Frode Helmich Pedersen, Espen Ingebrigtsen
and Werner Gephart (Eds.)
Narratives in the Criminal Process

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Frode Helmich Pedersen/
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Narratives in the Criminal Process

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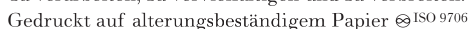

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Werner Gephart

Law as Narration in Light of the Law as Culture Paradigm

As children, we come to know the world through stories we are told: biblical stories have given us a certain worldview in Western Christian civilization, and fairy tales and sagas convey archetypal images which are considered important for a child's moral development. Whether stories are carried forward by mediums with moving images like television or film, their fascination remains the same – the identificatory concern for heroes, in human or animal form, who contribute to a certain tension when, in great danger, they have to prove themselves against seemingly invincible enemies. If we are lucky, we experience how these stories are retold and maybe we even amaze our children by always knowing how the story continues, even if we just came up with it then and there. From stories, we learn that there is also a »story«, or a multitude of stories, about a family, city, society, nation, pandemic,[1] culture, and even human history itself. We are accustomed to the fact that narration takes a certain amount of time, and that there is a »narrative time« that is also narrated – a »narrated time« – a story of the universe in search of lost time, »à la recherche du temps perdu«.[2] The narrator is a familiar figure, and we know early on that a »narrative community« is needed to bring a story to life. We thus move narratively through life, increasingly refined, with references to the past and future,[3] separating the main plot from the secondary strands, differentiating places of action from auxiliary scenes. We learned of stories' truth early on, and also of truthfulness and tall tales,[4] perhaps even of the right to lie and the pitfalls of professional liars who systematically hide the truth when they get wrapped up in contradictions and their statements are doubted to the point that we cannot take them seriously as witnesses. Even without having analyzed Rashomon as a film, we are aware that a story can be told from different perspectives and that a story's truth is constantly hidden. Many aspects of life – like falling in love – are »tellable«: when we kissed for the first time, when we lost our fortune, why we won the war, why we thought highly of a president and would have rather killed a tyrant. We also have stories about how we almost

1 Cf. the piece »A Pandemic of Narratives« by Frode Helmich Pedersen in the volume about the corona crisis: Gephart (ed.): In the Realm of Corona Normativities, pp. 409–417.
2 Proust: À la recherche du temps perdu.
3 As *Analepse* and *Prolepse*.
4 Cf. still Girard: Mensonge romantique et Vérité romanesque.

became famous or why we did not become an astronaut: our lives are told in all their contexts. And even beyond life: After all, what is the story of the last judgement other than the binding of our afterlife to a judging authority in which our entire lives are subject to review! For secularists, this tale is no easier to tell than the story of how the entire cosmos of our political orders is embedded in validity stories[5] about its genesis. With this, we are already approaching the law, which has been denied a narrative dimension for a long time.

This volume provides wonderful examples of how it is only the narratological view that reveals the law as a »phénomène totale« in the sense of Marcel Mauss: as stories about the law's origin,[6] which are often connected to a religious tale (such as Mount Sinai), and as subject matter through which law is contested: If collecting firewood is really theft,[7] if a transfer of property actually occurred, if a promise was made and not kept,[8] if a political party's right to participate in parliament was denied, if »spherical sin« was committed. Only in the medium of narration is narrated infringement alone relevant in proceedings, and those who do not present facts cannot claim damages. And those who wish to be forensically successful in court need to be good narrators: Court TV shows and all jurists who have enjoyed literary success as narrators – from Goethe to Kafka and Handke to von Schirach – make this apparent!

But why has the law's narrative dimension come into view so late? And does this apply equally to all legal cultures? Are there not currently legal cultures that are particularly close to a narrative logic, namely in places where thinking and arguing in »cases« presupposes that they are told and that the narrative's accuracy is part of the *ars judicandi*?

I hope that this volume, which touches on the Law as Culture paradigm in many ways, will also be received with interest in continental legal culture, where the supposed dominance of the subsumption of facts under abstract legal principles, as the actual terrain of legal activity, has obscured the view of the pitfalls and the art of narration. For if we apply the Law as Culture paradigm[9] to this dimension of the law as well, then we should not only extend the norm-based concept of law to a symbolic dimension and a ritual level, in addition to an organizational one, but we should add narration. The reference to the religious sphere thereby also becomes obvious, since this sphere is both reflected and formed by narratives that finally confront us with the universality of validity claims that are global in

5 Cf. Melville / Vorländer (eds.): Geltungsgeschichten.

6 Mauss: Essai sur le don.

7 Marx: Debatten über das preußische Holzdiebstahlsgesetz.

8 Cf. on this, see Albers et al. (eds.): Wortgebunden.

9 Cf. esp. Gephart: Einführung. A brilliant extension of the paradigm, mainly by introducing a narrative dimension and transferring it into a multidimensional analysis of conflicts of legal cultures by Jan Suntrup: Umkämpftes Recht.

nature, even if conflicts between legal cultures and validity cultures that have their own histories arise from this; but the right to tell has its very own aesthetic dimension, too, namely – as jurists like to say – being a »nice« case that leads to its own »nice« ruling!

In this way, storytelling, as a cultural technique, can be integrated into an understanding of law that grasps »legal analysis as legal research«.[10] Great appreciation goes to Frode Helmich Pedersen and Espen Ingebrigtsen for placing the results of a wonderful conference in Bergen (Norway; November 30 – December 1, 2018) into this very context. Now may the volume contribute to a better understanding of such a narratological approach to law!

Werner Gephart Bonn, July 26, 2020

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10 Cf. Gephart (ed.): Rechtsanalyse als Kulturforschung; Gephart / Suntrup (eds.): Rechtsanalyse als Kulturforschung II.

Frode Helmich Pedersen / Espen Ingebrigtsen

Why Narrative (Still) Matters

Law and Narrative

Notions of Narrative in Legal Research

The role of narratives in legal contexts has been explored in multidisciplinary research for several decades, in an array of different approaches. A common claim in this research is that the understanding of narratives – how they are constructed, how they are written out, how they are understood – is crucial to the understanding of any legal process. As Peter Brooks has stated, »narrative is omnipresent in the law.«[1] With this statement, Brooks points not only to the fact that narratives and storytelling abound in any legal process, he also asserts that neither the facts of a particular case, nor the law itself, can be properly understood without a keen sense of the role played by narratives in the production and dissemination of meaning. The force of this claim is especially evident in light of the double meaning of the term »narrative«. On the one hand, a narrative can be understood as a textual form representing or presenting a sequence of events, while on the other it may be seen as a *cognitive tool* with which humans make sense of themselves and the world.[2] Narrative can thus be conceived of as both an *object of* interpretation and a *tool for* interpretation. While the former conception of narrative applies to most representations of the facts in a criminal case, and at least partly to law itself, the latter is primarily an epistemological notion, describing how we »use narrative to impose structure on human experience« (Jeanne Gaakeer)[3] or, as Peter Brooks has put it, how we »make sense of meaning that unfold in and through time.«[4]

The first and more traditional sense of the term »narrative« is useful to researchers within criminal law because it singles out a mode of presentation that is already widely used and presents the researcher with a highly developed set of tools to analyze it. The theoretical concepts developed within the narratological tradition are especially well suited to analyze the way stories are composed, not least the complex relationship between the story's *discourse* level and the level of

1 Brooks: The Law as Narrative and Rhetoric, p. 17.
2 Fisher: Human Communication as Narration, p. xi.
3 Gaakeer: The Perplexity of Judges Becomes the Scholar's Opportunity, p. 334.
4 Brooks: The Law as Narrative and Rhetoric, p. 14.

its »content«, what is usually termed *histoire*.[5] This distinction is important both because traditional legal theories have paid little attention to the way legal narratives are constructed, and in view of the fact that the way in which a narrative is told can often determine the outcome of the case.[6]

As regards the latter and more recent sense of the term (where narrative is seen as a cognitive tool), it is useful primarily because it paves the way for fundamental insights into the way humans understand real events through the active formation of narratives in their minds. When these kinds of reflections are applied to law, important questions arise – such as how the narratives of the case are shaped and constructed through a complex process of human interaction and collaboration throughout the legal process; how a piece of evidence acquires meaning through its inclusion in a particular narrative; and how individual narratives are given moral and legal significance by being seen in light of certain dominant narratives that exist within a given culture. One should note here that no such process of narrative formation can ever be fully controlled by the conscious mind, relying as it *also* always does on unconscious or uncontrollable elements such as unexamined ideological notions; deep seated personal prejudices, sympathies, and antipathies; accidental impulses and incidents in the formation process; unexamined cultural stereotypes; and more.

In general, it seems justified to say that law's cultural foundations and presuppositions are always in some way or another manifested in its narratives and acts of narration. The research conducted within the field of law and narrative helps to expand our knowledge of the multiple ways in which legal thinking and decision-making rely on narrative, in both senses of the term. It also enhances our understanding of how narratives are put to use as rhetorical tools, both in the courtroom and in the court's written judgments.

Points of Intersection with the Broader Culture

In addition to analyzing narratives produced within the legal sphere, researchers within the field of law and narrative have pointed out various forms of interaction between law's own narratives and stories found in the broader culture, such as social media, television, the movies, news media and literature. Apart from the

5 The notions *histoire* and *discourse* were coined by Tzvetan Todorov in 1966 and proved to be indispensable in the development of narrative theory. His binary model describes the fundamental difference between a sequence of events (*histoire*) and the narrative arrangement of the same events (*discourse*). For an overview over theoretical predecessors and later supplements to this model, see for instance Porter Abbott: Introduction to Narrative, p. 16–20; Martínez / Schefffel: Einführung in die Erzähltheorie, p. 26; or Scheffel: Narrative Constitution, sect. 2. See also Frode Helmich Pedersen's article in this volume.

6 Gaakeer: The Perplexity of Judges, p. 347; Di Donato: The Analysis of Legal Cases, p. 5.

specific findings offered by such studies, they are also of importance in a more general sense, since they call attention to the fact that no legal culture exists independently of other parts of society. Indeed, the fundamental and necessary connectedness between law and other domains of culture has been one of the central tenets behind the move from various Law and Literatures to the broader field of Humanistic Legal Studies. The relevance and urgency of such studies seem greater than ever in view of the recent vogue of »true crime« stories in TV-shows, books, podcasts and documentary films.

These are not, however, the only points of intersection between law's narratives and stories told in other cultural contexts. Another significant link between law and other parts of culture can be observed in modern courts' increasingly important role as historiographers, issuing authoritative accounts of events of national and international importance and impact, such as terrorist attacks, war crimes or violent disputes between population groups. The meaning and function of such narratives are not limited to the legal sphere – carrying, as they do in many cases, a much broader moral and communal significance. Such court narratives often seem addressed to posterity more than anything else, in the sense that they are not simply recording a shared trauma, but also taking pains to reaffirm communal values, thereby expressing a sense of collective identity – who we are and how we want to be remembered – as seen for instance in the judgment dealing with the 2011 Norwegian Terror Attacks.

Indeed, in an age of global crises, where the coronavirus pandemic is only the most recent and urgent example, the need for shared narratives is becoming more and more evident. As Janet Roitman states in her book *Anti-Crisis* (which mainly deals with the 2008 financial crisis), »[c]risis is an observation that produces meaning« – by which she means that a perceived crisis always produces new narratives aimed at explaining the roots, origins and causes of the current precarious situation.[7] In this way, the crisis produces its own pre-history in the form of narratives that transform our view of the period leading up to the crisis. These narratives often have a significant legal component, being, indeed, often produced by legal institutions or lawmakers, for instance in order to legitimize the measures implemented to handle the crisis. In the case of the coronavirus pandemic that hit the world in 2020, these measures come, in some jurisdictions, close to what the German legal theorist Carl Schmitt called a »state of exception«. The narratives that are produced to justify such radical steps typically contain a complex amalgamation of legal, medical and economic considerations combined with various cultural and political beliefs – which are, in sum, calling for a careful and theoretically informed analysis in order to be properly understood. Interdisciplinary approaches to narratives in the legal context can provide a broader understanding

7 Roitman: Anti-Crisis, p. 41–42.

of how narratives are embedded and put to use in the shaping and legitimization of large-scale legal measures and crisis responses. The articles in the present volume are primarily oriented towards criminal law, but the theoretical groundwork they cover and expand can hopefully contribute concepts and insights that could be employed in such much-needed analyses.

Recent Developments

The field of law and narrative has been steadily expanding in recent years, in terms of institutional foothold, additions to the theoretical framework and the diversity of real-world phenomena examined by researchers. The European Network for Law and Literature (EURNLL) founded by Jeanne Gaakeer (Rotterdam) and Greta Olson (Giessen), has promoted the field since 2006, especially highlighting Europe-based research into law and narrative.[8] There are several other European networks in place, working on similar issues. In Italy, the *Associazone Italiana Diritto e Letteratura* (*AIDEL)*, founded by Daniela Carpi, has been important, organizing conferences and publishing a journal and a newsletter. Another network in Italy is the *Italian Society for Law and Literature* (*ISLL*) founded by Enrico Pattaro, which has been promoting Law and the Humanities since 2008. The International Association for Philosophy of Law and Social Philosophy (IVR) has included special work groups organizing workshops within the field of law and literature at the IVR World Congress. At Birkbeck University in London, there is a Centre for Law and the Humanities, promoting and developing research within the field – not to forget the important work that has been done at the Käte Hamburger Kolleg, »Recht als Kultur« founded by Werner Gephart, a co-editor of this volume. In addition, there is the Nordic Network for Law and Literature, which was of crucial importance for the establishment of the research project »A Narratology of Criminal Cases« (2016–2020) and its predecessors in Bergen – of which the present volume is one of the results.[9] This is only to mention a few important hubs of research on Law and Narrative in Europe specifically – the global field is now too widespread and plentiful to be listed. The main centers of research within Law and Literature are still situated in North America, with the Benjamin N. Cardozo School of Law in New York being a noteworthy example.

8 Axt: Interview with Jeanne Gaakeer, p. 474. Both Greta Olson and Jeanne Gaakeer have emphasized the need for differentiated narratologies of law, pointing out that narratives of law cannot be based solely on the Anglo-American common law-based model. Corresponding views are represented in several of the articles in this volume, some of which are concerned with the theoretical implications involved in turning the attention from the Anglo-American legal models to other systems. See also: Axt: Interview with Greta Olson, p. 318.

9 For further information about the research in Bergen, see Arild Linneberg's article in this volume.

The field of Law and Narrative today comprises an array of different approaches and topics, answering Greta Olson's 2010 call for a pluralization of Law and Literatures.[10] The pluralization of the field includes the development of localized projects all over the world as well as the exploration of new theoretical concepts and interdisciplinary connections – as witnessed also by this volume. Olson has herself recently contributed to the theoretical expansion of the field by extending the narratological analysis of law into the realm of metaphor, arguing, with reference to Michael Hanne, that metaphoricity and narrativity in law and legal discourse should be seen as conjoined mental processes and forms of articulation rather than separate ones. Olson's suggestion that the use of metaphor may function as a strategy for finding legal solutions, especially in difficult circumstances, points to a promising new way of exploring and conceptualizing the formation of legal cases.

Another recent and significant contribution to the field is Jeanne Gaakeer's 2019 book *Judging from Experience*, where she bases her renewed plea for a humanistic study of law on her extensive practice as a criminal law justice. The book reads like an exploration of the entire field of Law and Literature, providing new readings of a number of literary works through the lenses of legal hermeneutics. It also includes several chapters where she expands the theoretical field of legal narratology. In this section of the book, the author begins by suggesting that »judges need a narrative intelligence« in order to practice in accordance with the Aristotelian virtue *phronèsis*, where rationality merges with metaphoric imagination and emphatic understanding.[11] Gaakeer goes on to discuss the crucial issue of narrative probability, which she (with reference to Walter Fisher) sees as inherently connected to *phronèsis*, since the narrative world view necessarily leads to an acceptance of the fundamental contingency of the world, which is the same as saying that *phronèsis* pertains to the probable. Since the quality of being probable is necessarily a perspectival matter, Gaakeer argues that the judge's own background needs critical attention. Indeed, any fact in the legal sphere is to a certain extent a perspectival product, Gaakeer notes, which makes it extra important that jurists develop and value narrative knowledge. Without such knowledge, it is difficult, for instance, to adequately assess the facts promoted by the narrative that one is, as a judge, encouraged to endorse. It will be equally difficult to appreciate that events, which were for some reason overlooked or left out of the dominant narratives in a case, may be of equal importance to what ended up being regarded as the relevant facts.[12] Gaakeer also discusses the precarious allure of the master narrative in legal decisions, that is, the frequent use we make when we are forming our impression of particular incidents of ready-made scripts.

10 Olson: De-Americanizing Law-and-Literature Narratives, pp. 359–362.
11 Gaakeer: Judging from Experience, p. 143.
12 Gaakeer: Judging from Experience, p. 175.

She uses examples from her own judicial experience in order to warn against the over-reliance of such familiar scripts, reminding the judge to always examine with a critical eye every element of a narrative that suggests itself. But, as she keeps insisting, no matter what perspective one finds useful when reflecting upon issues of law and narrative, it is crucial not to privilege one discipline over the other(s): »In order to honor a plurality of views in terms of narrative, we must try to engage in truly interdisciplinary work lest we run the risk of methodological shallowness.«[13]

Another major recent contribution to Law and Narrative that deserves special mention is Flora Di Donato's book, *The Analysis of Legal Cases* (2020). In this extensive study, the author creates and applies a sophisticated new methodology for the study of the entire legal case as it unfolds through the interaction between multiple actors in legal proceedings, such as clients, attorneys, judges, administrative agents and social workers. Through the empirically minded reconstruction of the entirety of the narratives making up the case, Di Donato is positioned to identify events that have been cut out of the construction of the official story – which meanings have been privileged, left unmentioned, and so on.[14] Her methodology is uniquely suited to grasp the *dynamics* of the legal process as it proceeds from the first interviews and interrogations to the court's final decision. Her approach is necessarily interdisciplinary, relying as it does on an attempt to analyze the nexus between mind, culture and language in order to understand how general narrative formation in human interaction is translated into legal discourse. The strong orientation towards *practice* in Di Donato's work owes much to the clinical law approach, promoted, among others, by Ann Shalleck, who has contributed a foreword to the book, together with the psychologist Colette Daiute. A further notable aspect of Di Donato's work is the ethical imperative (which she sees as furthered by the focus of narrative) as it gives due consideration to voices that are otherwise not heard in legal discourse.[15] In this sense, her work may be seen as a continuation of the pioneering research of the 1990s, where scholars such as Richard Delgado and Kim Lane Scheppele advocated the view that a stronger focus on narrative within the legal sphere could benefit marginalized parts of the population by letting their »counterstories« challenge the notions and world view inherent in the hegemonic legal discourse.

Among the other notable recent publications on law and narrative, both Elizabeth S. Anker and Bernadette Meyler's *New Directions in Law and Literature* (2017) and Michael Hanne and Robert Weisberg's *Narrative and Metaphor in the Law* (2018) provide valuable contributions to the field of research. Anker and

[13] Gaakeer: Judging from Experience, p. 204.
[14] Di Donato: The Analysis of Legal Cases, p. 4.
[15] Di Donato: The Analysis of Legal Cases, p. 287.

Meyler's volume contains a variety of insightful articles that not only include reviews of the field's development throughout the last decades but also indicate how humanistic legal studies will evolve in future research. Likewise, Hanne and Weisberg's excellent book contains intriguing discussions of pivotal notions and concepts in the intersection between law, metaphor and narrative that will be an essential point of reference for future research in Humanistic Legal Studies. Current expansions within the field also include working with fictionality theory and new investigations into the affective dimensions of narrative.[16]

In addition to the recent progress done in research on law and narrative, studies in an adjacent discipline like forensic linguistics should be briefly mentioned. One eminent example is Martha Komter's careful analyses of linguistic transformations in police interviews in *The Suspect's Statement* (2019), which shows how writing processes can influence the overarching narrative in a criminal proceeding. There are also multiple other possibilities for new interdisciplinary connections in future research. At our research project in Bergen, for instance, we have had a fruitful collaboration with the Police Academy in Oslo, resulting in a volume of articles demonstrating that theories of narrative and theories of policing methods can be brought together for mutual benefit.[17]

Overview of the Present Volume

In the present volume, we aim to present the field of law and narrative as it exists today and expand the area of inquest into fields like text linguistics, speech act theories, ordinary language theory, public international law, artificial intelligence and various media transformations of law stories. The volume also contains several articles concerned with foundational problems involved in the construction of a »narratology for the law,« exploring and developing narratological concepts for the analysis of different kinds of legal storytelling and narrative evidence theory. Through the wide array of approaches in this collection of articles – primarily devoted to the theme of »narratives in the criminal process« – we aim to give the reader an impression of the diversity and vitality of narrative legal studies today by encompassing research from most parts of the world and involving issues that range from cases of local significance to those with global impact and from the particularities of individual legal cases to general notions concerning the nature of human understanding. Taking topics in criminal law and criminal proceed-

16 Greta Olson's work in this direction will be presented in the forthcoming book *From Law and Literature to Legality and Affect*, which is scheduled to be published in 2021.

17 Olsvik / Risan: Etterforskning under lupen.

ings as a point of departure, the articles in the present volume reflect the complex intersections between narratives, rhetoric, and legal cultures.

Part One: Narratives in the Judgment and in the Courtroom.

The volume is divided into three sections. The contributions in the first section present theoretical considerations on the role of narratives in criminal proceedings, including courtroom stories and the story of facts as presented in the written judgment.

Jeanne Gaakeer's article »Judicial Narration as Explanation of Facts and Circumstances« draws attention to different ways in which the narrative construction of facts influences legal reasoning and decision-making processes. She is particularly concerned with probing the question of *narrative voice* in judicial narratives, especially the voice of the judges. With the aid of a number of illuminating examples, she highlights, for instance, the *relative* nature of the judges' voice, i. e. how it may shift in tone and style depending on the context within which the narrative is told, to whom it is directed, and the particularities of the individual case. Further, Gaakeer discusses the role played by metaphor in legal narratives and how certain narratives connect to the topics of empathy and affect. The article ends on a sobering note, reminding us that even if »narratology may help to remind jurists of important issues of argumentation,« there is no quick fix in such matters, since it remains a fact that – although both are crucial to the legal process – »stories and rational, legal argument are not always hand in glove.«

Frode Helmich Pedersen's article begins by posing the basic question of how the court's story of facts, as presented in the written judgment, can be described in narratological terms. He goes on to claim that many of the established narratological concepts need revision in order to fulfill this task. A central premise for his argument is that the difference between factual and fictional stories – which is still a somewhat underdeveloped topic within narrative theory – must be addressed before one can proceed to construct an adequate narratological apparatus for the analysis of the court's narratives. After suggesting how a workable distinction between factual and fictional narratives could be made, he goes on to modify, through the analysis of selected samples from Norwegian judgments, narratological notions such as narrative constitution, the narrator, characterization, and focalization – with the aim of optimizing these concepts for the narrative analysis of the court's story of the facts.

Espen Ingebrigtsen is, in his article, concerned with certain more specific rhetorical aspects of the court's story of facts in the written judgement. His article focuses on the representation of speech events in judgements by reviewing the difference between cases where the court uses direct quotations compared to those

that employ forms of speech representation with a higher degree of diegetic narrativity. He argues that mimetic speech representations in the court's narrative apply the rhetorical figures of speech *evidentia* and *ethopoiea*, which can frame an utterance by providing certain (unnarrated) contextual information about a defendant's attitude, behavior, or social background. His main argument is that mimetic speech representation in judgements functions both as a documentation of legal facts and a characterization of the defendant, where the latter may play a role in the court's presentation of aggravating circumstances. The use of mimetic speech representation in judgements may thus, he argues, emphasize the court's public condemnation of the defendant's criminal conduct.

The role of the court as historiographer is the subject of Marlene Weck's article, where she investigates the narratives issued by the International Criminal Tribunal for the former Yugoslavia (ICTY) about the violent events that occurred during the Yugoslav wars in the 1990s. Weck explores different ways in which the terminology of International Law – as it is used by the ICTY – has influenced historiography and vice versa. Through a narrative analysis of two ICTY judgements, she identifies and compares the historical narratives included in these texts and discusses how the historical facts are narratively framed in order to further certain case-specific strategies and argumentation. Historians working with this material should therefore, she argues, always carefully assess the specific contexts within which these court narratives are told.

With Line Hjorth's paper »Underlying Narratives in Courtroom Exchanges,« we turn from the relative orderliness of the written judgment to the more unpredictable and immediate world of the courtroom. Hjorth's basic claim is that most courtroom exchanges in criminal trials are informed by certain underlying (often non-verbalized) narratives that govern and shape the questions that are posed to witnesses and defendants, as well as the answers to these questions. Through the notion »underlying narratives« she seeks to illuminate how certain strategically significant narratives are, often in subtle ways, promoted or rejected through the lingual exchanges in the courtroom. As a case in point she discusses the famed Norwegian »Orderud case,« where four people were charged with the murder of three persons – a mother, a father and their grown-up daughter – in a farm house in 1999. One of the significant features of this case was that the defendants, who claimed to have been wrongly accused, all had a different story about their own involvement (or non-involvement) in the events leading up to the crime. By reviewing recordings from the trial and comparing the exchanges to other kinds of documentation from the case, Hjorth highlights revealing connections between the courtroom exchanges, certain culturally significant stock stories and the strategic narratives informing the key actors' verbal performance in the courtroom.

Part Two: Narratives in Legal Reasoning and the Evaluation of Evidence

In the second – and largest – part of the present volume, we have collected a number of articles exploring the role played by narratives in legal reasoning, evidence theory and legal sociology.

Werner Gephart takes as his starting point two different operations involved in imputing crime and punishment to legal subjects: narration and subsumption. He argues that the relative importance of these operations depends upon the specific legal culture in which a particular case is being tried. In some legal cultures, the role played by storytelling and narratives is encouraged, whereas in other cultures that are more oriented towards subsumption, the function of narratives is restrained through systemic means. Gephart seeks an approximation between these two legal cultures by looking back at his own work on the sociological theories of Émile Durkheim – who represents the anti-narrative paradigm – and Max Weber, whose theoretical emphasis on *action* is more in line with a narrative way of thinking. Gephart's idea is that an emotive approach to crime and punishment may serve as a mediator between narrative and anti-narrative legal cultures, enabling us to benefit from the insights of the narrative paradigm without losing sight of the distinction between the narrative and the non-narrative.

Hans Petter Graver invites us in his article to peek through the keyhole of law's door with a careful reading of legal narratives. His main contention is that the actions and dispositions taken by actors within legal institutions are partly formed by tacit norms and knowledge that the actors themselves are not necessarily consciously aware of. This phenomenon, he argues, can be analyzed with the aid of Pierre Bourdieu's concepts *doxa* and *habitus*. The doxa in a specific legal culture, and the habitus of its actors, can be unearthed, he claims, by analyzing language-use and narratives in legal decisions. By reviewing a selection of Norwegian legal cases, Graver shows how certain elements in the court's narratives – such as choices regarding theme, perspective and grammatical form – reflect underlying (and unexamined) assumptions in the courts' reasoning. Graver anchors his analysis of the operations of law in the institutional theory of Douglass C. North, with special emphasis on the notion of »path dependence,« which pinpoints the way in which the workings of an institution derive from past beliefs and choices.

Ralph Grunewald's article turns our attention to narrative and evidence theory. Grunewald's basic claim is that any evidence put forward in a criminal case must be embedded in a narrative in order to become meaningful. This means that no evidence, no matter how »sound« or »scientific«, carries intrinsic meaning. It also means that the narratives that are constructed in order to make sense of the evidence in a case tend to develop a quasi-evidentiary power that may overcome even the most powerful singular evidence. Grunewald shows how this can happen by reviewing a selection of wrongful conviction cases, with special attention paid to