# IVR 2019
# SW 2: Dignifying and Undignified Narratives in and of (the) Law

CONVENORS: Flora Di Donato (University of Naples)
Carla Faralli (University of Bologna)
Ana Carolina Faria Silvestre (Southern Minas Gerais Law School)
Jeanne Gaakeer (University of Rotterdam)
Steven Howe (University of Lucerne)

This Special Workshop takes the narrative lens provided by interdisciplinary studies in *Law and the Humanities* to investigate the 2019 Congress theme. One starting point is the notion that literary narratives can help us explore alternative views on the human and social condition by showing us options law often disregards. Literary and everyday legal narratives contribute to revealing implicit and often instrumental elements often left unstated by formal law. Thus narratives can help open up new sources of knowledge and new perspectives on traditional topics of law and literature. Another starting point is Robert Cover's thesis that law's narratives can only be understood within their cultural and normative universe, the *nomos* of their origin and existence. The creation of legal meaning is always the product of mediation between the state and its people. The narrative paradigm of fact and fiction also deserves our attention because being allowed to tell one's story and to be heard is a way to be recognised as a human being. Such procedure confers dignity on the speaker; it honours the speaker's autonomy as a legal subject and opens up space for alternative views which law often suppresses. But how can people who are silenced, marginalized or excluded act successfully within the law, and be heard? Inequalities can be the result, or injustice, bias and discrimination, social and otherwise. These directly affect a person's dignity and are detrimental when it comes to the development of social diversity and democracy. All of the above asks us to consider the concept of narrative in its various forms as essential to law, and with a crucial role in the process of legal adjudication and the construction of legal reality. This SW therefore probes questions with respect to the development of a legal narratology for legal practice broadly conceived, focusing on probability, coherence, likelihood, and plot.

## Formal Guidelines

- Papers will be twenty minutes in length, with ten minutes discussion time.
- We ask that all participants submit a short position paper (ca. 3'000 words) by **Sunday 23 June**. These will be circulated prior to the workshop.

## Draft Schedule

### Monday 8 July
Chairs: Jeanne Gaakeer, Carla Faralli, Flora Di Donato, Steven Howe and Ana Carolina Silvestre

Session 1, 13.30-16.00h
- Frode Helmich Pedersen, *The Story of Facts in the Judgment. A Narratological Perspective*
- Marta Dubowska, *How we Build Legal Narratives? An Analytical Approach*
- Ann Shalleck, *How Clients and Lawyers Construct Facts Through the Stories They Tell Each Other and the Stories They Discover in the World*
- Iris van Domselaar, *On Silencing and the Art of Addressing the Loser in Legal Decision Making*
- Brisa Paim Duarte, *Normative Validity, Macronarrativity and Micronarrativity in Law*

Session 2, 16.30-19.00h
- Ivan Cláudio Pereira Borges, *Competing narratives on violence against middle and low-income women: Between the utilitarian lens and the legal perspective on domestic violence in Gama – D.F.*
- Ana Carolina de Faria Silvestre, *Shedding Light on How Brazilian Judges Used to Deal with the Emotions of the Parties and with their own Emotions from the Biographies/Diaries/Memoirs Written by Brazilian Judges before the Constitutional Amendment nº 45: Some Insights*
- Jacques Athanase Gilbert, *Mythology of the Rule*
- José Garcez Ghirardi, *I'm Sure Your Son is not a Savage. The Crisis of Modern Legal Rationality in Yasmina Reza's The God of Carnage*
- Alberto Puppo, *From the Old Testament to Transitional Justice: the Common Moral Force of Old and New Legal Narratives*

### Tuesday 9 July
Chairs: Jeanne Gaakeer, Carla Faralli, Flora Di Donato, Steven Howe and Ana Carolina Silvestre

Session 3, 14.00-16.00h
- Fernando Armando Ribeiro, *Literature, Hermeneutics and Reflexive Interpretation: A Legal Reading of Shakespeare's Measure for Measure*
- Daniel Conway, *Defiance Before the Law: Kierkegaard, Kafka, and Coetzee*
- Júlio Carvalho & Augusto Wiegang Cruz, *The Augustan Novel and the Cultural Foundations of Human Dignity*
- Steven Howe & Clotilde Pégorier, *Tales from the War on Terror: Law and Narrative in Contemporary Documentary Theatre*

Session 4, 16.30-18.00h
- Marketa Stepanikova, *Milada Horáková: Undignified/Dignifying Narrative of the Czechoslovak/Czech Law*
- Justine Poon, *Stories of Asylum Before the Law*
- Anne Macduff, *Narrating National Values Through Citizenship Ceremonies*

Session 5, 18.15-19.15h
- Yuliia Khyzhniak, *Narrative Coherence and Change: A Literary Approach to the Jurisprudence of the European Court of Human Rights*
- Angela Condello, *European Human Rights Culture and Individuation: The Nomos in the Singular Narrative*
- Abstracts

Frode Helmich Pedersen

## The Story of Facts in the Judgment. A Narratological Perspective

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Abstract

In this paper I will discuss some aspects of the construction of the story of facts in judgments from a narratological point of view. My basic premise is that the narratological analysis of such narratives must be based on a clear distinction between factual and fictional stories. Another premise is that such stories are always part of an overarching rhetorical act, designed to persuade the readership that the court's decision is reasonable and well founded. More specifically, the paper will focus on issues relating to the speaking instance versus the focalizing instance. I will discuss some examples (taken from Norwegian judgments in criminal cases) and show that it is, in these stories, not always clear a) who is speaking the words, b) who is perceiving the action and c) who is making the claims. This gives rise to some important questions: Are such uncertainties ultimately unavoidable, or can they be avoided through a different composition of the narrative? What function do these uncertainties have within the judgment's overarching rhetoric of persuasion? How can the uncertainties best be detected and what kinds of consequences do they have? While the examples are all taken from the Norwegian legal system, the paper's general points will presumably be relevant to judgments in other legal systems as well.

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Marta Dubowska

## How we Build Legal Narratives? An Analytical Approach

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Abstract

The structure of a legal narrative (an analytical view) After the "linguistic turn" the influence of narratology within the field of jurisprudence cannot be underestimated. Since legal discourse is inclusive of other types of discourses (like the historical discourse or literary one) the influence of narratology, mainly interested in elucidating the ways in which (hi)stories are told within the domain of law, is rather obvious. What is not clear, however, is the exact way in which the narratives about legal institutions (as told in public), or narratives about legal duties (as told before the court), are structured, given the fact that at many points they are dependent on different, not specifically (or exclusively) legal types of narratives. This is the main question I'd like to ask. In the field, there is no clear and precise definition of said narrative, one which would be perpetuated by many authors. In particular, there is no agreement on whether the way we frame a "legal narrative" expands or limits the understanding of law, its institutions and obligations. In order to answer this question, one has to provide a comprehensive definition of narrative in general along with certain criteria that would make a particular narrative a "legal" one. Only then one can differentiate between legal and other types of narrative, and eventually determine the roles the latter play within the former. In my attempt to provide such definitions I would like to treat a "narrative" not as merely referring to a kind of "story", but rather as a methodological category that is generally ruled by certain universal rules.

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Ann Shalleck

## How Clients and Lawyers Construct Facts through the Stories they tell each other and the Stories they Discover in the World

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Abstract

Legal cases begin with the story of a client about a problem, often told to a lawyer. In the relationship between lawyer and client, the facts of a case get constructed through the transformation of the client's story into a legal story, long before the story ever gets to a judge to decide and form into a legal judgment. I focus in this paper on this beginning of the construction of the facts of a case through two aspects of the lawyer-client relationship. First, facts get constructed through the dynamic between client and lawyer who tell and listen to stories of the client's problem and of the legal norms and rules that might be implicated in those stories. Through the iterative retelling, lawyers and clients seek to understand what the problem is, the meaning it has in the life of the client, and how it could be solved with what consequences. Second, lawyers and clients explore, elaborate and evaluate the facts of a case through the process of fact investigation, in which lawyers and clients search out information in the world. In this quest, they consider accounts of the various ways that the client's problem may be embedded in the world – how it came to be, who is part of it, and how it might be resolved. They detect, explore, and unearth the facts of those many accounts. They wonder what other facts those accounts suggest and decide how to find them. They seek to understand more fully or from other perspectives ways to situate the evolving understanding of the client's problem in a legal story of what occurred in the world and how it could be resolved. Through both reciprocal storytelling between client and lawyer and through the stories that guide and emerge from investigation of facts related to possible stories about the client's problem, lawyers and clients decide what legal claims to assert and how best to assert and frame them. The facts that ground those legal claims – as constructed through these two processes - constitute the plot of the legal narrative. It embodies the client's story, the context in which that story is situated, and the legal norms and rules animating the legitimacy and persuasiveness of the story. Using the elements and structures of narratives as analytic devices, I will suggest in this paper how these aspects of narrative can help us understand how the facts of a case get constructed from the stories that emerge in the lawyer-client relationship and in fact investigation. I will also address the roles that the reasons for telling the story, the expectations of listening to the story, and the shaping of inquiry about the story play in shaping factual construction.

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Iris van Domselaar

## On Silencing and the Art of Addressing the Loser in Legal Decision Making

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Abstract

How should judges address the loss for the losing citizen resulting from their decisions? For the acceptance of legal decisions and for trust in legal procedures this loss-addressing dimension in legal decision-making is highly relevant. Social-psychological research shows that trust in judges and acceptance of judicial decisions, in particular for the losing party, depend on *how* these decisions are made, more than on the actual outcomes: on whether the losing citizen feels respected as concrete individual. Despite its societal importance, the *normative* legal-philosophical question as to how judges should address the loss resulting from their decision has not been addressed so far. This lacuna is not fully surprising; the dominant normative approaches to law and legal decision-making are judgment- and system-centred. Legal decision-making is primarily accounted for in terms of the compliance of judgments with a prior legal system. The *post-decisional dimension* of legal decision-making is largely ignored or criticized as an expression of extra-legal subjectivity. This paper puts the post-decisional loss-addressing dimension centre stage. It develops a critique on what will be called 'silencing': the non-existence of the art of addressing the loser in the rationalistic tradition of legal theory and legal philosophy. In addition, it

offers an empirically informed normative eapproach for the art of addressing the loser in legal decision-making. Drawing on virtue and skill-based accounts of moral and legal decision-making, on theories of perceived procedural justice and on the first-person point of view of judges, this approach proposes an original constellation of concepts: moral remainder, judicial perception and civic friendship.

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Brisa Paim Duarte

**Normative Validity, Macronarrativity and Micronarrativity in Law**

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Abstract

The link between law and narrative has been one of the main subjects of contemporary law & literature and law & arts/ aesthetics fields. What does a narrative input means and what would be its role in legal practice, however, is not univocal, since the reference to narrative happens to give rise to many different assumptions in the context of legal thinking, building a multiform set of repercussions on what concerns to narrative's relation to law's identity and experience. As a result, this variety can lead either to the reinforcement, the deepening, or the rejection of the possibility to trace a common ground between those particular elements. Additionally, considering that such fields are marked by strong methodological concerns, law's institutional capacity to give adequate (i.e., just) answers to juridically relevant problems has always deserved, in the same context(s), a special attention, despite the understandings about the appropriate criteria to determine valid normative meanings, on the one hand, and the perimeter of the social circle of juridical relevance, on the other, are hardly uniform or unequivocal. When one intercrosses these two metadogmatic aspects, that is, the narrative and the methodological, it is possible to notice that, as the defense of law's narrative core is generally built upon a coherence-fidelity-continuity normative claim, and so upon the reinforcement of an institutional aspect (and the rejection of narrative paradigm is built upon the opposite assumption), the search for deepening law & narrative connections starts from the expansion of the very comprehension of narrative typical limits, and of what narrative inputs can provide in a practical sense, enhancing the tension between the coherence-fidelity (macronarrative) "internal" or "centripetal" normative argument and the (micronarrative) complexity of a fragmented, plural, and polyphonic, if not "centrifugal", legal reality, in which neglected or deviant types of parallel or underground (and, in this sense, "undignified") narratives, stories or perspectives are hoped to be seen, heard, and answered to, exposing the distance between the general and the particular, the macro and the micro dimensions of/in law, which are so placed one in front of another, with some exceptions (e.g., James Boyd White, Robert Cover), as two essentially different and static entities, as if belonging to opposite sides or constitutive realities. Exploring this arena and taking the referred difference/opposition as an artificial and false polarization and dichotomy, this paper aims to address the methodological intercrossing between the narrative and the normative.

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Ivan Cláudio Pereira Borges

**Competing narratives on violence against middle and low-income women: Between the utilitarian lens and the legal perspective on domestic violence in Gama – D.F.**

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Abstract

The problem of this research lies in the domains of the relation between Law and Literature, for which there is a significant difference between the primitive narrative of the layman and the juridical literature to which it is transported. In the case of domestic violence in Brazil, the complaint of the female victim registered with the police authority often suffers from withdrawal at the time of its reaffirmation before the judicial authority. So it is necessary to ask: Why does it change? When does it change? What is more, is the withdrawal of the domestic violence complaint of the female victim an indication of distancing from the legal codification of the legal experience she experiences? The collection of data was done through the analysis of some judicial proceedings in progress, documents formed by police bulletins of occurrence, preliminary judicial decisions, minutes of hearing of justification, sentences, and interviews with police and judicial authorities, and with police and judicial officials. The actors are familiar components of the satellite city of Gama, in the Federal District, Brazil. They are married men and women of medium and low income, with reasonable educational background and significant ignorance of the laws in force in the country. The conclusion that has been reached is that the retraction reveals diverse legal interests between what the woman expects victim of the State and its laws and what the provisions of the Maria da Penha Act effectively envisage. The preservation of the integrity of the woman, in her physical, psychological, emotional, patrimonial and sexual expression, provided for in said legal diploma, is reinterpreted by the right holder herself. In other words, violence is given another meaning, more utilitarian than proper intrinsic moral value contained in respect for the dignity of the human person. The motives that led to the production of this law seem not to be of the same kind, although within the genre repression of violence against women. By the objective analysis of the report of violence made by the victim himself in this locality in Brasília seems to demonstrate that the narrative of the legal text failed to capture in many aspects the drama experienced by the woman dependent social and economic of the partner in the context of violence that is submitted.

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Ana Carolina de Faria Silvestre

## Shedding Light on how Brazilian Judges used to Deal with the Emotions of the Parties and with their own Emotions from the Biographies/ Diaries/ Memoirs written by Brazilian Judges before the Constitutional Amendment nº 45: Some Insights

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Abstract

The source for this work are biographies/ diaries/ memoirs written by Brazilian judges before the major reform in the Brazilian legal system via the Constitutional Amendment No. 45.. The change in the Brazilian socio-legal landscape is a factor which impacts the emotional experience of Brazilian magistrates as emotions are *products* of the interaction of various components (physiological aspects, facial expressions, consciousness, subjective experience and social interactions). More recently, there has been a trend to recognize emotions as bio(psico)cultural processes and that understanding them demands multiple approaches (Röttger-Rössler and Markowitsch 2009). In this work, with Sheer (2012), we start from the assumption that emotions/feelings are also *products* of social interactions, so they are conditioned by the social contexts that are always culturally and historically specific.

In order to better understand how Brazilian Judges have been dealing with their emotions and the emotions of the parties, we can utilize from various artifacts (Maroney, 2019), however non-fiction literary texts have been chosen as a primary source. It is assumed, as a hypothesis, that legal actors, in the role of the author, will tend to feel more freedom to discuss their professional lives, which might include how they handle their feelings/emotions, and about the strategies they usually used to regulate their emotions and the emotions of the parties.

A court decision is a text produced by the judge from their position as judge, under the constraints of the law and with a specific purpose. In such a document, there is little or no room for the person (Judge) to appear, specifically regarding to their emotional experience during their professional day. Therefore, court decisions, despite being a potential artifact of research, were not considered a viable source for this research Project.

As we will begin from literary texts, i.e., a limited set of quantitative and qualitative records, the scope of this ongoing project is conditioned/limited by the assumed methodological choices. The epistemological potential of literary works is very broad. Semiotics works with complex verbal constructions that allow an investigation of the nature of the symbol. Feminist studies identify a reinforcement in unequal gender positions and its possible subversion. The discourse analysis, as an "in-between" discipline, allows us to work with the opacity of speech, seeing this opacity, as a result of the political and ideological intervention (Orlandi, 2005) etc. In this study, in order to analyze the autobiographical texts, we will use discourse analysis, implemented in Brazil by Orlandi, and emotion work studies.

Two texts were identified: (Eliezer Rosa, 1983. Candido Motta Filho, 1977). Unfortunately, books written by female judges were unable to be identified. This must be considered, in advance, as a gap in the research.

The discourse analyses methodology works with the opacity of language, i.e., with the meaning effects produced in certain conditions. We assume it can be a valuable methodological key in order to understand what has been said (the meanings from the text), and what has not been said, and what could be said on emotions and the emotion work of Brazilian judges in their daily professional lives before Constitutional Amendment nº 45. We assume these methodologies can help us to shed light on: a) the relations between community, judge and emotions b) the strategies Brazilian judges often used to regulate their emotions, and the emotions of the parties and their possible consequences. This research is part of a broad project on how Brazilian judges use to deal with their emotions and the emotions of the parts in their daily professional lives. The first insights were discussed in Law and Society Toronto meeting/2018.

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Jacques Athanase Gilbert

## Mythology of the Rule

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Abstract

In his book, *What is Philosophy?* Giorgio Agamben evokes the relationship between mythology and theory: "In philosophy, hypotheses necessarily have a mythical character, namely that they are always 'stories' and the rigor of thought consists precisely in recognizing them as such, in not taking them for principles". What to do with this mythological origin of the theory? Should it be considered, as Nietzsche does about the metaphor in *The Philosopher's Book*, as the very substrate of the concept, which would only be a residue of metaphor? Should we then consider the theories and hypotheses that support them themselves as residues of mythologies? The articulation of rational thought with mythological thought has always posed difficulties that are related to their respective foundations. In a sense, returning the thought of myths to a "prelogical" register does not shed any light on the exact nature of the transition. In what and how, is the story trustworthy? And above all, in what way can an argumentative thought be developed on a supposed "founding" story, in other words, one that is supposed to lay the foundations for further development? With reference to the legal field, another question arises from the first: how and in what ways does a narrative shape law and how can narrative rules be articulated with those that govern or organize a society? Giorgio Agamben's work does not escape these questions. The work of the modeling narrative, based on *Homo sacer*, has continued through all subsequent works, in such an effective and systematic way that one comes to doubt a model that works as well as it is, to the point that one would like to have the last word of the story...

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José Garcez Ghirardi

## I'm Sure Your Son is not a Savage. The Crisis of Modern Legal Rationality in Yasmina Reza's *The God of Carnage*

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Abstract

Consensus has become a keyword for postmodern societies, as it is seen as a better means to solve conflicts than the Modern hierarchical structures deemed as oppressive (TAYLOR, 1994). In Law, this has translated into a gradual abandonment of vertical, State-centered structures, as can be seen in the rise of governance and regulation (as opposed to government and statutes). (OST & KERCHOVE, 2010; SCHMITTER, 2007). The assumption at the heart of this movement seems to be that these horizontal forms of norm creation are more likely to produce fair and equitable exchanges (SUPIOT, 2015), once they enhance the balance of power between all the players. The current crisis in Western democracies, however, and the decline in prestige of legal and political institutions (LEVITSKY & ZIBLATT, 2018; ROSANVALLON, 2008) suggests that such assumption deserves close scrutiny, mainly in its reading of power relations. This paper proposes that Yasmina Reza´s *The God of Carnage* can be read as a critical allegory of such process.

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Alberto Puppo

## From the Old Testament to Transitional justice: the Common Moral Force of Old and New Legal Narratives

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Abstract

Transitional justice has been the object, in the last decades, of several monographs, probably agreeing on one point: such form of doing justice is poorly consistent with the more traditional concept of criminal adjudication, derived from the 18th century's traditions, and essentially grounded on the principle of legality. Justice can be blind but it must be predictable: no retroactive criminal punishment could be perceived as just. Kantian retributive conception of punishment also contributes to our rule of law-sensitive criminal justice narrative. Retroactive punishments in Nuremberg invite to question such a narrative and the post-dictatorships judicial activism in Latin-America confirms the need of re-thinking the social role of, and the narrative on, punishment. In this paper, I will argue that there is nothing new or surprising in how transitional justice places punishment in the larger context of human rights protection and social peace. In the Old Testament, at least according to Hermann Cohen's reading, punishment was already conceived as oriented to achieve social peace. It is also possible to go further: transitional justice is the evidence that the Law, as human construct, has been conceived, from the beginning, as a tool to fight against poverty, as a tool to eliminate the worse social inequalities. So that it is probably truth, as claimed by Kora Andrieu – in her book La justice transitionnelle –, that the mechanisms of transitional justice violate the principles of political liberalism. The real question is then according to which narrative (the 19th century formalistic and liberal rule of law tradition, or the Old testamentary transformative social justice tradition – having in the transitional justice its recent manifestation –) one decides to live.

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Fernando Armando Ribeiro

**Literature, hermeneutics and reflexive interpretation: a legal reading of Shakespeare's Measure for Measure**

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Abstract:

After 400 years, the relevance of William Shakespeare's work is remarkable and recognized as one of the most acute perceptions of human nature. In this paper, we intend to approach the relevance and actuality of his thinking concerning legal interpretation. Departing from the play Measure for Measure we propose a critical and reflective gaze into some of the most important matters in legal hermeneutics such as the desuetude of laws, equity, and the limits imposed by our pre-understandings. It is worth highlighting its sharp confluence with many postulates that would afterward be supported by philosophical hermeneutics. Therefore, we intend to discuss how hermeneutics and literature can enable the judge to reflect and question his own pre-understandings, thus contributing to the enhancement of the judicial decision. At the end, we try to indicate how Shakespearean narrative may provide a better understanding of many ideas supported by non-positivist schools.

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Daniel Conway

**Defiance Before the Law: Kierkegaard, Kafka, and Coetzee**

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Abstract

Søren Kierkegaard's analysis of **despair** [*fortvivlelse*] in *The Sickness Unto Death* (1849) receives welcome, complementary illustrations in the novelistic efforts, respectively, of Franz Kafka (*The Trial,* 1925) and J.M. Coetzee (*Elizabeth Costello,* 2003). Both Kafka and Coetzee succeed in fashioning dramatic settings in which their troubled protagonists despair of altering the conditions of their respective situations. In both cases, moreover, the distinctly *spiritual* character of despair is on display, as the protagonists in question slowly realize that their cognitive faculties will afford them no protection against, or immunity from, the despair they (correctly) see in others. Finally, both Kafka and Coetzee succeed in depicting the first-personal experience of despair as that of a progressively suffocating claustrophobia, which their protagonists insist on interpreting as an invitation to exercise their freedom and agency.

In both novels, the illustration of despair relies on a consideration of the protagonist's expression of defiance before the law. In *The Trial*, Josef K. is openly defiant of the authority of the court that has found him guilty. In *Elizabeth Costello*, the eponymous protagonist is similarly defiant in the face of the requirement that she submit a written testament to the merit of her life. In both cases,

moreover, defiance before the law is revealed to be falsely (and fatally) suggestive of a potentially admirable expression of freedom and agency. Josef K. famously dies "like a dog," while Elizabeth Costello fades away without ever passing through the gate at which she stands.

As both authors demonstrate, the "law" to which the protagonists respond is an outward expression (or projection) of their undiagnosed despair. In truth, the authority of the "law" they elect to defy originates in and with *them*. As such, the "law" serves as a seemingly external confirmation of the self-limiting narratives they have fashioned for themselves. Attesting to the validity of Kierkegaard's diagnosis, Kafka and Coetzee thus describe protagonists whose expressions of defiance are revealed to be symptomatic of the despair to which they (mistakenly) believe themselves to be immune.

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Júlio Carvalho & Augusto Wiegang Cruz

## The Augustan Novel and the Cultural Foundations of Human Dignity

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Abstract

Every culture furnishes a framework of categories that arch over the whole gamut of several different spheres of social life. Our experiences of meaning take place primarily within a culturally-tailored conceptual framework whose internal contours are continuously reshaped. Our principal concern in this text is to advance our understandings of how narratives plot the contrivances of social reality, whose semiotic tissue is, to a large degree, encompassed by law. To do so, we describe some connections between literary narratives of the Augustan period and the unfolding of the legal concept of human dignity in modernity.

Indeed, the cultural infrastructure of the subjective rights is anchored in the development of a common language of civility, sensibility and a strong notion of individuality whose shape and structure the literature of the time helped to create. The rise of a culture of reason and sensibility, of novels and printed-books, is the very story of the dawn of the modern subject and the commencement of the process of universalization of the principle of respect to human beings. After the second war, law incorporated a category aimed to comprehend altogether, through the language of rights, the complexity implied in the modern demand of universal respect to human beings, the identity of the modern subject and its moral sources: human dignity. Nevertheless, dignity still fights for recognition as the lodestar legal representative of the principle of universal respect.

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Steven Howe & Clotilde Pégorier

## Tales from the War on Terror: Law and Narrative in Contemporary Documentary Theatre

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Abstract

Recent years have witnessed a significant boom in documentary political theatre. In the UK in particular, documentary drama – based on controversial historical and contemporary events – has come to dominate the landscape of political theatre. At the forefront of this movement has been a series of verbatim plays, staged predominantly at London's Tricycle Theatre, that explore a range of concerns relating to international law: from the Nuremberg trials (*Nuremberg*) and the ICTY's Rule 61 hearings (*Srebrenica*) to 9/11 and George Bush's and Tony Blair's 'war on terror' (*Guantanamo*, *Called to Account*, *Chilcot*).

As Ian Ward notes, the aspiration of such productions, in presenting before their audiences a series of verbatim statements made by significant real-life actors, is "inherently jurisprudential". Mandated by official transcripts, textual sources and oral testimonies, verbatim theatre is also inherently narrative – in (at least) three distinct, if related, aspects. A first regards the process of selection, editing and structuring the documentary from the available material. A second relates to the presentation of the dominant, legitimizing narrative positions within the context of particular events and situations. The third meanwhile – which will provide the particular focus of the present paper – is how a number of the plays supplement official recorded material with the personal narratives of the victims of injustice. Drawing on a selection of examples, the aim here is to illuminate how these narratives humanize the experience of those whose experiences might otherwise be ignored and, in so doing, encourage a mode of critical reflection that (re-)connects human realities with the norms and principles of international law.

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Marketa Stepanikova

## Milada Horáková: Undignified/Dignifying Narrative of the Czechoslovak/Czech Law

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Abstract

Story of Milada Horáková, including both her personal story and story about the political trial in 1950 in which she was convicted, is one of the most powerful moments of the Czech legal history. At the same time, it is one of the most powerful narratives of the Czech legal culture and has far greater potential than merely informing about our legal past. Thus, we have decided to create a legal theatre show about it.

Any consideration about narratives within an area of the law and theatre has to eventually come here. Her story itself is a kind of the ancient-like tragedy, and Milada Horáková as its central figure is a dramatic hero in Aristotelian sense. Hence, dramatization of her trial should be easy. However, the familiarity of all those events in legal discourse of the Central Europe entails the danger that their artistic processing will only create a cliché of struggle against totalitarianism, a legal kitsch without any real content or message.

In my paper, I want to introduce story of Milada Horáková, an influential lawyer of her era and a victim of a politically manipulated trial used as a propaganda of a communist totalitarian regime. I will also explain what this narrative means for Czech legal culture nowadays. Moreover, I will briefly demonstrate specifics of staging this story as a legal theatre.

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Justine Poon

## Stories of Asylum Before the Law

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Abstract

Examining the legal narrative of asylum seekers who attempt to go to Australia by boat provides a case study in which the deterioration of rights, and of the possibility of recognising richer and deeper narratives, is done by both the law and the texts and images that surround the law. Metaphorical and poetic resources are in fact asymmetrically deployed by the state to legally, literally and figuratively keep asylum seekers, "at sea", whilst refugee advocates are constrained to arguing using the progressively diminished rights of asylum seekers in legal language, even as asylum seekers are increasingly alienated within their legal category.

Thinking with Anne Dufourmantelle, Walter Benjamin, and Simone Weil's concepts of attention as ethical and creative acts that transform stories and how we read the relationships in the law, this paper will look at how language can be complicit in limiting law's notion of asylum seeker personhood and how poetic thinking can disrupt the opacity of the legal category. The poetic potential of law may give us ways of rethinking the currently settled relationships between the state and the refugee.

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Anne Macduff

## Narrating National Values Through Citizenship Ceremonies

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Abstract

Over the past few decades, a number of countries have paid increasing attention to strengthening their citizenship regimes. These changes have led to increased fees and waiting times, language and cultural tests, including activity tests. These reforms are frequently justified as affirming and protecting democratic national values, thus ensuring that the new migrants will integrate seamlessly into the new nation.

Yet the specific nature of these national values is notoriously difficult to articulate, let alone include in legislative criteria for citizenship status. Increasingly, in many liberal democracies, national values are couched in broad terms including democratic values, loyalty to the nation and obedience to the law. This paper considers how the law narrates Australian national values through the citizenship ceremony. This ceremony is one where individuals must attend, and stand and make a public pledge of commitment before they are conferred the new legal status of citizenship. This paper critically analyses the narratives about Australian national values that are produced through this ceremony, in particular focussing on its sexualised, raced and gendered forms. I will argue that, this ceremony not only reduced and disciplines the cultural diversity of the Australian people, but also impoverishes its democracy.

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Yuliia Khyzhniak

## Narrative Coherence and Change: A Literary Approach to the Jurisprudence of the European Court of Human Rights

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Abstract

The jurisprudence of the European Court of Human Rights (hereinafter, the Court) does not solely constitute a series of international legal texts but is also a narrative that judges create when justifying their judicial opinions by referring to earlier cases. The legitimacy and weight of the Court depend on the 'narrative coherence' (Bricker) of its jurisprudence, which is always torn between the need for continuity and the call for development. When incorporating a change into the jurisprudence judges need to deviate from the past and simultaneously inscribe their vision into the past, that is, to justify their deviation, in order to continue a story. This double-edged task creates a certain tension which could be traced in judges' wording concerning the past reasoning.

When we look at some cases where the Court departs from a position of predecessors, one can see textual passages which could not be explained with a legal logic, i.e. where the wording of the Court could not be understood and justified in terms of applied method of legal interpretation (for instance, evolutive interpretation). In such cases (for example, *Christine Goodwin v. the United Kingdom*) the Court does not always manage to make a change in a smooth manner, so it inscribes a present judgment at the expense of distortion of previous texts of the Court. Sometimes this

distortion takes the form of a depreciation of a predecessor's argumentation or of a presentation of a predecessor's approach as defective.

It is essential to consider the textual passages in which changes have occurred not only through the lenses of the Convention interpretation but also as parts of the holistic narrative of the Court, i.e. in their relation to previous judgments. Changes should be viewed both from a perspective of a chosen legal interpretational strategy and, more importantly, from a perspective of a textual manifestation of this strategy. To describe and comprehend the above-mentioned unusual treatment of predecessors' judgments, which lies beyond the juridical field, one may apply both *narrative* and *rhetorical* analysis to texts of judgments. Judicial opinions may be seen as reflecting the relations between narrator, story, characters, and reader. This implies a *narratological* perspective which provides for an image of how the Court shifts accents to change a position on a particular matter. In addition to this, the literary theory of the anxiety of influence (Bloom) could give a *rhetorical* perspective on strategies judges use in their texts in order to deviate from a predecessors' approach. The combination of these two perspectives allows to understand how the Court preserves continuity of the case law or how it jeopardises this continuity creating 'holes' in the narrative of the jurisprudence.

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Angela Condello

## European Human Rights Culture and Individuation: The Nomos in the Singular Narrative

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Abstract

The pluralist character of the European space is challenging the motto "united in diversity". What is the theoretical foundation of the European human rights culture? Is there a common, and shared, European narrative (either historical, juridical, literary) that can be considered as the fundamental key to depict a "European human rights culture"? I will try to answer these questions by starting from the analysis of two cases decided by the European Court of Justice - concerning a religious discrimination suffered by two women in their workplace (*Achbita c. G4S5*; *Bougnaoui c. Micropole SA*). The solution of the single conflicts shows that only a non-foundationalist universalism can be a successful approach to the European human rights culture. By considering the paradigmatic force of the singular cases, and focusing in particular on the specificity of the gender conflicts emerging from the two cases considered, I will argue that the content of human rights within a pluralist space is better understood, or grasped, from the singular stories. The reason is that such a content entails the definition of concepts such as, for instance, "dignified life". But these definitions are different for each person. This specific approach to an idea of a human rights culture permanently "in the making" reflects an idea of the law as a product of experience, of conflicts, of differentiation and self-consciousness.

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