

Rättstillämpningens tystnad

En rättsvetenskaplig narratologisk studie om
argumentation och rättsliga uttryck inom
civilprocessen



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av

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Abstract

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The thesis aims to develop methodological concepts that contribute to the understanding of, and critique of, legal argumentation in court proceedings. The concepts take their onset in narratological terminology and in a thorough discussion concerning the ontological and epistemological grounds for legal application.

It is argued that there are unexplored aspects of law left to be examined particularly if law is seen as something that *becomes* rather than something that *is*, in other words, if legal *expressions* are studied rather than legal *representations*. In a shift from law within a *discourse of representation* to a *discourse of expression* the concept of *legal application* would be replaced by the concept of *legal narratives*.

The most important methodological concepts that are developed in the thesis are *legal enthymemes*, *overdetermined subjects* and *narrative dissonance*. These concepts are used to show how legal argumentation is constructed based on implicit premises (legal enthymemes), how legal argumentation faces challenges in handling different subject positions of the parties and the court (overdetermined subjects), and how differences in narrative approaches creates difficulties in relation to the principles behind the adversarial process (narrative dissonance).

On a more general level the thesis deals with issues regarding legal philosophy and civil procedural law. The methodological approach can be situated within the field of law and literature, more specifically, law and narrative.

Keywords: Narratology, methodology, legal application, subsumption, legal facts, discourse of representation, discourse of expression, flat ontology, legal enthymemes, overdetermined subjects, narrative dissonance.

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