Paragraphs on the Case of Fredrik Fasting Torgersen

Outline of an Analysis of the Relation between Law and Literature

by

Johan Dragvoll

Dissertation for the degree philosophiae doctor (PhD)
at the University of Bergen

Time and place for public defence:

The 04.09.2009 at 09:30, Aud. B, Sydneshaugen skole

Supervisor:
Prof. dr. philos Arild Linneberg
Department of Linguistic, Literary and Aesthetic Studies
Faculty of Humanities
University of Bergen

Opponents:

Opponent:	Prof. dr. juris Ståle Eskeland Department of Public Law Faculty of Law University of Oslo
Opponent:	Ass. Prof., dr. phil. Karen-Margrethe Simonsen Section for Comparative Literature Faculty of Humanities Aarhus University
Committee member:	Ass. Prof., dr. art. Ingrid Nielsen Department of Linguistic, Literary and Aesthetic Studies Faculty of Humanities University of Bergen

Chairperson:
Head of Department of Linguistic, Literary and Aesthetic Studies, Stein Haugom Olsen
Faculty of Humanities, University of Bergen

Johan Dragvoll
(Signature of candidate)

Ranheim, August 31. 2009

Abstract

The dissertation addresses the reciprocal and, in the case of Fredrik Fasting Torgersen, poorly recognized relationship between law and literature, i.e. law *in* literature and the significance of literature in law. In 1958, Fredrik Fasting Torgersen was convicted to life imprisonment for the rape and murder of 16-year old Rigmor Johnsen, as well as for arson, in Skippergata in Oslo the year before. All the while claiming his innocence, Torgersen has on several occasions demanded that his case be reopened. He has not succeeded. However, Torgersen also has another identity, as a writer and a poet. His scarcely examined literary work puts a distinctly satirical focus on law, justice and injustice: in his legal poetry the humane, the existentially tragic and tragicomic emerge as a powerful correction to formalist and instrumental legal thinking.

On the one hand the dissertation focuses on the literary and rhetorical aspects of law. On the other hand it raises the question of what comparative literature as a discipline may offer regarding the fundamental understanding of the law as such, legal security and the rule of law. The dissertation is a rhetorical and semiotic analysis of the legal material in the Torgersen case and of several later texts that the case has engendered.

Rhetorically speaking the judicial opinions, as well as other legal texts and documents in the Torgersen case, show many of the characteristics attributed to fiction or poetry, indeed undermining their apparent univocality and objectivity: even the legal genres are literary.

The dissertation juxtaposes the case documents and Torgersen's legal poetry. In turn, this opens up the possibility of examining the specific interactions between law and literature. It is argued that a common ground for law and literature is the inherent ambiguity of language. This ambiguity, however, is treated in very different ways when it comes to legal texts and poetry: faced with several incompatible interpretations, law still reaches unambiguous conclusions, whereas literature and poetry maintain and uphold this ambiguity. A basic problem of ethics is how to make decisions in complex situations, as is the case with Torgersen, where different and mutually exclusive interpretations oppose each other.

The starting point of the dissertation, then, is the writer's discontent regarding a practice of courts of law in which they, by reduction and by the suppression of single voices, unify contradictory and ambiguous arguments and evidence; a false homogenization which in turn forms the basis for judging the defendant guilty beyond reasonable doubt.

The text is situated within the field of "law and literature" and is founded on four theoretical pillars: deconstruction and its understanding of contradictory interpretations and

the metaphorical nature of language (primarily Jacques Derrida and the later Paul de Man), theories on "Law and literature" with focus on the "literariness" of law (primarily James Boyd White and Peter Brooks), structuralist semiotics (primarily Roland Barthes, Vladimir Propp and A. J. Greimas) and rhetoric (primarily Aristotle and Georg Johannesen). The four pillars share a common practice as to the investigation of how structures, figures, patterns and forms of law are constructed and (self-)deconstructed.

Paragraphs on the Case of Fredrik Fasting Torgersen consists of seven chapters in addition to an opening paragraph and a "precept".

Chapter 1 is a rhetorical analysis of the judicial opinion (or the "judgement") in the Torgersen case (from the Eidsivating court, June 16. 1958). The method applied is topical, meaning that the analysis starts from seven different key questions, more precisely the Latin *memoria* verse from the 18th century: "Who, what, where, why, how, when, with which means?" The questions are answered by analyzing details of the written opinion that bears witness to moral preconceptions and prejudices with regard to Torgersen as a person. A particular emphasis is laid on showing how the judicial opinions strive to make the impression of impartiality and objectivity, while a rhetorical analysis contrarily is able to unveil its major weaknesses.

Chapter 2 is a comparative analysis mainly of the written statement from the forensic psychiatrists and Torgersen's poetry, and even the judicial opinion. The main thesis is that Torgersen's poetry can be read as a defense for multiplicity and the rightless. The literary aesthetics of Torgersen is understood as an aesthetics of the humane, i.e. a sensibility and susceptibility towards the individual human being – as opposed to the forensic psychiatry which through its statement contributed to deprive Torgersen of his normality, his dignity and finally his humanity.

Chapter 3 is an analysis of five texts from and about the Torgersen case as crime fiction. These are different fictitious and non-fictitious pleas and presentations concerning the Torgersen case, all of them linked to the genre of crime fiction. The chapter shows how traditional genre formulas contribute to dramatize, parody and/or conceal the circumstances of the case. A significant point in this chapter is to demonstrate that the non-fictitious texts still fictionalize the case without showing or knowing that this is what they actually do, while poets on the other hand confess to this through the fictitious nature of their texts, as they are labeled 'play' and 'novel'.

Chapter 4 analyzes the figurative nature of four Supreme Court decisions in disfavor of Torgersen. The aim is to show how different rhetorical figures – figures of change and repetition, figures of addition and exclusion, figures of concealment and suppression – all

contribute to distort the case circumstances. This entails that decisions on a rhetorical level reduces and unifies complex circumstances through a tendentious and "fictionalizing" interpretation of witnesses and evidence. This kind of practice implies that the Supreme Court makes decisions without a real submission of evidence: the decision made rests solely on the authority of the Supreme Court.

Chapter 5 is an analysis of the dramaturgy of the courtroom in light of the folk tale genre. The chapter focuses on how law encompasses mythical structures as found in the formalist and structuralist texts by A. J. Greimas and Vladimir Propp. By way of the Actant-Model of Greimas it is demonstrated how the court structures stories that in a narrative way shape, organize and adapt the case circumstances, to a large degree in accordance with the genre rules of the folk tale.

Chapter 6 takes a closer look at the rhetoric and the theatricality in the decision made by The Criminal Cases Review Commission in 2006. The Commission is criticized for having evaluated the Torgersen case without any rhetorical analysis whatsoever. It is argued that the Commission is not the independent body that it is presumed to be, but rather adheres to the rhetoric and the way of thinking promoted by the courts of law.

Chapter 7 is a juridico-political discussion concerned with the problem of the right to a fair trial and protection against miscarriage of justice in Norway. It is claimed that the court to a larger degree should take into account the complexity and the heterogeneous evidence of each case, thereby also making more room for doubt. The argument further claims that the law must be reestablished as discipline of the humanities, indeed that legal practitioners should be educated within the fields of rhetoric, semiotics, hermeneutics and literature to enable them to practice law with the humanist insight into the complex field of signs and interpretation.

The juridico-political aim of this dissertation is thus to contribute to a "humanification" of law, based particularly on an idea which is fundamental to the humanities: that a rhetorical analysis of text, speech and signs is a necessary prerequisite for understanding the circumstances of a case as well as the people involved. In conclusion the text argues that the judges in the Torgersen case have drawn unambiguous, certain conclusions based on ambiguous and uncertain circumstances, thus suppressing the signs and circumstances which *do not* serve the idea of Torgersen being guilty as charged.