

# Enthymising<sup>†</sup>

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**Abstract**— This article offers, through a reading of James Fredal’s new study, *The Enthymeme*, an argument for the value of the history of rhetoric to theories of legal reasoning. The argument is inspired by Fredal’s call, in his ingenious reading of the practice of Ancient Greek oratory, for a shift in thinking of the enthymeme as a logical form, and an inadequate or imperfect one (when compared to the logical forms of dialectic), towards a way of thinking that emphasises enthymising as an activity, and specifically a relational and interactive activity of making narrative. At the heart of legal reasoning, on this view, is narrativity, which has two related elements: (i) the arts of storytelling and (ii) the arts of storyworld construction, or actively and creatively experiencing the told. What makes a narrative difference—for instance, various kinds of enthymising, or bringing to mind of narrative details—also makes a normative one. Enthymising, understood in this way, thus offers a way of understanding legal reasoning as a rhetorical art of making narratives that is deeply emotional, embodied and sensory. This art illuminates not only the making of arguments by advocates in particular cases, but also the making of law by judges and others over time.

**Keywords:** rhetoric, enthymeme, narrative, emotion, audience, oratory, legal reasoning

## 1. Introduction

The history of rhetoric matters critically to theorising legal reasoning. This has been known for some time, even if it is still neglected by mainstream theories of legal reasoning. But a recent crop of brilliant books has made the case even stronger than it had been before: for example, Benedict Robinson has shown how the history of rhetoric illuminates early modern and enlightenment theories of emotion and the mind, allowing us to re-read Enlightenment and other philosophies of the mind as deeply informed by the rhetorical tradition;<sup>1</sup> Rita Copeland has disclosed, again by relating emotion and rhetoric, how the individual legacies of

<sup>†</sup> A review of James Fredal, *The Enthymeme: Syllogism, Reasoning, and Narrative in Ancient Greek Rhetoric* (Pennsylvania State University Press 2020) (TE).

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<sup>1</sup> Benedict Robinson, *Passion’s Fictions from Shakespeare to Richardson: Literature and the Sciences of Soul and Mind* (OUP 2021).

Aristotle and Cicero informed medieval and early modern argumentative practices;<sup>2</sup> and Julie Stone Peters has explored one of the canons of rhetoric, delivery, revealing how crucial it is to the making and experience of law.<sup>3</sup> If we look a little further back, we will recall the work of Mary Carruthers on the arts of memory—another canon of rhetoric of vital importance to understanding legal reasoning—and the work of many others, such as Kathy Eden, who have shown how both law and literature have drawn on, and transformed in their own ways, forms that were originally crafted at the coalface of rhetorical practice.<sup>4</sup>

To that list, we now ought to add James Fredal's *The Enthymeme*. As with the books mentioned above, though also in his own distinctive way, Fredal shows how rhetoric weaves together so many of the elements that are vital to, and yet are neglected in theorising, legal reasoning (though also reasoning in other practical contexts, such as political deliberation or medical diagnosis): emotion, imagination, the body and its senses, the dynamics of communication between speaker and listener(s), and the devices of both linguistic expression and narrative. Indeed, for Fredal, reasoning in practical contexts is immersed in the senses; it relies on, and is enriched by, complex layers of embodied and affective experience, rooted in social practices and imaginaries (especially archetypal characters and moralising plot structures), while also creatively reworking them on particular occasions for particular ends.

Especially crucial to Fredal's account is the complex and dynamic relationship between two aspects of the reasoning process: first, storytelling—the weaving together of otherwise disparate facts that prompt and invite the construction of stories in the audience (an art often exercised in an adversarial context, in which one is trying to show the superiority of one's narrative over another); and second, precisely that process of storyworld construction by an audience from elements of storytelling (such as the action of characters, or the structure of a plot). Part of the point here is that no narrative, as told, is complete: all acts of telling rely on being made into a narrative capable of being experienced by audiences (or readers). In fact, the power of narratives resides in many respects in this necessity of storyworld construction, of every act of storytelling being underspecified and needing to be completed and made into a narrative by those who hear or read it—a process that draws on an audience's reservoir of embodied, affective and cultural knowledge, but also one that makes it seem to them almost as if they were the authors of it. It is a process that, if practised with great artistry by the

<sup>2</sup> Rita Copeland, *Emotion and the History of Rhetoric in the Middle Ages* (OUP 2021). For an account of how Robinson's and Copeland's histories of rhetoric might be of theoretical importance, especially to understanding the role and value of emotion in reasoning and judging, see Maksymilian Del Mar, 'The Confluence of Rhetoric and Emotion: How the History of Rhetoric Illuminates the Theoretical Importance of Emotion' [2022] *Law & Literature* 1.

<sup>3</sup> Julie Stone Peters, *Law as Performance: Theatricality, Spectatorship, and the Making of Law in Ancient, Medieval, and Early Modern Europe* (OUP 2022).

<sup>4</sup> Mary Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture* (CUP 2008); Mary Carruthers, *The Craft of Thought: Meditation, Rhetoric, and the Making of Images 400–1200* (CUP 1998); Kathy Eden, *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton UP 1986); Kathy Eden, *Rhetorical Renaissance: The Mistress Art and Her Masterworks* (Chicago UP 2022).

speaker or writer, will make the audience feel as if they were present at the events being told. It will make the audience experience something made as if it were something real, something which is but a mere possibility as if it were an inescapable necessity, and therefore as something authoritative. The rhetorical arts of narrative, we might say, make the normative possible. They go to the heart of the experience of reality, authority and normativity, and thus also to the heart of law.

In some ways, this is a process that is very familiar to lawyers and legal theorists, and Fredal's approach to Ancient Greek rhetoric is in fact inspired by the developments in law and literature scholarship over the last few decades. Fredal's inspirations here include Bennett and Feldman's *Reconstructing Reality in the Courtroom*, Cover's 'Nomos and Narrative', White's *Heracles' Bow* and, more recently, DeSanctis's 'Narrative Reasoning and Analogy'.<sup>5</sup> From the perspective of law and literature scholarship, this is a patchy and of course highly selective list, but Fredal is not writing a law and literature book. He is drawing on the insights of this body of scholarship to show that, when read via the insights of storytelling in adversarial contexts, Ancient Greek rhetoric, and especially the old chestnut of the enthymeme, can be understood in radically different ways than it hitherto has been. But although Fredal may not have intended to contribute to the theory of legal reasoning, his reading of Ancient Greek rhetoric is of vital importance to it. Fredal found the encounter with law and literature scholarship productive for his reading of the Ancient Greek enthymeme; my reading of his work here suggests that theorists of legal reasoning will find his account of the enthymeme highly generative and important for understanding not just the practice of argument by advocates in particular trials, but also for the very making of law over time.

## 2. *The Enthymeme: The Truncated Syllogism and its Discontents*

To see why Fredal's approach to Ancient Greek rhetoric is so important, we need to trace his radical rewriting of the history of the enthymeme. Here, Fredal's book itself employs an interesting, highly rhetorical and dramatic structure: he begins, in the first part and also in the first two chapters, with the traditional, well-established and widely accepted account of the enthymeme as a truncated syllogism (what he calls Enthymeme 3.0); he then tracks back in time (in part two, ie chapters 3 and 4) to recover a slightly more hidden, but still misleading, account of the enthymeme as it appears in the works of Aristotle, especially Aristotle's *Rhetoric*, which is a kind of reasoning from topics, and one that retains some links to the narrative arts (this is Enthymeme 2.0); and finally, in parts three and four (chapters 5–9), he offers a reconstruction, in theory and practice (via a close reading of excerpts of the 10 Attic orators, a series of speeches and the logographer Lysias's

<sup>5</sup> Lance Bennett and Martha Feldman, *Reconstructing Reality in the Courtroom* (Quid Pro Quo 1981); Robert Cover, 'Nomos and Narrative' (1983) 91 Harv L Rev 4; James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (University of Wisconsin Press 1985); Christy DeSanctis, 'Narrative Reasoning and Analogy' (2012) 9 Legal Communication and Rhetoric 149.

*On the Death of Eratosthenes*), of Enthymeme 1.0, which is less a form (less a truncated syllogism) than a practice, a verb, to enthymise, which is precisely an art of bringing to mind (of making present in the minds of an audience) and specifically of crafting narratives that invite the audience to construct and experience a particular storyworld (and, importantly, one that will win the case, ie that will result in the audience experiencing a certain normative conclusion as at least more plausible than that of the opponent's proposed conclusion).

The experience of reading Fredal's book is itself quite dramatic: it is like moving through a series of stages, each curtain being pulled back to reveal an even more inviting stage, until one finally reaches the most treasured stage of all, ie one in which one witnesses the practice of narrative enthymising. For Fredal, it is this activity of narrative enthymising that lies at the heart of Ancient Greek rhetoric, and it is this activity that has been obscured over time, first by Aristotle, who tended to approach rhetoric as if it was but a colony of dialectic, and then by those who built on Aristotle (in selective ways) to cement an understanding of the enthymeme as a truncated syllogism. The historical reconstruction here is like a fast-paced thriller (at least if you are addicted, as I am, to reading the history of rhetoric): from an anaemic theoretical picture that sees reasoning as but the manipulation, via an inadequate logic, of relations between linguistically stated propositions, through a re-reading of Aristotle (relating his *Rhetoric* more to his *Poetics*), all the way towards a rich, complex account of the relation between storytelling and storyworld construction—a non-propositional, synaesthetic, affective, embodied, deeply social account of reasoning.

To begin, then, backwards: Enthymeme 3.0 is a form—an ideal form, except that it is imperfect when compared to the full syllogism. Articulated in full, it is

a sort of syllogism based on signs or probabilities that is persuasive because it includes a premise that is shared by the rhetor and audience such that it need not be stated by the speaker but is supplied by the audience.<sup>6</sup>

It is, once again, a poor cousin of dialectic, and its proud, full syllogism; it smacks of inadequate and warped logic, and thus also serves to entrench philosophy's self-interested demonising of rhetoric as an underhanded, dangerous and ultimately incompetent practice of forceful persuasion. It is also entirely a-contextual—a form that can be parachuted in to represent any argument anywhere—and that has no real connection to the agonistic practice of Ancient Greek rhetoric. Fredal carefully traces how this 'truncated syllogism' was read into Aristotle's work, and then how it ossified over time (and this despite warnings from philologists that the ancient texts were being misread).

Why was it that 3.0 was and remains so attractive? For one, it is easy to teach: it offers a neat, identifiable form, which fits into the logical curriculum, dominated as that is by premise–conclusion (PC) sequences. One can offer students an easy example: Socrates is human; Socrates is mortal—the missing premise here is that

<sup>6</sup> TE 25.

all humans are mortal, which everyone knows so it need not be spelt out, also (allegedly) making the whole argument more persuasive. It also implies a very appealing—to philosophers—account of rhetoric: as above, as something trading in popular opinions, taking shortcuts and hiding its own problematic foundations. It does have some—albeit weak—connection to Aristotle’s works, though not his *Rhetoric* but his *Prior Analytics*. As Fredal says, however, not mincing his words:

almost everything about this view of the enthymeme is wrong. It is not faithful to Aristotle, it is not accurate as an analytical tool, and it is not useful as a productive technique. Least of all does it reflect how ancient orators argued.<sup>7</sup>

When examined more closely, 3.0 really does beggar belief: for a start, we know (from contemporary research in psychology) that audiences do not process syllogisms very well,<sup>8</sup> so the idea of it being part of the process for audiences to receive an argument by supplying missing premises simply contradicts the many studies on how bad people are in conforming to the strictures of syllogistic reasoning. Secondly, it is not clear why an audience supplying a premise would make the argument more persuasive: if you say to me ‘Socrates is mortal because Socrates is a man’, why does my thinking to myself (as 3.0 insists we do) ‘And all men are mortal’ make your argument more persuasive to me? Is it not, in fact, tiresome to do this as a listener—and is it not the case that we would do it precisely when we are not persuaded by the speaker, ie tracking back from what the speaker is saying to identify premises we may think are of doubtful stature? It seems like 3.0 is self-sabotaging: it is not so much an account of the processing of a persuasive argument as a kind of dialectician’s diagnosis of what listeners do when they have doubts about a speaker’s persuasiveness.

The a-contextualism of this approach is also problematic: it ignores entirely the situations in which arguments are spoken and heard—it prioritises the logical form of argument over its messy, rough, agonistic and situational reality. As such, it ignores, for example,

how context shapes the meaning and force of utterances ... through various emotional or attitudinal registers; through manipulation of form and convention; through varying degrees of reliability, sincerity, irony, sarcasm, humour, diffidence, understatement, or exaggeration; and through framing devices, tropes, and other markers of style, tone, or mood.<sup>9</sup>

In a way, this is part of its attraction: it offers a kind of shortcut to modelling argumentation and reasoning, enabling a way of avoiding careful, contextual readings of the communicative situations in which arguments are made and received. 3.0 is a kind of dead letter: at its best, it offers a formal illustration of a possible way to formulate an argument, but, as Fredal says, this model ‘cannot describe a

<sup>7</sup> TE 29.

<sup>8</sup> See TE 47–8.

<sup>9</sup> TE 53.

rhetorical argument because it is not a piece of argument but the hypothetical illustration of a logical model'.<sup>10</sup> 3.0 is a logician's fantasy, and one that replaces and removes from view the practice of rhetoric.

Interestingly, Fredal is not, however, entirely dismissive of attempts to build on Enthymeme 3.0. He cites two examples of contemporary accounts of the enthymeme, both of which he takes to reveal something interesting (if also a bit too general) about enthymising. The first comes from Lloyd Bitzer,<sup>11</sup> and is a kind of interactionist enthymeme (3.1); the second is from Roland Barthes,<sup>12</sup> and is a kind of ideological enthymeme (3.2). Both, in different ways, turn the enthymeme into a modern, if not postmodern, form of argument. They are far removed from the practice of Ancient Greek oratory, but that does not render them unilluminating.

Bitzer's view of the enthymeme is to treat it as a deeply social, interactional phenomenon, where the argument takes its meaning and persuasiveness from the listener's reception. Anticipating implied reader and reader response theories (Bitzer's article is from 1959), Bitzer moves the enthymeme away from the intentions of the orator towards the active work of meaning-giving by the receiver. As Fredal says, although this really has little connection to the theory and practice of Ancient Greek rhetoric, including Aristotle, it does—and did—offer a 'clue toward a better understanding of the interactive basis of rhetorical reasoning'.<sup>13</sup> Bitzer recognised 'social interaction as a necessary analytical feature of all rhetoric and interpretation',<sup>14</sup> and this is an important corrective to views of rhetoric as but the mere imposition of a speaker's intentions on the listener's mind. However, as Fredal notes, this account of audience participation and the interactivity of rhetoric is not confined to the enthymeme: it characterises all aspects of rhetorical argument.

A similar problem affects Barthes's take: for Barthes, enthymemes rely on 'ideological knowledge that is taken for granted and remains unspoken'<sup>15</sup> (that missing premise again). In suppressing the ideological knowledge that is relied on, this form of argument is a tool of 'naturalised, cultural self-reification', prompting 'the reader to act upon and so reproduce traditional "truths" that she already "knows"'.<sup>16</sup> The enthymeme becomes, in other words, the carrier of false consciousness, and thus (in the context of when Barthes is writing) the engine or driver of bourgeois ideology. This is important and revealing, and serves as a vital reminder of the broader political context of all argumentation—including its embeddedness in political imaginaries and their class-based power relations—but this is also an insight that is relevant to all discourse and communication: it does not sufficiently identify what is specific about enthymemes or enthymising.

<sup>10</sup> *TE* 55.

<sup>11</sup> Lloyd Bitzer, 'Aristotle's Enthymeme Revisited' (1959) 45 *Quarterly Journal of Speech* 399.

<sup>12</sup> Roland Barthes, *S/Z* (Richard Miller tr, Blackwell 2002).

<sup>13</sup> *TE* 39.

<sup>14</sup> *TE* 39.

<sup>15</sup> *TE* 40.

<sup>16</sup> *TE* 42.

Enthymeme 2.0—the Aristotelian model—fares better than 3.0. Given Aristotle's authority, it of course matters what one takes Aristotle to have meant by the enthymeme. The first and most important point here is that there is really no strong evidence, anywhere in Aristotle's work, and least of all in *Rhetoric*, that by enthymeme Aristotle meant 'truncated syllogism'. To see this, one has to proceed slowly and unspool the meaning of 'sullogismos' and 'enthymema' in Aristotle's works. The former is 'an argument in which, certain things being supposed, something different from the supposition results of necessity through them'.<sup>17</sup> Different instances of sullogismos could appear in different contexts: thus, in the dialectical contest, which was a favourite pastime of sophists and was later (said to be) refined by philosophers as a tool of inquiry, a questioner asks a respondent a series of questions, which results either in the respondent contradicting the original posited proposition or in the questioning failing to result in self-contradiction.<sup>18</sup> In that context, the starting point of the dialogue involves departing from a premise which the audience would accept and then exploring what follows from it: in that sense, it is a kind of movement from something accepted or known to something else yet unknown or yet to be accepted (precisely a sullogismos—a kind of moving, by argument, from one position to another).

The rhetorical context is different: it involves

two or more people arguing in response to current affairs before a mass audience by giving speeches that the audience will vote in favour of one and against the others, such as occurs in legal cases, assemblies, and other occasional game and ceremonial contests.<sup>19</sup>

There is a difference in context, then, between dialectic and rhetoric: the former is a kind of thought experiment, or game, designed to generate insights about a certain subject by 'predicating something of it (a definition and properties)', while the latter is, as Fredal characterises it, a contest of narration, with one story emerging as (experienced by the audience as) more plausible than another. In this context—the rhetorical context—the Aristotelian *rhetorikos sullogismos* is a kind of tool—it is less an abstract kind of syllogism than it is a particular means of inviting an audience to move from one (known, accepted) place to another (unknown, not yet accepted) place, in the context of an adversarial contest of narratives. Rather than the form of an argument, it is better conceived of as a particular kind of joining or weaving together of particulars—a process of finding

<sup>17</sup> TE 61.

<sup>18</sup> On dialectical reasoning as dialogical, and really a kind of a pedagogical game, see Caterina Dutilh-Novaes, *The Dialogical Roots of Deduction: Historical, Cognitive, and Philosophical Perspectives on Reasoning* (CUP 2020). It should be emphasised that none of this emphasis on the history of rhetoric need involve the neglect of the history of dialectic, but it might involve reversing or at least equalising the traditional hierarchy of dialectic as superior and rhetoric as inferior. For other attempts to place the history of logic within, and as growing out of, practices of storytelling and story-based rhetorical contests, see Apostolos Doxiadis, 'Narrative, Rhetoric, and the Origins of Logic' (2010) 2 *Storyworlds* 79; Markus Asper, 'Law and Logic: Towards an Archaeology of Greek Abstract Reason' (2004) 26 *Annali Istituto Orientale di Napoli* 73.

<sup>19</sup> TE 62.

and arranging ‘statements so that they lead the group through a series of inferences to a new understanding’.<sup>20</sup>

Properly understood, then, the Aristotelian enthymeme has narrative roots: it refers to the practice of storytelling—precisely finding and arranging, synthesising, particulars into a series—‘for the purpose of explaining an event, generating knowledge, and enabling comprehension and judgement’.<sup>21</sup> Again, the enthymeme, as a rhetorical syllogism, is, in Aristotle, more a practice—an art—of weaving facts together into a whole (a temporal series) so as to invite audiences into a process of storyworld construction, and thus moving (as for all syllogisms) from one place to another. Dialectical syllogisms are also a kind of movement—but in the form of a dialogical game, with or without an audience (the audience is less important, whereas it is crucial in the rhetorical context), via a process of question-and-answer. The rhetorical syllogism is also a movement, but through other means: not question-and-answer, but instead storytelling and storyworld construction. If one accepts this account, then reference to the form of the syllogism becomes a distraction from the more active and dynamic account of argumentation—again, as a movement—and thus better thought of as a communicative and interactive activity of inference suggesting and inference making.

In fact, approached this way, much of Aristotle’s treatment of the topics can be re-read as techniques of movement, and especially narrative movement: reasoning from the topic of opposites, for example, when we ‘See if the opposite [result or behaviour] is true of the opposite [action or trait]’, becomes a way of inviting the audience to see or feel a scene or episode in a particular way, and thereby make inferences as to character and its moral implications.<sup>22</sup> This re-reading of Aristotle is important, because it offers a rich reservoir of ‘narrative reasoning’: all the many Aristotelian topics become storytelling techniques for inviting audiences to affectively imagine something (making present something absent, such as a scene, episode or action alleged to have happened in the past), and as a result end up in a different place from where they began (for instance, now thinking the defendant guilty). Significantly, this is no mere mechanical manipulation of propositions articulated in language; rather, reasoning from the topics, understood through a narrative lens, involves a multimodal and synaesthetic process, involving a deeply sensory, embodied, affective mode of inference making (or knowing).

Aristotle, on this view, especially as he appears in *Topics*, *Rhetoric*, *Poetics* and, I would suggest, also *Anima* (with its account of imagination in action, of making and relying on appearances while moving, which, importantly, we share with animals), provides us with the basis of an account of (legal) reasoning as narrative reasoning, an active, necessarily embodied and affective process of moving in different ways from one place to another—think here of parables and metaphors as distinct kinds of argumentative movement: parables involving a throwing into the

<sup>20</sup> *TE* 64.

<sup>21</sup> *TE* 64.

<sup>22</sup> See *TE* 76.

air and then falling to appear side-by-side with something else, and metaphors involving transferring something from one domain to another.

As much as this may better capture Aristotle's understanding of the enthymeme—and syllogistic as well as reasoning activity in general—it is also clear, says Fredal, that Aristotle was simply less interested in really engaging with the details of the practice of Ancient Greek oratory. It is striking that Aristotle does not mention any of the 10 Attic orators in *Rhetoric*. He does not quote from actual deliberative or forensic speeches delivered in Athenian courtrooms or public fora, let alone study them as a whole. Instead, his sources are sayings, as part of anecdotes—for instance, military stratagems attributed to Iphicrates, an Athenian general. But to study notable sayings, or excerpts from epic and tragic poetry, Socratic dialogues and epideictic speeches,<sup>23</sup> is not to study forensic or deliberative speeches. Aristotle, it seems, was simply not interested in analysing 'full speeches in the context of a legal case or political issue'.<sup>24</sup> Perhaps the necessary sources were not available to him, or perhaps he did not think them as helpful pedagogically as the examples he did use. Whatever the reason, he was more interested in short, clear statements and the relations between them, rather than the messy, long practice of real-life oratory. As a result, he encouraged a certain kind of reading of his work, especially *Rhetoric*, which brought it into the shadow of dialectic, itself understood, increasingly, as the domain of logical forms, and of a rather mechanical, disembodied process of analysing relations between linguistically formulated propositions.

### 3. *Enthymising: Rhetorical Narrative-Making*

The starting point, then, for recovering Enthymeme 1.0, or the activity of enthymising, is to begin with and focus on what Aristotle neglected: the speeches themselves, and thus the rough and tumble practice of Ancient Greek oratory. This also requires keeping in mind the broader cultural context of these contests, and thus the culture that produced it, that is, as Fredal puts it beautifully and succinctly, the 'agonistic, patriarchal, slaveholding, shame-based, performance and gift culture'<sup>25</sup> of the Ancient Greek world. To be properly understood, now as then, reasoning needs to be situated historically—culturally, politically—and treated situationally, as an art of communicating with particular audiences at particular times, and in the context of particular disputes, where there is a contest between two rival accounts of some episode, action or event, and where the character of persons is very much the object of judgment by the audience.

Fredal's investigation of enthymising—and recovery of 1.0—does this situating and contextualising in a series of steps: in chapter 5, he examines the usage of the verb *enthumeisthai* in speeches, so as to get a better handle on the activity of enthymising, going on to examine examples of enthymising in three speeches

<sup>23</sup> See *TE* 83.

<sup>24</sup> *TE* 83.

<sup>25</sup> *TE* 28.

(in chapter 6) and drawing on narrative theory to see how these examples can enrich our understanding of enthymising as a narrative art (in chapter 7). Having done that, Fredal focuses in chapters 8 and 9 on one particular logographer—the speech-writer Lysias—and one particular speech of his, Lysias 1, to give us an even more detailed and contextual reading of the practice of enthymising. The details of his readings cannot, of course, be reproduced here—but it is important to dwell on them, even in outline, so as to show why these readings are so important for theorising legal reasoning.

It is instructive and important that Fredal focuses, initially, on instances of the use of the verb *enthumeisthai* rather than the noun *enthumema*. As he says, to do this is to remind ourselves that ‘enthymising is something that speakers and audiences do—it is performed and experienced—more than it is a linguistic or logical structure on the page or in the mind’.<sup>26</sup> It reminds us, equally, that ‘oratory is not theory, logic, or even merely an argument but is primarily narrative contest’.<sup>27</sup> We can grope our way to this understanding of enthymising as a narrative activity if we begin to see that the uses of the verb to enthymise in forensic and deliberative speeches invite audiences, in different ways, to keep something in mind, to notice it or consider it. Put another way, each of these invitations to keep in mind are designed—like narrative clues—to contribute to the construction of a particular storyworld by the audience. The particular ways in which this verb functions, and thus how it invites audience to consider or notice something, is not reducible to propositional belief, but instead involves a whole variety of possible mental processes and experiences: ‘It can indicate a perception (notice, take note of), an emotion (be concerned, be hurt or angry at, or be worried about), or a more effusive and indefinite cognitive response (ponder)’.<sup>28</sup> Put perhaps at its most general, to enthymise, as usages of the verb in speeches reveal, is to bring something to ‘the foreground of consciousness’:<sup>29</sup> to bring attention to a detail, which resonates in a broader narrative frame (in the particular narrative contest in question). Each such detail or clue that is enthymised makes a narrative difference and, therefore, also a normative one. Once again, narrativity is the key to normativity.

Fredal’s examples of the uses of the verb to enthymise are many, and he structures them into an extraordinarily rich taxonomy of 24 representative cases, involving an appeal to ‘four sets of variables: A) mood (indicative/imperative); B) mediacy (immediate, mediate); C) stance (supportive, contradictory), and D) novelty (mnemonic, didactic, heuristic)’.<sup>30</sup> Speakers may describe themselves as having enthymised or failed to enthymise something—that they themselves thought, considered or noticed, or failed to think, consider etc—with this having narratological, and thus also normative, relevance; for example, ‘I had no suspicions and thought no more of it [*enthumoumenos*], but gladly went to bed, since I

<sup>26</sup> TE 89.

<sup>27</sup> TE 89.

<sup>28</sup> TE 89.

<sup>29</sup> TE 89.

<sup>30</sup> TE 91.

had just returned from the country' (Lysias 1)<sup>31</sup> paints a particular picture of the speaker's character, which resonates in particular ways in the speech's narrative frame. Enthymising can also be imperative, as when the speaker invites the audience to think of something: for example, in Isaeus, the speaker says

You must consider [*enthumeisthai*] these facts, gentlemen, and remember that I am the deceased's nephew, but she is only his cousin; that she is asking to possess two estates, but I claim only this one into which I was taken by adoption.<sup>32</sup>

Notice—enthymise!—that the consequence of an invitation to bear in mind need not be about the making of an inference, or the entertaining of a belief, in the audience: it may be made in order to evoke a certain emotion in the audience, or an image or attitude—these are also vital ingredients of narrative making and thus also of normativity-generating mental processes.

Enthymising can be either immediate or mediate, and it is the mediate uses that are especially effective. These involve the speaker describing a thought or telling 'listeners to think about something so that they will also enthymise something else, creating or breaking a link between the thing asserted by the speaker and "something else" understood or felt by the listener'.<sup>33</sup> This is clearly a more advanced skill of the art of enthymising or narrative making: the speaker presents a fact and invites the audience to make a connection, which may be 'deductive, inductive, abductive, analogical or paradigmatic, semiotic or indexical, imagistic or metaphoric, emotional ... experiential, or even physiological',<sup>34</sup> such that the second fact being enthymised 'now takes on a second valence of meaning and effect given to it by the first'.<sup>35</sup> Interestingly, here, Fredal suggests that mediate (indirect) enthymising in this way

bears a resemblance to the *anagnorisis* of Aristotelian poetics, introducing a more-or-less rapid change from ignorance to knowledge as the audience gains awareness or recognition of (what appears to be) the true significance or meaning of a fact and thus of the episode, the characters, and the plot connected to it.<sup>36</sup>

This experience has important repercussions for how the audience—a jury or judge—experiences their role: on the back of such a movement, shift or change, they may well see themselves in the role of making the next step in the culmination of the storyworld, namely either finding the defendant guilty or not. The more indirect, and more surprising, the shift—the colouring of earlier facts by later ones, or of any kind of linking made by the audience—the more likely is it that the audience will own it and see it as part of their own narrative agency, which they must now fulfil in reaching a certain decision. Mediate enthymising can take many forms, including connecting

<sup>31</sup> TE 92.

<sup>32</sup> TE 93.

<sup>33</sup> TE 95.

<sup>34</sup> TE 96.

<sup>35</sup> TE 95.

<sup>36</sup> TE 96.

a scene to an act; an act to an actor; an actor to a motive; a deposition, witness testimony, or will to an event and a character; a story to an emotional response or moral judgement—and all of these to a verdict.<sup>37</sup>

Such mediate enthymising, then,

performs multiple tasks at once: a stated fact can establish a motive and clarify the plot as it blackens the character of an opponent, arouses the suspicion of the audience, and assimilates the speaker to the protagonist of a familiar cultural take or myth. The goal is not simply drawing conclusions from premises but building a familiar, coherent, and believable story and setting it within a normative world, or *nomos*. Enthymising is the “linking unit”, the building block that binds narrative elements into a story and connects that story to a situation, to a *nomos*, and to the listeners’ sense of injustice and harm.<sup>38</sup>

Narrativity and normativity are intertwined here and fused by the dynamic process of facts being told by speakers and listeners linking them together in building storyworlds, at the same time experiencing emotions and making judgments (for which, in addition, they come to feel personally invested in and responsible for). This is a deeply self-involving experience: one in which the audience is a narrative agent, almost taking on or identifying with the role of the narrator.

In addition to the indicative, imperative and immediate/mediate kinds of enthymising, there are also supportive and contradictory, as well as mnemonic, didactic and heuristic, ones. The contradictory uses are important because they are also frequent in the agonistic context of Ancient Greek rhetoric: they are designed to invite the audience to experience the opposing narrative as inconsistent and implausible. Heuristic enthymising, in turn, refers to the art of introducing a fact early on, then restating it at a later moment, when it acquires a different significance and thus a new meaning. Thus, in the above example from Lysias 1,<sup>39</sup> where the speaker, in the voice of the accused, says ‘I had no suspicions and thought no more of it [*enthumoumenos*], but gladly went to bed, since I had just returned from the country’, this is a narrative detail which is planted early on but is returned to later, and put suddenly in a different light, contributing to an overall character portrait as well as an experience of a plot, ultimately aimed at exonerating him from the charge of murder (of someone who was so naive that they did not even realise their wife was having an affair, but thereafter, after this recognition of his naivety, was also someone who became a vigilant citizen, protecting and enforcing the city’s law against adultery). As Fredal notes, this is very powerful, with the newly enthymised fact feeling ‘like a new discovery, much as when a detective in a mystery explains the significance of a clue that had been seen but passed over’.<sup>40</sup>

<sup>37</sup> TE 99.

<sup>38</sup> TE 99–100.

<sup>39</sup> TE 92.

<sup>40</sup> TE 105. For more on the relations between detective stories and legal reasoning, see Simon Stern, ‘Detecting Doctrines: The Case Method and the Detective Story’ (2011) 23 *Yale JL & Human* 339.

One way of understanding these various uses is to see them, as Fredal does, as ways of marking and directing the audience's attention—a kind of art of dramatising the attentive practices of the audience. On this view, the different kinds of enthymising are like ornaments—embellishments, or what is also sometimes called the 'flowers of rhetoric'—but these are not extractable and superfluous decorations; instead, they are narrative weapons in the agonistic art of narrative contest. Certain facts are mentioned, with some made especially colourful so as to attract the audience's immediate attention, while others are but quietly sown, so that they may be returned to and coloured later, with special dramatic effect on the audience's attention. This seemingly 'mere decoration' is anything but mere: it only appears so when one does not take into account its function in the telling of a story and in the invitations to the audience to make, and experience, a particular storyworld and, ultimately, to complete a narrative and reach a normative conclusion. To reduce this narrative art to some kind of cold, lifeless distinction between literal and figurative dimensions of language is to misunderstand entirely what role embellishment and ornament play in rhetoric: as soon as one recognises rhetoric as part of the narrative arts, these devices come to life. They are not stand-alone moments of purple speech, which one can just pluck and admire in some a-contextual heaven: rather, they are vital elements of a plot, or, as Fredal characterises them, they are 'like crumbs on a path', prompting audiences to construct emotionally powerful stories and reach normative conclusions.

In chapters 6–9, Fredal shows how these various elements—these various modes of enthymising—come together in particular speeches. What is fascinating here is to follow Fredal's reading of the 'narrative's movement, its cadence, or *periodos*',<sup>41</sup> and thus the overall crafting of a temporally stretched-out experience for the audience. These readings show precisely why Aristotle's strategy of taking snippets of sayings could not assist him with understanding the art of the orators: this is a holistic art, involving the bringing together of different modes of enthymising, so as to create an overall effect. It is also only by analysing the whole that one sees how interactive and relational it is: this is no monological, self-sufficient, fully specified form which the audience experiences passively; rather, it is a dynamically interactive and relational art of making both narrativity and normativity together. It works only when both speaker and audience relate to each other, one inviting the other, and the other completing the work of the former. Fredal demonstrates this brilliantly in the inheritance dispute speech of Isaeus, as well as in the two speeches on one side of a case (involving a charge of impiety), Lysias 6 and Andocides 1.<sup>42</sup> In doing so, he also connects, especially in chapter 7, enthymising to contemporary developments in narrative theory on gaps in narratives and how readers fill them (as per Wolfgang Iser, Richard Gerrig

<sup>41</sup> *TE* 110.

<sup>42</sup> Thus, although Fredal focuses on a reading of a criminal case (the murder of Eratosthenes), he shows enthymising at work in non-criminal cases as well (eg inheritance disputes). The significance of Fredal's discussion of the technique of enthymising is by no means limited to any particular kind of case: it extends to any exercise of reasoning, arguing and judging. I thank an anonymous reviewer for raising this issue.

and David Herman), on the narrative devices of kernels and satellites (as per Seymour Chatman) and on the practice of disnarration (as per Gerald Prince). These are all helpful connections and drawing on them will help in any future applications of Fredal's account of enthymising to more recent legal practice.

But the pearl of readings amongst an embarrassment of brilliant ones is Fredal's reading, and then subsequent re-reading, of Lysias 1 (in chapters 8 and 9). This has to be read in its full glory, if only to experience the anagnorisis of first reading Lysias's speech as a straightforward (if, in retrospect, a little suspiciously too elegant) speech in defence of a murderer, only to be shown that the same speech can be read as a comic drama, a political parable or a pedagogical exercise. Fredal shows, in detail, how Lysias enthymises, in different ways, so as to invite the audience into the active construction of a storyworld and the exoneration of his client, simultaneously painting portraits of the character of both the defendant and the victim in ingenious ways. Of special significance is Fredal's account of the overall ring shape or chiasmic structure of Lysias's narrative, with a particular use of enthymising at its narrative crux, creating a powerful emotional experience of movement and perspective-switching—first painting a portrait of a naive, weak husband, only to turn this round and paint a picture of a vigilant citizen defending the laws of the city (which require him to murder, or which in fact almost themselves murder the victim).

Fredal's re-readings, in chapter 9, themselves make connections to bodies of practice that call out for further research: to the links between the history of argument (in the broadest sense) and the history of comedy, with the latter being a rich reservoir of techniques of plot making, especially plot reversals, and surprising, sudden shifts of perspective, which orators employed frequently (it is no wonder that Quintilian urged his students to study comedy); to the political history of narrative and its narrative forms, including parable and allegory, with seemingly politically irrelevant speeches serving as cloaked criticisms of tyranny (in the parabolic reading of Lysias 1, the victim, Eratosthenes, turns out to be one of the Thirty Tyrants, and his murder is a kind of justification of tyrannicide, as well as a plea to citizens to be vigilant and suspicious, rather than naïve and gullible); and to the vital importance of the history of pedagogy for a history of reasoning and argumentation, with this particular Lysias speech offering a virtuoso display performance of the power of enthymising, while also serving as the preparation for an exercise for students to write and deliver the opposing speech (this time prosecuting, rather than defending, the murderer). These re-readings by Fredal (who even offers a sketch of a possible opposing speech to Lysias 1) are truly brilliant, even if they draw on some previous scholarship. In offering them, Fredal gives us plenty of reason to take Lysias's *On the Death of Eratosthenes* as a key text—a canonical text—in the history and theory of legal reasoning, sitting proudly alongside Gorgias's *Encomium of Helen*. And this is all the more so because, as noted above, this text shows just how entangled the histories of argument, law, literature, politics and pedagogy really are.

#### 4. *Rhetorical Futures of Rhetoric Past*

Reading Fredal's book, and thus taking seriously the history of rhetoric, offers many possible exiting futures for theories of legal reasoning. I have been alluding to them as I have gone along, but it may be useful if, in this section, I reiterate some of those possibilities more explicitly.

The first possibility is the potential for a historical, but also theoretical, linking between the arts of democracy and the practice of legal reasoning (and argument more generally). The oratorical practice that Fredal uncovers is rooted in the practices of giving voice to persons appearing in courtrooms and other public fora—the art of logography, or speech writing, is precisely that art. It is an art of representation in many senses of that word: of re-presenting past events into the present minds of the audience, as well as an art of representing voices that might otherwise not be heard. If we reach further back—and it would be interesting to attempt to do so, to trace back, for instance, a potential Enthymeme 0.0 in popular practices like the mimes and earlier sophistic practices, including the art of improbable defence (and the related form of the paradoxical encomium), which Fredal does mention briefly—then we might dig up an even more intimate relation between the practices of reasoning and the arts of democracy. This is crucial, because so much of the theory and history of legal reasoning is done as if legal reasoning was but the exclusive purview of aristocratic elites. Beginning with the aristocrat Plato, rather than the often-slave-originating, travelling and initially poor sophist pedagogues (no wonder they had to charge for the services, which the rich Plato scoffed at), theories of legal reasoning tend to privilege what are seen to be the technical arts of those who are trained in the artificial reason of the law, which is then put to use in the service of power (the few oppressing the many). That there is an institutional pedagogy of legal reasoning, and that it was open often only to the elites, is of course true, and remains important to understand. However, it can be argued that the beginnings of many of the forms and techniques that found their way into elite practices lie not with the elites, but rather in what James C Scott identified as the arts of resistance:<sup>43</sup> of slaves and other marginalised persons, perhaps sometimes in collaboration with their advocates (such as the logographers), finding ingenious and resourceful ways to fight back and to appeal successfully to the powers that be. The fables of the slave Aesop are one such example,<sup>44</sup> but there are others: for instance, the practices of comedy and comic argument. This is a history that remains to be told, but what an exciting history it would be: a cultural, political, aesthetic bottom-up history of legal reasoning, and one that would be exciting not only historically, but theoretically too. The political history of legal reasoning is not only a history of domination and oppression; it is also a history of resistance and defiance.

<sup>43</sup> James C Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (Yale UP 1990).

<sup>44</sup> See Annabel Patterson, *Fables of Power: Aesopian Writing and Political History* (Duke UP 1991).

A second possibility relates to Fredal's broad understanding of reasoning or argument as movement—of moving from one place to another.<sup>45</sup> This art of movement is deeply social and interactive, and it is also multi-modal and synaesthetic. It offers a way of bringing together legal, literary, rhetorical and cognitive histories (where 'cognitive' is understood broadly to include embodied, affective and kinesic processes). What this approach demonstrates very clearly is the poverty of a model of reasoning or argument as but the manipulation of linguistically stated propositions. This model misses the interactive dynamics of movement, including the art of inviting others to move, in so many different ways and via so many different forms (alluding, suggesting, implying) and using forms such as parables, metaphors, myths, fables, jokes, paradoxes, and riddles (all of which, again, can be understood as distinctive ways of inviting movement). And it also misses the art of receiving that invitation to move, and recycling or completing it, thereby again moving in many different ways. With Fredal, then, we might say that the history of reasoning or argument is, in part, also a history of bodies moving, in certain environments, and sometimes also using certain tools in certain ways, with those movements becoming standardised over time and transforming into forms and modes of argument and reasoning. Even the most technical and abstract logical instruments, or the most fanciful and complex poetic forms, might be echoes of interacting bodies and bodies at work.<sup>46</sup>

A third and related point is that these dynamics of movement are also pleasurable, and thus that the history and theory this invites is one that would connect legal reasoning to the history of pleasure, and the making and enjoying of aesthetic objects of all kinds (including not only ancient rhetorical and literary forms, but also aesthetic objects in other media, such as films or computer games). The point here is that aesthetic pleasure, including the vital role of the body, the senses and the affects in that process, matters, both to the telling and to the (active, creative) experience of the told. This pleasure, in turn, is part of the experience of the normative (in legal and other contexts). In this way, the aesthetics, and pleasure, of movement, and its many forms, turn out to be at the heart of histories of reasoning and argument.<sup>47</sup> Of importance, too, is that this process—of inviting movement and moving—is, as Fredal says, not confined to

<sup>45</sup> One exciting prospect for future research would be to connect the history of argument, understood as movement (with different arguments being constituted by different movements), to the history of pedagogies of movement, eg physical education, dance and sport. For the Ancient Greek context, see eg Debra Hawhee, *Bodily Arts: Rhetoric and Athletics in Ancient Greece* (University of Texas Press 2004).

<sup>46</sup> Further resources for this task of situating the theories and histories of the forms and modes of reasoning and argument within broader theories and histories of moving bodies, including bodies using tools, might be gleaned from Christopher Collins, *Paleopoetics: The Evolution of the Preliterate Imagination* (Columbia UP 2013); Christopher Collins, *Neopoetics: The Evolution of the Literate Imagination* (Columbia UP 2017); Lambros Malafouris, *How Things Shape the Mind: A Theory of Material Engagement* (MIT Press 2013); Maxine Sheets-Johnstone, *The Primacy of Movement* (2nd edn, John Benjamins 2011); Terence Cave, *Live Artefacts: Literature in a Cognitive Environment* (OUP 2022).

<sup>47</sup> Incidentally, on this view, rules might be just one of many forms that invite a certain kind of movement and prompt the making of storyworlds in particular ways (as Fredal himself says, 'Rule-based reasoning ... is based upon a narrative illustration of how the rule has operated and a narrative of how the interpretation of that rule has expanded': *TE* 186). In this sense, rules might be best approached as part of a broader history of short forms that trigger the active and inventive arts of making narratives together (eg maxims, proverbs, fables, parables, jokes).

any act of inference (even when that is broadly understood to include deductive, inductive and abductive processes), but extends to other modes of associating (imagistic, emotive, metaphoric, analogical, etc), and thus includes the experience of a feeling or the formation of an attitude (and not just having a propositional belief). Reasoning and arguing, on this view, are deeply intertwined with aesthetic pleasure and its affective experience.

The fourth point is that it would be important not to confine any such theory and history to the practice of advocacy. As important as this is, it ought not to exclude the other side of the trial process: the making of judgment. This, of course, does not operate in isolation from advocacy—we must surely always keep our pulse on the interaction between advocates and judges—but it does mean that we need to extend our scope of recovering the rhetorical character of legal reasoning by analysing how judges themselves communicate with future audiences (beyond those in the current case). Put another way, law making itself is a kind of narrative making, involving narrative-inducing forms, and thus modes of communication, created by judges and then recycled and remade by later advocates, judges, scholars and citizens. Law making is thus also a mode of rhetorical interaction, except one that occurs over time. Thus, not only do advocates tell a story of the particular case, inviting the judge to co-make a narrative of the case by constructing a storyworld out of those storytelling elements; they also build a synthetic story, inviting the judge to co-make a synthetic narrative of: (i) this case, as they suggest it ought to be decided (ie with a particular justification), together with (ii) other past cases and (iii) possible future cases. Judges, in dialogue also with each other across time, build such synthetic narratives, which, taking into account the current case, reshape and resynthesise groups of cases. The narrative arts, then, reach deeply into the very fabric of law making: this too, like the building of narratives in particular cases, involves storytelling and storyworld construction, over and over, by multiple hands and many subjectivities, over time. These synthetic, complex, underspecified narratives are carriers of legal knowing—that is how, for instance, common lawyers know cases (not one case, but groups of cases), which may also include not only dominant synthetic narratives which group cases in particular ways, but competing, contested, agonistic narratives, offering multiple, competing narrative opportunities in future cases. If we include the above point that the arts of movement (and thus also linking and connecting) include the experience of an emotion and the formation of an attitude, we have a rich ontology of law making, which includes such emotions and attitudes. Thus, Fredal's approach to enthymising offers the exciting prospect of an account of legal knowing and legal reasoning as a communicative, synthetic, synaesthetic, affective, embodied, agonistic (while still also collaborative), narrative art.

Fifth, delving into the theoretical details of this narrative art—this narratological legal knowing and reasoning—will require us to dig deeply into the history of philosophy and re-read it in light of its connections to rhetorical history and narrative theory. For instance, we could go back to the work of David Hume and his associative arts of the imagination and re-read this in

light of the need, in legal reasoning, to make synthetic narratives of groups of cases. Similarly so with the understanding of imagination, as a kind of synthetic art, in Immanuel Kant's third critique. On this approach, Hume and Kant are not opposites and rivals, but instead partners assisting us to understand the process of imaginatively grouping and regrouping particulars, albeit in certain kinds of institutional and cultural contexts.<sup>48</sup> Further, this approach to legal reasoning will require not only a revisiting of past traditions of theorising, but also of tapping into current, exciting developments in the cognitive humanities and narrative theory. These show how, for instance, narrative, when connected to contemporary research on the brain, cannot be understood on the basis of the more traditional structuralist approaches to narrative, as but scripts we follow (at some point without conscious awareness); instead, narratives are much more complex, recursive, dynamic resources, which also fit our highly flexible, adaptative, predictive brains.<sup>49</sup> There will, thus, need to be a back-and-forth between current developments in narrative science and a re-reading of past philosophical and other traditions of theorising the dynamic relationship between form and cognition.

In addition to these five points, there will undoubtedly be other links to make as well. For instance, there is a deep connection to be explored between the oratorical arts of Ancient Greek rhetoric and the character arts of Ancient Greek literature and history.<sup>50</sup> In fact, character making may well have featured even more than it does in Fredal's book: perhaps, even more than plot, character is a key concept of narrative, and the concept that is most intimately related to judgment. Thus, we could explore the long-standing and richly entangled histories of (legal) reasoning and character making, from the Ancient world through to the revival of character writing in the early modern period, and its flowering in enlightenment and modern literature.<sup>51</sup> Another connection might revolve around the notion of intention, motive or, perhaps even more broadly, consciousness, especially where this is placed in the context of a history of narrative and narratological devices. One example of a link between the Ancient Greek practices of the enthymeme and Ancient Roman oratory, which involves interactive play with attributing or inviting inferences of intention or motive, is that of the device of colouring: the pedagogical exercises of the declamations involved multiple orators proposing colours of actions, which were designed precisely to shift perspective and invite a different kind of judgment (of character). This declamatory device of colour,

<sup>48</sup> Thus, although there may be some similarities at a theoretical level between Hume and Kant's account of the imagination, showing how the synthetic arts are at work in 18th century Scottish courts will be quite different from showing how they are at work in German ones.

<sup>49</sup> See Paul Armstrong, *Stories and the Brain: The Neuroscience of Narrative* (Johns Hopkins UP 2020).

<sup>50</sup> See eg Koen De Temmerman, *Crafting Characters: Heroes and Heroines in the Ancient Greek Novel* (OUP 2014). The Ancient Roman arts of character are of course relevant here too, see eg recently Erica Baxley, *Seneca's Characters: Fictional Identities and Implied Human Selves* (CUP 2022).

<sup>51</sup> See eg Harry Newman, 'CharacterTM: Character-writing, Drama, and the Shape of Literary History' (2021) 21 *Journal for Early Modern Cultural Studies* 142.

in turn, as Joel Altman<sup>52</sup> has shown, was of decisive importance to medieval and early modern drama, and to its dramatic arts of judging character. The dynamics of this colouring was important, and links up to what we might call an ethics of judgment: to slowing judgment down and to showing how the same events and persons can be coloured, and thus judged, in different ways.

### 5. Conclusion

All this is, at least to my ears, very exciting, and opens up many possible futures. Fredal's work ought to be part of that future, and for that we owe him many thanks. Along with Fredal, we ought to include the work in the history of rhetoric with which I began this review article. The history of rhetoric remains an inclusive historical thread, which weaves together so many of the ingredients that are necessary to understanding legal reasoning. This may be in part because, rather than just being a mode of persuasion, rhetoric is also, or even more so, an art of generation and invention: an active and aesthetically pleasurable craft of making meaning—including narrative meaning of normative significance—together, and with our bodies, our emotions and our senses. Let us hope, then, for many rhetorical futures of rhetoric past.

<sup>52</sup> Joel Altman, *The Tudor Play of Mind Rhetorical Inquiry and the Development of Elizabethan Drama* (University of California Press 1978). I have attempted to draw some links between the device of colour and common law reasoning: in Maksymilian Del Mar, 'Emotion Experiments in Legal Thought' (2018) 5 CAL: Critical Analysis of Law 178; Maksymilian Del Mar, *Artefacts of Legal Inquiry: The Value of Imagination in Adjudication* (Hart Publishing 2020).