like, let's say, a form of sociology of law), but it is also a method of legal interpretation, that allows one to actually offer normative answers to legal problems, arguing within the law[13]. In other words, it is possible to use a critical method to develop an argument that can be used in and accepted by a Court. It is a branch of Jurisprudence (MACKINNON, 1983; MOREIRA, 2019).

Critical methods of legal interpretation have been thoroughly theorized in both Critical Race Theory and other branches of outsider scholarship. The core of the method is contextualization, but that can happen in multiple ways. Feminist authors, for instance, have explored the methods of "asking the woman question" – that is, exposing how "the substance of law may silently and without justification submerge the perspectives of women and other excluded groups"[14]. Another method is consciousness-raising – or the

[11] In MacKinnon's words, "Piece by bloody piece, in articulating direct experiences, in resisting the disclosed particulars, in trying to make women's status *be* different than it was, a theory of the status of women was forged, and with it a theory of the method that could be adequate to it: *how* we had to know in order to know *this".*

[12] Critical Race Theory has been developed initially in the context of legal scholarship, but it's insights can be transposed to virtually every area of social inquiry. Examples are applications of CRT in environmental justice (e.g., LIÉVANOS et al, 2021, pp. 103) and Public Health (e.g., BUTLER 3rd, 2018)

[13] The possibility of arguing within the law and not only about the law is what differentiates it from other disciplines (HART, 1961).

[14] An example of this way of "doing in law" in the context of Critical Rae Theory can be found in Torres and Milun's argument that rules of evidence reflect what colonizer's consider valuable sources, to the exclusion

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

"collective critical reconstitution of the meaning of women's social experience, as women live through it" (MACKINNON, 1989, p. 83). This method provides a means for diagnosing problems and making sense of them, from the personal to the political.[15] The knowledge produced in this setting becomes a guide for approaching law. Yet another method is intersectionality. Intersectionality adds to the critical lens the idea that "systems of race, gender, and class discrimination converge" (CRENSHAW, 1991, p. 1246). It demands not only that one asks the "woman question", but that one asks the "other question" (MATSUDA, 1991).

Those methods are – or should be – overlapping and they share the common ground of "looking to the bottom" to think about the law. This can be done in many ways, that includes types of knowledge that do not limit itself from traditional scholarly works produced by those at the bottom, such as "briefs in the great civil rights cases, speeches and persuasive writings, art, literature and oral histories" (MATSUDA, 1987, p. 345).

The use of stories to talk about the law has been widely accepted, in various critical works (DELGADO, 1989, p. 2411). Authors have engaged in writing or engaging with both fiction (BELL, 1984; HARRIS, 1990) and non-fiction about personal (ESTRICH, 1986) and non- personal stories (MAHONEY, 1991). To tell stories is seen by some authors as a form of resistance to and subversion of the stories told by dominant groups that create an ideology that naturalizes their superior status, purporting not to be there at all. Stories told by outsiders – groups whose voice has been excluded from the mainstream narratives -, on the other hand, create "bonds, represent cohesion, shared understandings and meanings" (DELGADO, 1989, p. 2412). By exposing/creating a new counter-reality, stories told by outgroups challenge the status quo (DELGADO, 1989, p. 2414).

Storytelling starts at the particular but is a methodology directed at tackling the structural. Just like in the theater of the oppressed,

A political contribution which we feel we have already made is the expansion of the feminist principle that the personal is political. In our consciousness-raising sessions,

of indigenous people's way of registering and reading events. Gerald Torres & Kathryn Milun, Translating Yonnondio by Precedent and Evidence: The Mashpee Indian Case, 1990 Duke Law Journal 625-659 (1990).

[15] The Combahee River Collective (1977) states "A political contribution which we feel we have already made is the expansion of the feminist principle that the personal is political. In our consciousness-raising sessions, for example, we have in many ways gone beyond white women's revelations because we are dealing with the implications of race and class as well as sex".

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

for example, we have in many ways gone beyond white women's revelations because we are dealing with the implications of race and class as well as sex (BOAL, 1993, p. 150)

As exposed above, storytelling has many virtues. This article, however, is interested in exploring the role of stories in legal arguments.

3. Storytelling and the problem of verifiability

Although critical storytelling has innumerable virtues, it has been thoroughly criticized. Some critics refer to the incompleteness of the method in giving us a correct answer for a legal problem. If, in legal disputes, both sides rely on stories to build their cases, how can we choose between them? Storytelling, according to this perspective, cannot, by itself, help with that (MASSARO, 1989, p. 2099). The criticism this paper focuses on, however, has to do with the credibility of arguments based on storytelling, that, sometimes, affect their scientific character (FARBER; SHERRY, 1992). The credibility of storytelling is often put into question by the problem of verifiability (ABRAMS, 1991, p. 978), which refers to the possibility or not of assessing the truthfulness of the stories that lay in the root of storytelling-based arguments (ABRAMS, 1991, p. 979). The fact that such arguments cannot be confirmed (WILLIAMS, 1991, p. 47). Or, simply put, some scholars find it troublesome not being able to assess "what actually happened".[16]

Some authors have come in defense of narrative as a method, against the problem of verifiability. For instance, Kathryn Abrams addresses this question in a 1991 article, in the context of feminist legal theory.[17] Her response is not a direct answer to the question of whether the claims are or not true, but a challenge to this question itself. According to Abrams, it is "neither necessary nor advisable to respond to this question in precisely the form in which it has been framed". That, because it reflects the "evaluative premises of objectivity" (ABRAMS, 1991, p. 1013).

[16] According to the definition provided by the Collins Dictionary, verifiability is the "the quality or state of being capable of being verified (https://www.collinsdictionary.com/dictionary/english/verify), confirmed (https://www.collinsdictionary.com/dictionary/english/confirm), or substantiated (https://www.collinsdictionary.com/dictionary/english/substantiate)". According to the Merriam-Webster Dictionary, to verify means "1. to establish the truth, accuracy, or reality of".

[17] She does so by exploring three feminist works in which narrative is used – the article Susan Estrich, Marta Mahoney's Legal Images of Battered Women: Redefining the Issue of Separation, Patricia William's Obliging Shell and Zig-Zag Stitching and the Seamless Web, from Marie Ashe. The author thoroughly describes the claims that are made by the authors and the place narrative has on framing them.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

The idea of objectivity, as seen by Abrams, has been contested as a feature of both legal methodology and legal substance. And, as such, using its premises are "antithetical to the assumptions of narrative" – a methodology that merged precisely from the denial of objectivity (ABRAMS, 1991, p. 1013). Consequently, Abrams proposes that truth as correspondence to reality should not be used as criteria for the credibility of storytelling-based arguments. Instead, she proposes that credibility can be achieved through "revealed pain, through the cohering, particularized knowledge of the expert witness, through the ignition in the reader of a flash of recognition" (ABRAMS, 1991, p. 1024).

This understanding about the measure of truth in storytelling is similar to Richard Delgado's, which argues that stories should be noncoercive and "invite the reader to suspend judgement, listen for their point or message, and then decide what measure of truth they contain". Stories, in this context, are seen as "insinuative", rather than "frontal" (DELGADO, 1989, p. 2415).

Abrams' and Delgado's arguments are interesting; however, it is not necessary to get away with the possibility of objective truth to defend storytelling as a credible legal method. In fact, their presupposition that storytelling arguments live and are built in a paradigm of skepticism toward the possibility of objectivity and, hence, of truth about the law is not accurate about all the production on the critical field.

Challenges to objectivity are true for some authors - storytelling has been used to show the multiplicity of points of view that can shape different readings of stories and, as such, has been seen as a challenge to objectivity (BARON, 1998, p. 68).

One example is Richard Delgado's storytelling about a black law professor who is denied a job at an elite institution. In his exercise, Delgado tells the same story as recounted by the professor – who emphasizes the many micro aggressions suffered during the interview process – by a member of the faculty – who emphasizes the fact that the prospective professor's scholarship did not meet the standards required by the institution, that of a student – who is enraged by the injustice of what happened, and, of course, by the judge who eventually decides the lawsuit in which the professor claims he was discriminated. This last one focuses on the lack of evidence (DELGADO, 1989). Delgado's storytelling exercise is aimed at showing the lack of objectivity in perspective in general, and in law, in particular.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

Other authors, however, are preoccupied with reality as understood as something that really happened, in an objective fashion (MACKINNON, 2002, p. 688). And I would go as far as saying that they are interested in establishing that one can consider one reality at least more accurate than others. In those cases, stories are used to "demonstrate the gap between the reality of the described experiences, on the one side, and existing legal doctrine, on the other" (BARON, 1998, p. 68). In this context, although the possibility of truth and right answers in law is accepted, those answers are often seen as situated and provisional, which encourages the constant process of knowledge production and dialogue about which answers should be given (BARTLETT, 1989, p. 880).

For those authors, in my reading, it matters less that readers believe in them because they are compelling or cohesive, than that what they are describing is the lived reality of real people. Themselves and others. They claim to themselves the "power of truth" (SCHEPPLE, 1989, p. 2074). And, as such, the possibility of establishing a reality is not something to be thrown away. Not only because they want their accounts to be heard, but also – and maybe more importantly - because they want other accounts to mean less than what they actually do. In this context, reality is important, to the extent that it is also a mechanism that outsiders can use as a defense. In the end of the day – and now I can tell from my own experience – it is very violent to hear that something just happened in your head.[18]

Having said that, because many storytellers are committed to reality, I believe that it is important to take the verifiability problem into account, from a perspective that adheres to the possibility of at least some objectivity. In the next section I will argue that even if it is hard – perhaps even impossible? - to verify if the story that lies at the source of a legal argument is true, what matters in those kinds of arguments is not the story per se, but what it tells us about structural problems and, eventually, about the law. The stories that critical storytelling is concerned with are not about what happened to a person. They are entry points to social problems. Those problems, as will be exposes in the remainder of this article, can – and should - be verified.

[18] Matsuda (1989, p. 2325) states that "The use of stories, the theme of this symposium, is not necessarily a denouncement of structure in law. As I see it, stories are a means of obtaining the knowledge we need to create just legal structure". Matsuda, Response to Racist Speech.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

4. Verifying storytelling-based arguments

The verifiability critique has been too focused on the story that prompts the legal argument, without considering the argument in its entirety. Because of that, responses to the criticism have been directed at showing how stories can or can't be verified. These responses, as I have exposed above, are not satisfying. In this section I offer another response: a response that is less focused on the verifiability of the story *per se* and more interested in the verifiability of the legal argument as a whole. To do that, I will present two now canonical storytelling-based arguments. I will then discuss their structure. From there, I will try to show that arguments can stand or not stand based on the strength of its second level – that is, the social discussion that arises from the story told, independently of the truth status of the story told. The argument made here is that maybe it is hard or impossible to verify a personal story, but it is possible to verify the argument. And this is what matters for the kinds of legal arguments presented.

4.1. Storytelling in Outsider Jurisprudence: Applications

4.1.1. Public Remedies to Racist Speech

In Public Response to Racist Speech: Considering the Victim's Story, Mari Matsuda suggests that racist speech should be subject to formal criminal and administrative sanction (MATSUDA, 1989). Matsuda's analysis of racist speech is grounded in storytelling. On one hand, she tells victims' stories, to show how harmful racist speech can be. On the other hand, she tells the story that is embraced by the first amendment doctrine. By doing so, she highlights how having a story in the basis of an argument is not exclusive to critical arguments; it is also present in liberal legalism, even if under the guise of neutrality (MATSUDA, 1989, p. 2321). The core of Matsuda's argument is to show that public redress of the issue is necessary because of its public nature. Contrary to how the legal system perceives it, racist speech is shaped by political forces and perpetuates them.

The contrast between public problem and private-based response (by both law enforcement or not) is illustrated in a series of stories. Matsuda recounts, for instance, the story of an African American worker who was daily confronted with racist speech that included references to a white supremacist group. The employer attributed the incident to "horseplay" (MATSUDA, 1989, p. 2327). In another incident, the same supremacist

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

group inscriptions were sprayed in the cars of African American employees of a factory. Local officials attributed the problem to children's play (MATSUDA, 1989, p. 2328). In yet another event, the picture of an ape was placed over an FBI agent's child picture. The supervisor stated the practice was healthy for the work environment (MATSUDA, 1989, p. 2328). Finally, crosses burning were placed in the lawn of a Hmong family. The incident was classified as a prank by the local police (MATSUDA, 1989, p. 2329).

According to the author, those stories tend not to be covered by the mainstream media, which, consequently, creates the impression that the events are random and isolated. For folks affected by racist speech, however, the individual stories are seen as part of a larger one (MATSUDA, 1989, p. 2331). The larger story is, of course, the structural dimension of the problem of race speech: the fact that it is derived from a system of subordination. As a system that "comprises the ideology of racial supremacy and the mechanisms for keeping selected victim groups in subordinated positions" (MATSUDA, 1989, p. 2332). This factor, according to Matsuda, should challenge the prevailing individual-centered story that permeates current First Amendment doctrines and require a public legal response (MATSUDA, 1989, p. 2332).

4.1.2. Formal Equal Opportunity

A classic example of critical storytelling is displayed in Patricia William's The Obliging Shell: An Informal essay of Formal Equality (WILLIAMS, 1989). In this essay, the author recollects a series of stories – hers and others'- to challenge a decision on affirmative action in which the court has argued that the policy could not stand unless proof about black's will to participate in it was shown. To do that, Williams show how racial inequalities happen in the lives of blacks in a "color-blind" paradigm and the insights that arise from the stories inform her analysis of how legal formal equality and doctrines that flow from it are unable to deal with them (WILLIAMS, 1989, p. 2139).

When talking about the decision, Williams states that blacks "still find it extremely difficult to admit, much less prove, our desire to be included in alien and hostile organizations and institutions, even where those institutions also represent economic opportunity" (WILLIAMS, 1989, p. 2139). This perception – which is both hers and others'- puts into question how much weight can or should be given to personal preferences built in a world of inequality for purposes of policy-making.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

Williams also argues that while formal equality operates on the surface, racial inequalities run deep. As deep as in the formation of how blacks perceive themselves – which, therefore, leads to a rejection of blackness. To be part of the world, in terms that are equal to whites, blacks feel the need to avoid the label of black. When talking about that, she refers to the moment, when she was three, that she discovered she was "colored" (WILLIAMS, 1989, p. 2140), which then entailed a process she describes as a "division against herself". She states: "I still remember the crash of that devastating moment of union, the union of my joyful body and the terrible power-life of that devouring symbol of negritude. I have spent the rest of my life recovering from the degradation of being divided against myself, within myself" (WILLIAMS, 1989, p. 2140). In this point, Williams states that while segregation imposes physical boundaries, neutrality imposes a suppression that institutionalizes psychic taboos that lead to a kind of segregation that does not depend on the existence of formal laws.

Finally, Williams exposes that racism operates in pervasive, yet subtle ways and that the law fails to the extent that those problems cannot be translated in those terms. In a striking passage, she says: "What is truly demeaning in this era of double-speak-no-evil is going on interviews and not getting hired because someone doesn't think we'll be comfortable. It is demeaning not to be promoted because we're judged "too weak," the putting in a lot of energy the next time and getting fired because we're 'too strong'". And she concludes: "It is outrageously demeaning that none of this can be called racism, even if it happens to disproportionate numbers of black people; as long as it's done with a smile, a handshake, and a shrug; as long as the phantom-word 'race' is never used (WILLIAMS, 1989, p. 2140)"

The author ends by stating that she believes in affirmative action – not because blacks have a special "holy suffering", but because "black individuality is subsumed in a social circumstance – an idea, a stereotype – that pins us to the underside of this society and keeps us there" (WILLIAMS, 1989, p. 2142).

4.2. Storytelling-based arguments and verification

As stated above, I believe the verifiability of storytelling-based arguments can be better discussed if one focuses on the argument, rather than on the story per se. Before exposing how this is possible, however, it is important to reflect about what is meant by

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

"argument as a whole". The way I see it, storytelling-based arguments of the kind of the above – arguments that are aimed at challenging existing legal doctrine, from the perspective of the oppressed – have three different levels – that parallel Augusto Boal's process of the poetics of the oppressed.

The first level is the ground level. It is the one that is composed by the story, or stories. In Matsuda's argument on racist speech, it corresponds to all the events she describes, that comprise both what happened to the people involved and the authority responses given to it. In William's argument on formal equal opportunity, it corresponds to her stories about the way she felt as a kid when she realized the implications of her race, how she internalized and responded to it, how her feelings are shared by the many blacks that want to take a distance from the label black and those who are skeptical about even wanting jobs.

The second level is more abstract; it is about the broader social problems involved in the events. Here, they can take two forms. In the first form, the social problem is derived from the story. The story is an entry point for the identification of a broader problem. For instance, the way Williams felt as a kid could be an indicator of the existence of racism. Or the stories told by Matsuda can expose the reality that race is an important factor in how some people are treated.

The second form regards how the story told is read. Matsuda tells the stories and not only they expose a problem, but they also can be read in a certain way – as a manifestation of racism –, because of the broader context of inequality that exists. In the case of Williams, when she tells the story about why many blacks are not hired or promoted – that is, because they are either seen as being too weak or too strong – she claims that that can be read as racism having in mind the context in which those events take place – e.g. the fact that blacks have been historically denied jobs (as she states at a certain point).

The third level is the level in which a certain doctrine is challenged. In Matsuda's case, through the stories, she identifies the public problems involved in racist speech. That is, they are not a private practice, but a practice that is informed by a broader political problem - inequality. It is a practice that is permeated by and enforces subordination. And, because of that, the law should treat it as such. In Williams' case, her point is that racism happens on the ground in a way that is not captured by formal equality. As such,

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

affirmative actions should take that reality into account, rather than subjective preferences.

In both arguments, the jump from the first to the second and then second to the third levels is mediated by a principle: the antisubordination principle, which acts as the normative framework that allows for things that happen in the word to become relevant for the law. This principle is premised on the idea that inequality happens through the hierarchization of groups and, as such, it prescribes that equality demands a rupture with this situation (FISS, 1976; MACKINNON, 1987)[19] . It is this principle that makes the facts described at the second level matter for the purposes of the legal response given at level three. If subordination was not seen as a problem, the structural violence exposed by Matsuda in level two would have no normative consequence. Racist speech could be characterized as a private damage, but not as a political problem relevant for the law.

In the Matusda's case, there is the destabilization of free speech private centered doctrine; in the William's case, there is the destabilization of the traditional equality doctrine. In both cases, the challenge is based not on the story of the first level, but on the relation between the story and broader social problems that is established on the second level. Core to the argument that is being made here is that the point made by the authors are illustrated by stories, which, nevertheless, could be talked about in abstract. Matsuda's point is not to say that something happened to a specific person or a specific family and that, in view of that, they deserve remedies. Her claim is broader: race-related "jokes" directed at black people arise from and perpetuate inequalities – independently to whom they are directed or to how many people they affect. This relation – stories are related to inequalities – is the "what is". The destabilization of the doctrine is the "what ought to be".

This becomes clear if we contrast those arguments with other kinds of legal arguments: imagine for instance a tort claim based on an injury caused in a car crash. The conclusion for the liability of one of the parties depends integrally on the occurrence of the car crash in reality – or, at least the "reality" as established by the law, which does not necessarily correspond to what actually happened. No car crash, no liability. Matsuda, on the other hand, is arguing that, reflecting about some kinds of speeches in context, it is

[19] For discussions about antisubordination, see Owen Fiss, in Groups and the Equal Protection Clause, Philosophy & Public Affairs, Winter, 1976, Vol. 5, No. 2; Catharine MacKinnon, Difference and Dominance: On Sex Discrimination, Feminism Unmodified: Discourses on Life and Law 32 (1987).

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

possible to see a connection between them and broader social issues. This is where the injustice that gives rise to her claim lies.

In the same way, the weight of the stories Williams tells is not - and need not be - as heavy as the car crash liability argument. That, because her focus is not on what happened, but on the problem that is involved in the kind of social phenomenon represented by her story. Matsuda and William's stories matter, in this context and for the purpose of the arguments, solely to the extent that they are related to a social problem. Without the social problem, on the other hand, the argument has no normative content, even if the facts exist.

To reflect about this, let's imagine the following hypothetical: A young white man saw an email at his Law School chain of emails talking about a consciousness raising event hosted by the Black Students association. He was interested and RSVPed. The young man then received a polite reply from one of the members of the affinity group stating that, because the event was aimed at sharing very personal stories, a safe space was needed and, for that to happen, white students were not welcome to attend. But he was welcome to attend many of the activities organized by the affinity group during the semester about antiracism, in case he was interested. The white student was extremely upset about being excluded and felt discriminated against. After all, he was excluded because of his race. He then decides to write a paper for his constitutional law class, narrating his experience, arguing that his equal protection rights were violated, and that the University should review its policies about affinity groups.

In this case, the story is unequivocally true. It corresponds to "reality". He even has emails to prove his exclusion. However, the argument does not hold up – independently of the story being true or not. That, because he is not able to establish a connection between what happened and discrimination – which is the core of the argument. Although he was excluded for being white, the exclusion was not based on subordinatory ideas society as a whole holds against whites and the exclusion does not perpetuate white people's subordinate status – after all, they are not subordinated. If the young man wanted to prove his point, he would have to show that his exclusion is part of a broader system that disadvantages and has historically disadvantaged whites. If he can successfully show that whites being excluded raise problems of equality, then it would not matter, for the purposes of the argument, if his experience was true or if it was a thought experiment.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

This hypothetical exposes both the strength and the limits of the argument being made here. The strength, because it shows how little stories by themselves – without the abstraction that happens in level two – represent in legal arguments and, hence, the fact that verifiability is not really a problem in that level. The limits, because it shows that storytelling-based arguments can only be sustained in legal settings in specific kinds of claims – that is, the claims that are not directed at one person, but in exposing a problem in need of legal redress. Matsuda's case aims to propose a policy change, not request a particular remedy to someone in a specific case. If Matsuda was successful in her claim, the new legal arrangement she proposes would be applied case-by-case afterwards and, in that particular setting, remedy would depend on the establishment of "what happened".

The defense of the low weight of the verifiability criticism directed at storytelling-based legal arguments does not lay on the typicality of the story. If a determined story happens only one time the argument about the systemic problems can still be made. For instance, if Williams was the only black person in the United States to hear she was too weak or too qualified for a job, the practice could still be read as a systemic issue in need of redress. On the other hand, if all white men in law schools are excluded from consciousness raising events hosted by black students' associations, it also says nothing about the subordinatory character of the practice. Typicality can be an indicative of a problem, but it is not sufficient to prove the existence of the problem.

It is also important to state that storytelling-based arguments can also be verified in the third level – that is, in the legal solution that is given to the problem identified in level two. The antisubordination principle that permeates the arguments above – and, in fact, most, if not all legal arguments and critics advanced in the realm of outsider jurisprudence - functions both as a lens for perceiving something that is wrong and as a guide to how to tackle the wrong. The third level is preoccupied with what ought to be to make things better for subordinated groups. And, of course, it is possible that disagreements about what would be the best solution take place. An example of those disagreements is exposed by Derrick Bell in the classic "Serving Two Masters: Integration Ideals and Clients Interests in School Desegregation Litigation". There, Bell argues that while desegregation was sought as a means of structural disruption, maybe a focus on ameliorating the quality of the education given by black children – which kept having

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

worst conditions than that of whites, even after desegregation – might have led to a more emancipatory potential to blacks (BELL, 1976).

5. Conclusion: storytelling as legal politics and poetics

The present paper proposed a reflection about storytelling as a legal method, particularly interested in the matter of verifiability – can those arguments hold up when we have virtually no way of establishing the truth of the stories presented? I have argued that the weight stories have in legal arguments depends more on the legal syllogism presented in its entirety, than in the story per se. In other words, what really matters is not the story (that might or not be true), but the equality-based reflection prompted by it. Conceição Evaristo sums up this idea in an interesting way. When talking about her short stories book, she states: "Nothing that is being narrated in Becos da Memória is true, nothing that is narrated in Becos da Memória is a lie"[20]. The way I read it – and I guess it is only one way – Evaristo's point is to show how the truth of the stories are attached to the truth in the broader social context in which they happen.

Telling stories has always been a way of resisting in the most diverse settings. This paper started by showing that one of the most important ways through which inequalities are maintained is by the appropriation of narratives by those in power. Stories permeate the status quo, even if they seem not to be there at all. In response to that, many critics have adhered to the idea that subversion could be found in counter-stories.

For many years now, critical scholars associated with outsider jurisprudence in general and Critical Race Theory in particular have embraced this technique – storytelling - in order to reflect about the world and the law. This paper has tried to explore the place stories can have in a legal argument, addressing the criticism that such arguments could not stand, for the impossibility of verification of individual stories. As has been argued, verifiability is important, but the truth or not of certain stories does not really matter for the purpose of making justice claims – what matters for the strength of a legal argument is the meaning they have in determined contexts.

[20] "Nada que está narrado em Becos da memória é verdade, nada que está narrado em Becos da memória é mentira". EVARISTO, C. Becos da Memória. 3ª ed. Rio de Janeiro: Pallas, 2018.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

The place stories have in legal reasoning, however, is not limited to the constitution of the baseline of legal arguments. Just like what happens in other settings – such as the pedagogy or theater of the oppressed, exposed above - stories are triggers for reflection. Consciousness-raising is what sparks the fire for criticism. If one person tells a story about a lived experience that is shaped by subordination, chances are the other members of the group will have suffered it as well - something that once upon a time seemed personal, emerges as a political problem. Some groups have - let's say – an advantage point to unearth inequalities (MOREIRA, 2019, p. 75). Stories are also a way of community-building (DELGADO, 1989, p. 2414) and self-preservation (DELGADO, 1989, p. 2436) and can positively affect ingroups, minimizing resistance against change (DELGADO, 1989, p. 2438). That, because they create empathy and, as such, can make events seem more relatable and challenges to them, more persuasive (MASSARO, 1989, p. 2105). These functions of stories – which are, at the same time, practical, political, and poetic - despite being less directly connected to the destabilization of legal doctrine, are just as important for the antisubordination drive that animates outsider jurisprudence. These features confer legal arguments a poetic status, to the extent they touch people in ways that are similar to art and that go way beyond what legal arguments are traditionally for.

Finally, and perhaps, more importantly, storytelling, in any setting, can be an imaginative exercise to show "that there are possibilities for life other than the ones we live" (DELGADO, 1989, p. 2414). The poetics of the oppressed considers the theater of the oppressor to be a close-ended spectacle, as the powerful already know how the world is. The oppressed, on the other hand, still don't know what a liberated world would look like and, as such, can never present a finished spectacle[21]. Stories are a provisional way to envision a new world – and, in outsider jurisprudence – a new law.

6. Bibliography

ABRAMS, Kathryn. Hearing the Call of Stories. **California Law Review**, vol. 79, No. 4, pp. 971-1052, 1991.

[21] "The bourgeoisie already knows how the world is, its world, and can, therefore, present images of this complete world. The bourgeoisie presents the spectacle. The proletariat and the exploited classes, to the contrary, still don't know how their world will be; consequently, their theater will be the rehearsal and not the finished spectacle" (BOAL, 1993, p.164).

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

BARON, Jane B. Storytelling and Legal Legitimacy. **Law, Literature, and Interdisciplinarity**, vol. 25, n. 1, pp. 63-76, 1998.

BARTLETT, Katharine T. Feminist Legal Methods. **Harvard Law Review**, v. 103, pp. 829-888, 1989.

BEIRNE, Piers; SHARLET, Robert. **Pachukanis: Selected Writings on Marxism and Law**. London: Academic Press Inc, 1980.

BELL, Derrick A. Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation. **The Yale Law Journal**, vol. 85, n. 4, pp. 470-517, 1976.

BELL, Derrick. The Supreme Court, 1984 Term – Foreword: The Civil Rights Chronicles. **Harvard Law Review**, v. 99, n. 1, pp. 4-83, 1985.

BRYTTON-PURDY, Jedediah; SINGH GREWAL, David; KAPCINSKY, Amy; RAHMAN, Sabeel. Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis. **The Yale Law Journal**, v. 129, n. 6, 2020.

BUTLER 3rd, James; FRYER, Craig S.; GARZA, Mary A.; QUINN, Sandra C.; THOMAS, Stephen B. Commentary: Critical Race Theory Training to Eliminate Racial and Ethnic Health Disparities: The Public Health Critical Race Praxis Institute**. Ethn Dis.**, v. 28, pp. 279-284, 2018.

COOMBS, Mary I. Outsider Scholarship: The Law Review Stories. **University of Colorado Law Review**, v. 63, pp. 683-716, 1992.

CRENSHAW, Kimberlé W. Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law. **Harvard Law Review**, v. 101, n. 7, pp. 1331-1387, 1988.

CRENSHAW, Kimberlé W. Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. **Stanford Law Review**, v. 46, n. 6, pp. 1241-1299, 1991.

DELGADO, Richard. The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want Minority Critiques of the Critical Legal Studies Movement. **Harvard Civil Rights-Civil Liberties Law Review**, v. 22, n. 2, pp. 301-322, 1987.

DELGADO, Richard. Storytelling for Oppositionists and Others: A Plea for Narrative. **Michigan Law Review**, v. 87, n. 8, pp. 2411-2441, 1989.

ESTRICH, Susan. Rape. **The Yale Law Journal**, v. 95, n. 6, pp. 1087-1184, 1996.

EVARISTO, Conceição. **Becos da Memória**. 3ª ed. Rio de Janeiro: Pallas, 2018.

FISS, Owen. Groups and the Equal Protection Clause. **Philosophy & Public Affairs**, vol. 5, n. 2, 1976.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

FREEMAN, David. Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine. **Minnesota Law Review**, v. 62, 1978.

GUINIER, Lani; TORRES, Gerald. **The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy**. Cambridge: Harvard university Press, 2002.

FARBER, Daniel A; SHERRY, Suzana. **Stanford Law Review**, vol. 45, n. 4, pp. 807-855, 1993.

HARRIS, Angela. Race and Essentialism in Feminist Legal Theory. **Stanford Law Review**, v. 42, n. 3, pp. 581-616, 1990.

HART, Herbert L. **The Concept of Law**. Clarendon Press, 1961.

K.P, Mojan. Capturing the Gramscian Project in Critical Pedagogy: Towards a Philosophy of Praxis in Education. **Review of Development and Change**, v. 24, n. 1, p. 123-145, 2019.

LIÉVANOS, Raoul; WILDER, Elisabeth; RICHTER, Lauren; CARRERA, Jennifer; MASCARENHAS, Michael. Challenging the white spaces of environmental sociology. **Environmental Sociology**, v. 7, n. 2, pp. 103-109, 2021.

LORDE, Audre. **The master's tools will never dismantle the master's house**. Penguin, 2018.

MACKINNON, Catharine A. Feminism, Marxism, Method and the State: An Agenda for Theory. **Signs**, v. 7, n. 3, pp. 515-544, 1982.

MACKINNON, Catharine A. Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence. **Signs**, v. 8, n. 4, pp. 635-658, 1983.

MACKINNON, Catharine A. Difference and Dominance: On Sex Discrimination, Feminism Unmodified: Discourses on Life and Law. In MACKINNON, Catharine A. **Feminism Unmodified**: Discourses on Life and Law. Cambridge: Harvard University Press, 1987.

MACKINNON, Catharine A. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989.

MACKINNON, Catharine A. Points Against Postmodernism. **Chicago-Kent Law Review**, v. 75, n. 3, pp. 687-712, 2000.

MAHONEY, Martha R.. Legal Images of Battered Women: Redefining the Issue of Separation. **Michigan Law Review**, vol. 90, n. 1, pp. 1-71, 1991.

MATSUDA, Mari J. Looking to the Bottom: Critical Legal Studies and Reparations. **Harvard Civil Rights-Civil Liberties Law Review**, v. 22, p. 323-399, 1987.

MATSUDA, Mari. Public Response to Racist Speech: Considering the Victim's Story. **Michigan Law Review**, vol. 81, n. 8, pp. 2320-2381, 1989.

MATSUDA, Mari J. Beside my sister, facing the enemy: Legal Theory out of Coalition. **Stanford Law Review**, v. 43, n.6, pp. 1183-1192, 1991.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015

MASSARO, Toni M. Empathy Legal Storytelling, and the Rule of Law: New Words, Old Wounds? **Michigan Law Review**, vol. 87, n. 8, pp. 2099-2127, 1989.

MORAGA, Cherríe; ANZALDÚA, Gloria. **This Bridge Called My Back: Writings by Radical Women of Color**. State University of New York Press, 2015.

MOREIRA, Adilson J. **Pensando como um negro: ensaios de hermenêutica jurídica**. São Paulo: Editora Contracorrente, 2019.

RIDEOUT, Christopher. Applied Legal Storytelling: A Bibliography. **Legal Comm. & Rhetoric: JALWD**, v. 12, pp. 247- 264, 2015.

SCHEPPLE, Kim Lane. Foreword: Telling Stories. **Michigan Law Review**, vol. 87, n. 8, pp. 2071-2098, 1989.

TUSHNET, Mark. An Essay on Rights. **Texas Law Review**, v. 62, n.8, pp. 1363-1403, 1984.

WILLIAMS, Patricia. Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color. **Law & Inequality**, v. 5, n. 1, pp. 103-134, 1987.

WILLIAMS, Patricia. The Obliging Shell: An Informal Essay on Formal Equal Opportunity. **Michigan Law Review**, vol. 87, n. 8, pp. 2128-2151, 1989.

WILLIAMS, Patricia J. **The Alchemy of Race and Rights**. Cambridge: Harvard University Press, 1991.

Sobre a autora

Taís Penteado
Mestre (LL.M) pela Yale Law School (Turma de 2022), onde também foi pesquisadora visitante e fellow. Doutoranda em Direito e Desenvolvimento na FGV Direito SP, com bolsa Mario Henrique Simonsen de Ensino e Pesquisa e apoio financeiro da FAPESP. Mestre pela FGV Direito SP, com bolsa Mario Henrique Simonsen de Ensino e Pesquisa e apoio financeiro da FAPESP. Graduada em Direito pela FGV Direito SP, com Bolsa Mérito Luiz Simões Lopes no último ano. Professora, advogada e consultora.

A autora é a única responsável pela redação do artigo.

https://doi.org/10.1590/2179-8966/2023/72015 | ISSN: 2179-8966 | e72015