

The Rhetorical Use of Plot-Construction in Judgments

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1. Introduction

Plot has been described as one of the most elusive of all narratological concepts (Dannenberg 2005, 435). In this contribution I would like to formulate some of the central problems about plot and discuss a few examples of how plot-construction can be used rhetorically in the court's story of facts as it is presented in the judgement. These stories are (in the Norwegian legal system) generally accepted as the "material truth" of what happened in the case but can also be read as a way for the court to justify its own decision. One could say, therefore, that the stories presented in the judgement serve two masters, who may not always agree with each other. On the one hand, the court's story should adhere to the principle of truthfulness and give a balanced and evidence-based rendering of the relevant events; on the other, it must present these events in a way that makes the court's decision appear just, sound, and reasonable. While these two dimensions of the court's narrative are often in line with each other, there may also be instances where they come into conflict. This may occur, for instance, when there has been put forward credible testimony or evidence before the court that does not quite fit with the story that most convincingly supports the court's conclusion. In such cases the rhetoric of persuasion may demand adjustments to the story that would not have been necessary if the sole purpose of the story had been to present a balanced and truthful account of what happened. Such adjustments may be effected in a number of ways. In a well-documented study of Norwegian criminal trials from 2008, the folklorist Audun Kjus claims that what he calls "tightly paring down of the narrative" is a common way to do this in judgements. According to Kjus, "tightly paring down" a narrative means creating a narrow time frame for the plot so that inconvenient facts can be left out of the narrative simply because they occur at points in time which the narrative – as it is presented in the judgment – does not cover (Kjus 2010, 70). The phenomenon can be viewed as an aspect of plot-construction, which always includes a decision about where a particular story begins and where it ends. In this contribution I will discuss a concrete example of the rhetorical use of plot-construction which differs somewhat from the phenomenon discussed by Kjus, but where the basic problem is similar, i.e., how to conceal, cover up or make inconspicuous, inconvenient aspects of the case through storytelling or, more specifically, plot-construction. The main example is taken from the

judgments in the much-discussed Orderud-case (2001/2002), where four people were convicted of “aiding and abetting” a shocking triple murder of an elderly couple and their grown-up daughter at a farmhouse in eastern Norway.¹ My analysis concerns both judgements in the case, issued by two different judicial instances, i.e. two courts of different instances, as well as the story put forward by the Norwegian prosecuting authority.

2. *Theoretical Points about Plot and the Rhetoric of Storytelling*

Before we turn to the concrete example, it is necessary to clarify some theoretical points about plot and the rhetoric of storytelling. How should we define ‘plot’? As the reader will be aware, plot is often defined as a kind of configuration of the story.² In order to understand what that means, we must first agree what a ‘story’ is.³ As I understand it, the story is a thing of the mind, a mental construction, where events are chronologically ordered and arranged within a general framework of causality. If we imagine, for instance, a sequence of events where Mr. Smith got a letter and then Mrs. Johnson crashed her car, we do not have a story. If we imagine instead that Mr. Smith got a letter, which caused him to call his sister, Mrs. Johnson, who then crashed her car, we do have a story. When we are dealing with factual narratives, it is important not to confuse the story level with the level of reality itself, which I prefer to call the *happenings*, following a suggestion by Karlheinz Stierle (1973, 531). This distinction corresponds to the difference between what really exists and *claims* about what really exists. When we are dealing with the story-level of a factual narrative, we are dealing with *claims* about reality, that is: of what happened,

¹ https://en.wikipedia.org/wiki/Orderud_case.

² In theoretical discussions of the term plot, Seymour Chatman’s formulation of plot as “story-as-discoursed” (1978, 43) and Peter Brooks’s definition of plot as “the dynamic shaping force of the narrative discourse” (Brooks 1992, 13) are frequently mentioned.

³ In what follows I will use the narratological terms in a way that differs somewhat from the standard model of Genette, Chatman, Rimmon-Kenan and others. I use *story* to designate the chronologically ordered sequence of events, which is, in factual stories, selected from the raw material of experience. The level underneath the story (for factual stories) is the level of reality, which I refer to as *happenings*. *Discourse* is used to refer to the verbal presentation of the story, in which events may be referred to independently from their chronological order. *Plot* is used in this article to mean a modelling or configuration of the story – the way the story is shaped. In factual stories, the “story” (understood as the ‘content’ of the narrative) can always be extended further back in time on the basis of new information. This does not hold for the plot, which is tied to the concrete presentation. Plot differs from discourse both because the discourse includes verbal phenomena that do not properly belong to the “plot” and because it may refer to points in time that lie outside the scope of both story and plot. If a legal narrative about a brawl in a bar opens with brief discussion of changing attitudes to violence from the 1950s until today, one cannot say that the plot therefore begins in the 1950s. It does, however, make sense to say that the discourse begins with a glance at events in the 1950s.

who did what to whom, when, where, and why. These claims can be true or false and they may be more or less plausible. Such categories do not apply to the level of reality.⁴

The story is, according to narrative theory, always presented to us in the form of a *discourse*. This is the same as saying that we extrapolate the story from what is presented to us by the discourse. What we get through this operation is – at least ideally – a chronologically ordered sequence where the most important events are causally linked. When this story is a factual narrative of the kind we are presented with in criminal cases, we may view the entire story as *one* claim about what happened in the case.

I would like to turn now to the question of rhetoric, understood as a means of persuasion. It is generally accepted that the discourse – any discourse – has a rhetorical aspect to it. If the narrator, for instance, describes a person as “crafty” rather than using a possible alternative such as “goal-oriented,” the choice of words can be regarded as part of the overall rhetoric of the discourse, which seeks to nudge the reception of the story in a particular direction. A similar use of rhetoric can be found at the level of the story. Consider the following example: In the judgement of a Norwegian murder case (often referred to as the Tengs-case), the court-as-narrator includes, through an external analepsis, an earlier incident where the young male defendant had allegedly complained very intensely to his teacher about some test-results at school. By including this event in the story about the murder, the defendant is characterized in an unfavorable manner (i.e., as a person who may react violently when his sense of self-worth is questioned), which fitted well with the court’s view of what happened at the scene of the crime. The event could just as well have been left out – no essential information would thereby have been lost – but was included for rhetorical reasons.⁵

So far, we have briefly looked at how rhetoric may be at work at the level of the discourse as well as that of the story. We turn now to the rhetoric of plot-construction. As a narratological term, plot is perhaps best viewed as the presentation of the story; not its verbal presentation, but its arrangement, how the story is laid out. Plot does not so much concern *what* is included in the narrative as *when* or *where* it is included; at what point in the discourse the events are told and, further, what events are highlighted and what events are placed in the background. From this brief description it should already be evident that plot-construction can be used for rhetorical purposes, for instance by directing the reader’s attention toward certain events or facts rather than others. In legal storytelling, the highlighted events will typically be the ones which can be used to support the story’s main conclusion, whereas the events that are placed in

⁴ Compare Pedersen (2021, 69–70).

⁵ The defendant was acquitted in the court of appeal. The case is currently being investigated by a cold case unit and a different man has been charged with the murder.

the background may contain information that is less convenient to the overall drift of the story.

In general, I think it important that the analysis of narratives in judgements pays close attention to these three aspects of narrative construction: the composition of the story, the wording of the discourse (i.e., the stylistic level of the discourse), the design of the plot (the presentation of the story-elements). The analysis should, in short, be able to expound the rhetorical effects produced on each of these levels. In the following analysis of the Orderud-case, I will focus on the question of how plot-construction can be used rhetorically by the court in order to persuade the reader of the soundness and plausibility of its conclusions and, more generally, to create an impression of the court's authoritative command of the facts of the case. But before I do that, it is necessary first to give a brief overview of the case.

3. *About the Orderud Case*

The Orderud murder-case is one of the most commented-on criminal trials in recent Norwegian history. The murders were committed over twenty years ago, but the case is still very much present in the Norwegian press, not least because two of the convicted defendants (who have since been released from jail) are currently fighting to get their case reopened in order to prove their innocence. The case was unusual in many ways, which is one of the reasons why the various stories about it have captured the imagination of the general public and why it has been the subject of several books and film documentaries.

The case concerns a triple murder, carried out with firearms at the Orderud farm on May 22, 1999. The shooting took place during the night when the victims were at home in their beds. The victims were an elderly couple, who were the formal owners of the large farm on which they lived, and their grown-up daughter, who had a successful career at the Norwegian Ministry of Defense. The daughter was staying with her parents for the weekend. Four people were investigated as suspects: The couple's son Per, who had run the farm for many years, and his wife Veronica, who lived together in the farm's main building, near the scene of the crime. Among the defendants were also Veronica's sister, Kristin, and her boyfriend Lars. They were both connected to the criminal underworld in Oslo. A crucial point about the case from a legal point of view is that the four defendants all ended up being charged with, and later convicted of, *aiding and abetting* the murders and not with carrying out the actual killings. The reason for this was that the police could not find enough evidence at the scene of the crime to conclude with any degree of certainty who had been present there at the time of the killings. They did, however, claim to be able to prove a motive for the murder as well as producing evidence that Per had

obtained several firearms with the help of his sister-in-law and her boyfriend.⁶ One of the defendants, Kristin, who was a drug addict at the time, claimed that Per and Veronica had indeed planned the murder of Per's parents. The motive, according to her, had to do with the ownership of the farm. Per's father had, after an initial oral agreement that the entire property would be transferred to Per, postponed the deal, and was now moving to secure part of the farm's property for his daughter, who was among the victims. The prosecution was able to prove that the son, Per, had falsified his father's signature in order to secure the farm for himself – a fact which Per eventually admitted. All four defendants were convicted of aiding and abetting the murder, and with respect to Per and Veronica it mattered little that they were not charged with having committed the actual murders, since they got the maximum sentence under Norwegian law, 21 years. Kristin was sentenced to 16 years of imprisonment and her boyfriend Lars got 18 years.

4. *One Story, Three Beginnings*

An initial point of interest in the story about the Orderud case is the significant hole at its very center: neither the police nor the court, nor anyone else who was willing to talk, could give an account of what happened on the night of the killings. The question is, then, how one can go about constructing a narrative about these murders convincing enough to convict the four defendants, given that one cannot relate the event of the actual killings nor identify who perpetrated them.

The Norwegian justice system produced three different written narratives about the crime in the course of the criminal process. The first is found in the indictment, which is issued by the public prosecuting authority, and which is always quoted in full in the judgement. The second is formulated in the judgment of the first instance of court, Nes Herredsrett, from 2001, and the third is presented in the judgment issued by the court of appeal, Eidsivating lagmannsrett, from 2002. These three narratives are very different from one another, both with respect to how they begin and with respect to how they deal with the hole at the center of the story.

I should like to start with a general comment on the beginning of a narrative. The beginning of a narrative is to my mind an aspect of plot-construction. The beginning is often used to establish the main theme of the story or the

⁶ Two of the pistols that had been obtained by Per had not been used in the murders. A third gun, a revolver, had according to ballistic analysis been used at the scene of the crime but Per denied ever having had access to this gun, which belonged to Lars and was accessible to Kristin.

narrator's attitude to the main events.⁷ In this case, there was not a great deal of disagreement with respect to the story level: that is, all the main events were more or less viewed in the same way in all three narratives. Nevertheless, they differ greatly in the way the story is told, including where the plot begins.

Starting with the narrative found in the indictment, we will first take a closer look at the significance of the beginning. How does this narrative begin? Interestingly, the narrative formulated by the prosecuting authority begins at the moment where Per and Veronica's presumed intention of killing Per's parents is first concretely acted upon: "In the fall of 1998 Veronica and Per Orderud approached Kristin Kirkemo and Lars Grønnerød and asked them whether they could provide them with a firearm."⁸ From this point on, the events are seamlessly knitted together up until the events at the scene of the crime. Rhetorically speaking, this is a *logos*-oriented plot-construction, which, through its strong focus on causality, is designed to appeal to the readers' reason. The central function of this plot-construction is to show how the narrative's ending is anticipated already at its very beginning. At the moment of the plot's opening, the string of events that end with the killings are set in motion in such a way that the murders are seen as an all but direct consequence of the act of requesting the firearms. The events of this narrative are arranged almost as if they were subject to a domino effect or a chain reaction.

Moving on to the narrative of the first instance of court, we notice already in the first sentence that this is an entirely different way of telling the story: "Per Orderud has lived his entire life at the Orderud farmstead. His father Kristian Orderud, born in 1918, started running the farm in his teens. He was a relatively dominating person who had strong opinions about how the farm should be run."⁹ The beginning is here placed at a much earlier point in the story, with the father's take-over of the farm in the early 1930s. Through this opening, the court signals that this is a narrative about a generational conflict and, more concretely, a conflict about the farm. Through its wide and far-reaching perspective, this is an *ethos*-oriented plot-construction in the sense that it signals a thorough and truth-seeking human seriousness, which is mainly concerned with the question that was on everyone's mind during the trial: How could it be possible that a presumably decent man and able farmer like Per Orderud, whose tender relationship with his mother was well-known in the area, could decide to brutally kill both of his parents over a such trivial conflict – which was all the less significant to Per, one would assume, seeing as his allod (*allodium* or 'right to inherited estate') to the farm had never been questioned. In order to explain this conundrum, the narrative of the court of

⁷ In his classical work *Metahistory*, Hayden White talks about the "inaugurating event," which is necessary in order to transform a chronicle into a story (2014, 7).

⁸ Quoted from the judgement of Nes Herredsrett, TNESS-2001-51. The translation is mine.

⁹ TNESS-2001-51. The translation is mine.

the first instance carefully examines the lives of those involved in the story in a way that resembles a Bildungsroman or a biography. In addition, the narrative goes into a thorough review of several other murder cases where the motive was less than rational and hard to understand. The court is then able to conclude that it is indeed possible that Per planned the murders.

Turning now to the court of appeals, whose judgement is still legally valid, we observe that this narrative begins at the opposite end compared to the narrative presented by the first instance of court, i.e., with the discovery of the bodies:

At about 11 pm on May 23, 1999 [Kristian's brother] drove up to the Orderud farmstead in Sørumsand. Earlier this Sunday, he had tried several times to get in touch with his brother, Kristian Orderud, over the phone. Kristian Orderud lived in a house at Orderud farm with his wife, Marie Orderud. This Pentecost weekend their daughter, Anne Orderud Paust, was visiting her parents. When [Kristian's brother] arrived at the house he found the front door locked. He had keys to it and let himself in but did not manage to get past the entry. He went round the house and up to the terrace and saw the murdered bodies of Kristian Orderud, Marie Orderud and Anne Orderud Paust inside the house.¹⁰

This opening, where we follow the witness from his premonitions that something is amiss to the horrifying discovery of the dead bodies, resembles the openings of the plots we often find in crime fiction. This way of telling the story is suspense-arousing and designed to draw the reader into the action. Through its plot-construction, the court-as-narrator here invites the reader to imagine what it would be like to discover your family murdered in this manner. This is therefore, rhetorically speaking, a pathos-oriented plot, which places the central emphasis on the shocking nature of the murders. Whereas the narrative in the first instance of court emphasized *the need to understand* how these murders could happen, the narrative of the court of appeal is more concerned with demonstrating that the murders are something that should and must be *strongly condemned*.

As we can see, what we have here are three plot-constructions that make use of each of the main means of persuasion in rhetoric: logos, ethos, pathos. We have also seen how the court, by choosing one opening rather than another, is able to direct the readers' attention in ways that highlight certain aspects of the case.

5. *The Gap in the Story and How It Is Dealt With*

We turn now to the major gap in the story, which resulted from the fact that the police investigation did not succeed in uncovering who was present at the

¹⁰ LE-2001-666. Obtainable at www.lovdatab.no. The translation is mine.

scene of the crime. The first thing to notice is that the gap is not properly described as a plot-hole but should rather be seen as a hole in the story itself and as such a *premise* for the plot-construction. The hole concerns the question of what we know about the reality of the crimes and is not an effect of any particular way of constructing the story. The second thing we should note is that the hole *is a problem* for a story about the Orderud murders intended as a factual basis for the conviction of the four defendants. The main reason for this is the lack of any clear, evidence-based connection between the alleged planning of the murders, which all four defendants are said to have been involved in, and the movement and actions of the murderers on the night of the crime. The question that will concern us in what follows is how this gap between planning and execution was dealt with in the three official stories produced by the criminal justice system in this case.

As we have seen, the three stories in question differ significantly from one another and the same is true for their handling of the gap in the story. We found three distinct rhetorical strategies at work with respect to the beginning of the plot in the three narratives. Similarly, we find three different strategies in the way that they deal with the gap. In the story of the indictment, the narrator hides or covers up the hole; in the story formulated in the first judgement, the hole is left open; and, finally, in the story formulated by the court of appeal, the narrator tries to *fill in* the hole. The task of the following analysis is to examine the specific problems connected with each way of dealing with the gap.

The narrative in the indictment is short and has a strong focus on causality. The narrative movement from the phase of planning to the carrying out of the killings looks seamless at the first glance:

On the night of April 3, 1999 at Orderud farm Per Orderud received a revolver cal. 38 with ammunition from Lars Grønnerød in exchange for one of the pistols that Kristin Kirkemo had acquired. The exchange of weapons took place as a result of Per Orderud's request. After prior consideration the murders were committed in the following manner: [here follows a technical description of the shots fired and their impact on the bodies of the victims].¹¹

In this narrative the plot is constructed in such a way as to make the hole inconspicuous. This is done by going directly from Per's obtaining the firearm to the technical description of the murders. One thereby gets the impression that at least Per must have been present at the scene of the crime, since he has, in the previous sentence, received one of the weapons that were used at the scene of the crime. But in fact, no such claim is made in this story. While Per is the subject in the sentence about the gun, the following sentence makes no reference to any particular subject. It is simply stated that the murders were committed in the manner which is deductible from the investigation of the

¹¹ TNESS-2001-51.

crime-scene. The rhetorical trick consists in constructing a causally oriented story where the causal link is heavily implied throughout the sequence, including the causal connection between Per's receiving the gun and the execution of the killings. Close reading is required in order to notice that the subject is in fact lacking in the sentence which follows immediately after the sequence about the gun. In this way a causal connection is implied without being stated outright, and this is what I am referring to when I claim that the hole is concealed. This is partly an effect of the story's discourse (leaving out the subject), and partly a result of plot-construction (strong focus on presenting the reader with a causally arranged string of events).

In the narrative presented by the first instance of court, the gap is handled very differently compared with the story of the indictment. Instead of concealing the hole, the hole is openly discussed at various stages of the court's presentation of the case. For example, the court clearly states that it is unclear whether there were "one or several perpetrators" present at the scene of the crime, adding that the findings at the crime-scene "are much too uncertain to claim with any reasonable degree of certainty that any of the three defendants can be tied to the execution of the murders."¹² In other words, the court is here quite outspoken about the fact that what happened on the night of the murders is largely unknown, focusing instead on establishing a motive for each of the defendants and on proving that planning had occurred, and that Lars had instructed Per and Veronica in how to use a firearm. This way of handling the gap is in line with the ethos-oriented nature of this narrative in the sense that the court-as-narrator is honest about what it does not know. The problem with this narrative is that the hole weakens the plausibility and overall soundness of the story. It does so not only because it is possible that there was more than one plan to kill the same people, but also because it is possible that one or more of the defendants were unaware that any serious attempt on the life of Per's parents was being suggested. The court, in its narrative, is trying to overcome this problem by focusing on establishing a clear motive for all of the defendants.

Turning now to our third narrative, formulated in the judgment issued by the court of appeal. We can observe here a third strategy with respect to how the gap in the story is dealt with. The connection between the planning and the carrying out of the murders is presented in a similar way compared to the narrative in the court of first instance, but with a significant addition. After having established Per's acquisition of the firearms, the court-as-narrator tells us that "after deliberation, Per left the completion [of the plan] to others."¹³ This is an attempt to *fill in* the hole in the story in the sense that the missing link between the planning and execution of the murders is partially brought forward:

¹² TNESS-2001-51. The reason why the court only mentions three of the defendants is that it concluded that Lars had an alibi for the night of the crime.

¹³ LE-2001-666.

Per has planned everything, with the help of his wife and the other defendants, and then left it to others to carry out the plan. Read in isolation, this addition makes the story more complete and would therefore seem to lessen the gap that troubled the other narratives. But on closer look, the opposite is true: the addition creates far more problems for the story than it solves.

First, it should be noted that the whole operation is illegitimate. The gap belongs to the narrative's story-level, and one cannot fill in such a gap through plot-construction alone. Any attempt to fill in such a gap must involve introducing new elements at the level of the story, which requires the introduction of new evidence or source material. However, this is not done in this case: the new plot element is introduced without any new information to support it. To my mind, this strategy is fatal to the plausibility of the entire narrative. By attempting to bridge the two separate parts of the story, and thus partly getting rid of the hole, several *other* holes immediately open up: Who were these other people? What did they receive as compensation? Why has there been no mention of such a compensation in the rest of the story? What could be the reason why no evidence for such a compensation has been discovered? How did Per come into contact with these people? How did they arrive at the scene of the crime? And if Per did indeed leave the killings to others, who were presumably professionals, why did he and his wife stay at the farm's main building on the night of the killings instead of securing an alibi for themselves by going away? In fact, they left early the next day before the bodies were discovered.

Instead of filling in the hole, the addition to the plot made by the court of appeal has the effect of creating a plethora of new holes in the narrative. This illustrates a central characteristic of stories in general: that they cannot simply be viewed as linear sequences but must be regarded as organic wholes, in the sense that each point in the story is not only connected to what comes immediately before it and after it but also to a host of other story-elements. A change made at one point in the narrative may therefore have unforeseen consequences for other parts of the narrative and may, as in this case, have a negative effect on the narrative's overall coherence. And when a factual narrative loses coherence, it also becomes less plausible. Plausibility is of course crucial to any instance of legal storytelling and of particular importance when the story is used by a court as a basis to convict people of murder. In Norway, as in many other legal jurisdictions, the standard of proof in criminal cases is that the guilt of the defendant must be established beyond reasonable doubt in cases of conviction. The standard of proof may be reformulated in terms of narrative plausibility. According to the Norwegian legal scholar Eivind Kolflaath, this can be done by stating that a conviction is admissible only when the court is unable to construct an evidence-based story to support an acquittal after having examined all the evidence in the case (2013, 156). I will leave the question open as to

whether this criterion has been met in the Orderud case, but would like to suggest that the possibility that it is *not* met increases when the story that serves as a basis for conviction is incoherent or implausible.

6. Conclusion

We have seen in this contribution that rhetoric is at work at all levels of legal storytelling, including the stories which are presented in judgements. In order to analyze the story's rhetoric, it is useful to pay attention to the particular rhetorical maneuvers that takes place both at the story-level and discourse-level of the narrative as well as that of the plot. The example of the Orderud case shows us that establishing *the beginning* is a crucial part of plot-construction, not least because the beginning tends to set the tone and establish the theme of the entire narrative. The example also shows that different possibilities exist with respect to handling problems at the narrative's story-level through plot construction, while at the same time pointing towards an important *restriction* on plot-construction in factual narratives: One cannot, in the effort to construct as plausible a plot as possible, introduce elements to the plot that are without basis on the narrative's story-level. Any introduction of new narrative elements at a factual narrative's story level requires the support of new evidence or source material. The narrative in the legally binding judgment in the Orderud case illustrates the kinds of problems that can result from the violation of this restriction. The fact that this judgment is still actively contested, almost twenty years after it was issued, suggests that problems in narrative construction may point to serious flaws in the evidentiary foundation of the case.

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