Embodied truths and authentic selves: The constitution of evidence and credibility in rape cases

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Abstract
In this article, I use the concept of chronotope, which means time-space, to analyse knowledge production at the intersection of science, technology and law. I do a comparative study of written legal decisions regarding criminal injuries compensation in rape cases from two different legal institutions in Norway—namely, the Compensation Authority and the criminal courts. In these written decisions, the two institutions state the reasons and justifications for their decisions by invoking, relying on and dismissing various kinds of knowledge, such as forensic, medical and psychological knowledge. The aim of this comparison is to investigate how these reasons and justifications constitute evidence and credibility. I argue that the two institutions attach themselves to different kinds of expert knowledge because they are chronotopically different and consequently constitute evidence and credibility in different ways.

Keywords
Authenticity, credibility, forensic evidence, legal chronotopes, psychological trauma, truth

Introduction
In ‘The ground-zero theory of evidence’, Kim Lane Scheppele (1997) criticises American law of evidence for embodying what she calls a ‘ground zero’ theory of evidence. ‘Ground zero’ is a military metaphor of nuclear destruction, and it is the point at which the bomb hits, and levels of devastation are measured from this point in time and space. She uses the ground zero metaphor to illustrate how the rules of evidence privilege information (evidence) are collected in close proximity in time and space to the crime. Information becomes less relevant as it radiates outward. This metaphor suggests that the law primarily relies on forensic experts and institutions that can analyse evidence collected at the crime scene in temporal proximity to the crime. Others have similarly criticised the legal system for placing too much emphasis on forensic evidence, particularly DNA-evidence, when making legal decisions (Cole, 2007; Jasanoff, 2006).
This metaphor and criticism can also, at least partly, be applied to the Norwegian legal system. However, it does not apply to all legal institutions in Norway as the law is more dynamic than this metaphor suggests. In this article, I will show how legal institutions attach themselves to different experts and institutions within the Norwegian jurisdiction by comparing written legal decisions regarding criminal injuries compensation in rape cases from two different legal institutions in Norway—namely, the Compensation Authority and the criminal courts. In these written decisions, the Compensation Authority and the criminal courts state the reasons and justifications for their decisions by invoking, relying on and dismissing various kinds of knowledge, such as forensic, medical and psychological knowledge.

In my analysis, I will use Mikhail Bakhtin’s concept of the chronotope introduced to socio-legal studies by Mariana Valverde (2015). The concept of chronotope means time-space and refers to how spatial and temporal dimensions interact with and shape one another. I use the concept of chronotope to analyse knowledge production at the intersection of science, technology and law. I use insight from science and technology studies (STS) scholarship to conduct a socio-legal analysis of the constitution of evidence and credibility in legal decisions regarding rape.

I will use the concept of chronotope to show how evidence chronotopically transposes the incident (the alleged rape) from the past to the present and from the crime scene to legal institutional spaces so that the trier of facts can make a decision. In this way, evidence chronotopically links the incident to the legal decision-makers.

Evidence in a rape case typically includes DNA profiles, medical reports (which include toxicology results and documented physical injuries), documentation of psychological trauma, police interviews and oral testimonies. These types of evidence constitute different kinds of knowledge produced in different chronotopes in connection to the incident and the legal system. For instance, in temporal proximity to the incident, police investigators collect biological traces at the crime scene and medical experts examine the victim’s body (and sometimes that of the accused) at the hospital, before technicians test the biological material in the laboratory and finally write the results in a report that is presented in legal institutions distanced by time and space.

I will further use the concept of chronotope to show how the two institutions that are differently shaped but tasked to do the same thing attach themselves to different experts and institutions when processing rape cases. Valverde (2015) has characterised the courtroom as a chronotope and argued that particular chronotopes shape and give meaning to various legal processes. For instance, a trial that occurs within a particular space, i.e. a courtroom, is also governed by temporal dimensions in which legal rules and procedures dictate what to do when, and the judge is in charge of starting and stopping time. Outside of the courtroom, time is no longer controlled by the judge or legal rules.

I argue that the two institutions attach themselves to different kinds of expert knowledge because they are chronotopically different and consequently constitute evidence and credibility in dissimilar ways.

**Criminal injuries compensation from the Compensation Authority and the criminal courts**

In Norway, a person who has suffered physical or psychological injury as the result of a crime may be entitled to criminal injuries compensation according to the Compensation Act. The compensation scheme consists of three parts: compensation for financial loss, compensation for permanent and significant injury, and damages for non-economic loss. I will focus solely on damages for non-economic loss as this is the most common type of compensation applied for in rape cases. Rape victims are entitled to criminal injuries compensation. According to section 192 in the penal code (1902), rape is sexual activity by means of violence or threats or sexual activity with any person who is unconscious or incapable for any other reason of resisting the act.

Victims have to report the rape to the police to be entitled to criminal injuries compensation. Both the criminal courts and the Compensation Authority make decisions regarding criminal injuries
compensation. If the case is prosecuted, the victim has to claim compensation from the accused in court. If the case is not prosecuted, the victim can apply for compensation from the state through the Compensation Authority. Whereas the court assesses the defendant’s liability to pay compensation to the victim as part of the criminal trial, the Compensation Authority makes decisions regarding criminal injuries compensation from the state based on an application from the victim. The victim’s lawyer usually informs the victim about the compensation scheme and guides the victim through the application process. Victims consider criminal injuries compensation important, especially if their case is not prosecuted, because it indicates that the state believes them and recognises that they have been wronged and harmed (Oxford Research, 2019).

There are similarities and differences between the two institutions, which shape their decision-making practices. All the caseworkers at the Compensation Authority have legal education. In court, legal judges or a mixed panel of legal judges and lay assessors make decisions regarding compensation. Both institutions make decisions based on the principle of freedom of evidence, which means that there are few limitations regarding the submission of evidence. Additionally, both institutions make decisions based on a preponderance of evidence indicating whether a crime has been committed. This standard of proof is higher than regular tort law, which is often portrayed as probability more than 50%, but lower than criminal law, which is often portrayed as probability close to 100%. The institutions accordingly have the same standard of proof.

The two institutions are chronotopically different. They occupy different spaces governed by distinct legal rules and procedures that determine how evidence should be presented. The Compensation Authority is a bureaucratic office that processes applications regarding compensation based on written documents, such as police, forensic and medical reports. The police reports include crime scene reports, a description of the investigative steps taken by the police, and summaries of the statements of the victim, the accused and other witnesses. The summaries of the statements are written by the police officer conducting the police interview. The summaries are quite short, and the structure is to some extent standardised. The police are supposed to record all police interviews in criminal cases, and the Compensation Authorities have access to the recorded files. In court, the oral proceedings cover both the criminal case and the compensation claim. The rules regarding the presentation of evidence in court are based on the principle of orality, which means that all evidence must be introduced orally by witnesses (including the victim and the accused), who are present in court and available for cross-examination.

The Compensation Authority was established in 2003 after forensic evidence such as DNA evidence entered the legal system. The criminal courts, on the other hand, have a long history of resolving conflicts before this type of forensic evidence entered the legal system and have traditionally relied on testimonies and considered their credibility. The principle of orality, which secures the cross-examination of witnesses in court, sustains a focus on disagreements and inconsistencies during the oral proceedings. The lawyers in the case further shape the ways in which evidence is presented in court. In addition, an oral presentation in court makes it possible to focus on how the testimony is presented and how persuasive and credible it is in its performance. In the written documents the Compensation Authority rely on, the contested issues and inconsistencies are not readily apparent even if the victim’s lawyer sometimes attaches a letter to the application for compensation to argue the case.

**Embodied truths and authentic selves**

Legal proceedings are not about finding the truth, but to make the right decision based on the facts of the case. Still, evidence tends to be associated with finding the truth in a case. Evidence used in legal proceedings has acquired a different status within and outside the legal system. The DNA profiling technique is the most trusted forensic technique today (Lynch et al., 2010). It is commonly portrayed as the ‘gold standard’ in forensics, as an infallible technique that is able to speak the language of truth (Aronson and Cole, 2009; Hindmarsh and Prainsack, 2010; Lynch et al., 2010). Testimonial evidence, on the other hand, tends to be warned against because of memory’s presumed malleability and inaccuracy
When DNA evidence competes against testimonial evidence in a particular case, DNA evidence tends to win (Lynch et al., 2010). For example, Lynch et al. (2010) describe a case in which a person is convicted of rape based on DNA evidence even though the victim failed to identify the accused and insisted that the accused person was not her attacker. Numerous cases have also been described in which a person convicted of rape based on witness identification (before the introduction of the DNA profiling technique) was exonerated after the case was reopened because of DNA evidence (Cole, 2007; Holmes, 1994). According to Jasanoff (2006) and Kruse (2016), the truth that is regarded as transcendental today is the natural truth produced by the natural sciences and by means of technology; this truth is considered objective, as it is believed to be free from human intervention and the social and cultural world.

Lynch et al. (2010) have questioned the superior status DNA evidence has acquired and argue that DNA evidence, much like any other type of evidence, depends on a fallible combination of technical and legal practices, administrative assurances and circumstantial knowledge—all of which, in addition to the biology of DNA, create the meaning and evidentiary value of DNA. According to Kruse (2010), it is the materiality of forensic evidence that seems to make it reliable and tangible, evoking confidence in its ability to provide impartial and certain knowledge. Kruse further argues that societal expectations of forensic evidence tend to give precedence to matter over meaning, underestimating the discursive dimension and the mutability of meaning. Valverde (2003: 55) further argues that the law ‘is obsessed with physical detail, with clues, with bits left by bodies or on bodies’; she calls this obsession ‘the forensic gaze’ or ‘the epistemology of clues’. The law, she continues, attempts to make legal truths physically visible to establish a concrete and objective basis for legal judgements. According to Valverde, the epistemology of clues promises that legal truths always leave culturally neutral tell-tale stains. The materiality and biology of DNA evidence and other forensic evidence relevant in rape cases, such as physical injuries, make the biological body evidence. When the biological body is considered evidence—and often, evidence that is more reliable than spoken words—it suggests that the truth is perceived to be in the body (Ticktin, 2011).

The biological body, however, is not the only truth-teller in legal decisions. Psychological trauma evidence can become relevant when DNA evidence is irrelevant because the perpetrator’s identity is not an issue or the accused claims consensual sex. Psychological trauma is frequently associated with rape (Egan, 2016; Fassin and Rechtman, 2009; Gavey and Schmidt, 2011; Marecek, 1999). Psychological trauma can be used as evidence, because it connects an event with symptoms of distress (Breslau, 2004; Fassin and Rechtman, 2009). According to McGarry and Walklate (2015), the trauma framework has become so pervasive that it is easily conflated with victimisation. Unlike DNA evidence, psychological trauma evidence is controversial because it is disputed as to whether it can prove rape and whether it will usurp the role of the jury (Harris, 2008; Ward, 2009). The trauma framework is further problematised because it can create a situation in which natural responses to crime must be pathologised to be considered worthy of policy or practice intervention (McGarry and Walklate, 2015).

Trauma, or posttraumatic stress disorder (PTSD), was included in the third revision of the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association (APA) in 1980 (Young, 1997). To give scientific legitimacy to trauma, the diagnostic manual created an analogy to physical injury, which is the original meaning of trauma, and created a standardised classification system based on visible symptoms located in acts and bodily conditions that was intended to be universally recognisable and treatable (Young, 1997). In court, psychological trauma is particularly relevant in relation to credibility assessments (Harris, 2008). Skyberg (2001) argues that credibility assessments depend upon perceptions of a person’s authentic self. According to Skyberg, the more a person reveals of his or her personality, and the closer we get to a person’s psychological life, the more real, authentic and credible we believe that person to be. According to Rose (1996), the psychological self is imagined to be a stable inner life that determines a person’s conduct and holds the truth about the person. Building on this, I suggest that trauma evidence gives the court access to a person’s authentic self in credibility assessments. This is because the symptoms of trauma, whether they are observed directly.
by the court or are presented through an expert opinion, tell the truth about the person and consequently
the rape claim.

Method

In this study, I analyse written legal decisions regarding criminal injuries compensation made by the
Compensation Authority and the criminal courts in rape cases. All the cases included in this study
involve a rape as defined by section 192 of the penal code (1902). I have left out cases involving
domestic violence as these cases often include more than one indictment. Moreover, I have excluded
cases that include male victims and female perpetrators as well as cases involving a large number of
victims and perpetrators because these cases constitute few, if any, of the total number of legal decisions
regarding rape. They are therefore challenging to anonymise.

I applied for access to case files from the Compensation Authority through the Ministry of Justice.
From the Compensation Authority files, I selected 50 cases from 2015 according to the criteria stated
above, in which half of the cases were awarded compensation and the rest were denied compensation. I
did this for the purpose of the study and it does not reflect the share of awarded cases. I selected the cases
from a list based on the results of a search for cases concerning the rape provision and that were
dismissed by the police for a lack of evidence. I started at the beginning of the list and selected cases
with female applicants older than 16 years. My analysis included the legal decisions as well as docu-
ments from the case file, primarily police reports, which included forensic medical reports.

I selected all the cases I found from the criminal courts of appeal during the years 2015 and 2016
published in the ‘Lovdata’ database. I selected cases in the database by searching for decisions based on
the rape provision. I looked through the most recent decisions to select cases using the same criteria as
applied to cases from the Compensation Authority. The selection comprised 26 cases, all but one of
which resulted in a ruling of liability to pay compensation. The high number of cases resulting in a ruling
of liability to pay compensation might be due to the fact that the police select few cases to prosecute.

All rape trials in Norway cover both the question of guilt and the compensation claim. If it is a jury
trial, the jury decides on the question of guilt, and the legal judges supervising the jury make a decision
regarding the compensation claim. If it is a trial with a mixed panel of lay and legal judges, the panel
decides on both questions. The 26 selected cases include 19 jury cases, resulting in eight acquittals and
11 convictions, and seven cases with a mixed panel of lay and legal judges, resulting in one acquittal and
six convictions. The only case that did not result in a ruling of liability to pay compensation was decided
upon by legal judges in a jury trial that resulted in an acquittal. Accordingly, the written legal decisions I
analyse from the criminal courts sometimes include considerations of guilt (if not decided on by a jury)
and sentencing in addition to liability for compensation since the compensation claim is processed
during the criminal trial. The presiding judge formulates and structures the decisions without necessarily
distinguishing between the evaluation of the evidence in the criminal and civil cases. My analysis
therefore comprises the evaluation of evidence in both the criminal and civil cases because I will not
necessarily be able to separate the two.

In my reading of the legal decisions, I share the epistemological position common to discourse
analysis, as outlined by Gill (2000), in which I map knowledge practices and their effects rather than
looking for any hidden reality or underlying causes in the texts. This means I am interested in what the
written decisions do in terms of how they construct or represent evidence and credibility. My analysis is
informed by the approach developed by Carol Bacchi, called ‘What’s the Problem Represented to Be?’,
which offers a way of thinking differently about what is commonly taken for granted (Bacchi and
Goodwin, 2016). The key term in this analytical strategy is problematisation, that is, how the text
analysed produces problems. The approach consists of a set of questions to critically scrutinise what
is taken for granted or problematised in the text, such as the following: What is the problem represented
to be? What assumptions underlie this representation of the problem? How has this representation of the
problem come about? What is left unproblematic in this problem representation?
I use the concept of problematisation to critically analyse the legal decisions, particularly the assumptions and presuppositions in the legal texts, and to question what the decision-makers take for granted and problematise in the legal decisions. To identify the ways in which things are taken for granted, I have looked for what the decision-makers present as given and apparently needing no further explanation or justification. When the decision-makers silence explanations and justifications, they contribute to presenting things as true and natural. To dismantle these naturalised entities, I have tried to identify things not communicated in the texts using a comparative method. I compared decisions by the two legal institutions, grants/rulings and rejections/acquittals, the ways in which different types of knowledge are presented, and whether the same kind of evidence is presented in different ways in various decisions. In addition, my reading of the legal decisions is informed by the theory outlined above and is guided by tensions, inconsistencies, contradictions and conflicts.

In Norway, verdicts from the criminal courts are public information but not the decisions from the Compensation Authority. For this reason, in my analysis I do not mention the case numbers of the cases from the Compensation Authority, only those from the courts. However, the verdicts published in Lovdata do not have identifiable information, such as the names and addresses of the people involved. My decision to use the case numbers of the court cases raises ethical issues because my decision can potentially direct unwanted public attention to those involved in the cases (although without identifying any persons) and risk exposing some courts and judges to criticism. Despite these potential risks, I have decided that it is important that other scholars can verify the information I use from the verdicts.

This study is qualitative, which means that the analysis cannot be generalised. This might be considered a weakness of the study. However, in qualitative research the aim is not to generalise research findings but to consider the transferability of knowledge claims. Transferability describes knowledge claims that ‘may apply more broadly, depending on differences in the nature and context of the situation to which they are transferred’ (Maxwell and Reybold, 2015: 688, emphasis in original). I suggest that the analysis I present in this article, although made in particular contexts, can be useful as a guide in regard to what might happen in similar situations and can be applied conceptually in other studies.

The compensation authority: ‘A forensic gaze’ and scientific truths

I will start my comparative analysis of the two legal institutions by analysing how the Compensation Authority constructs evidence. The decisions made by the Compensation Authority, irrespective of their outcome, clearly circle around forensic evidence. There is a clear emphasis on forensic evidence in the decisions in terms of both focus and formulations. For instance, forensic evidence is used to justify granted applications for compensation. In one case, a woman is rewarded compensation after a rape committed by her neighbour in his apartment after they both had taken drugs. The woman was unconscious from the drugs during the rape and the perpetrator gave her new injections when she revived during the rape. As part of the assault, she had incurred minor injuries, such as bruises. At the scene of the crime, there were bloodstains on the bed and used syringes on and around the bed. The decision for compensation is justified by reference to the forensic evidence: ‘We have emphasised your statement to the police, the results of the medical examination from the assault center, as well as the results of forensic testing of biological material from the crime scene.’ The formulation of this decision is typical in the sense that it refers to forensic evidence and to the use of broad and general formulations. Moreover, the characteristics of this case, which involves people using drugs, typically include forensic evidence such as toxicology reports indicating unconsciousness, injuries on the woman’s body and physical clues derived from bodily fluids and cells at the crime scene and on the parties involved. It fulfills what Valverde (2003) calls the epistemology of clues. The bodily clues were gathered and analysed in forensic institutional spaces in temporal proximity to the incident. All of these clues could have disappeared if not secured immediately. Someone could have cleaned the bedroom, the injuries on the woman’s body would have healed and the drugs would have left her body. Once the forensic machinery has produced forensic evidence that can be attached to the application for compensation, it can be able to corroborate
the woman’s rape claim and the Compensation Authority is able to grant her compensation. In this way, the forensic and medical reports chronotopically transpose the incident from the crime scene to the office of Compensation Authority.

In some cases, the Compensation Authority considers psychological harm or trauma as indicative of a rape, but it generally does not set forth trauma as a decisive factor in its decisions. When it refers to psychological trauma, it reformulates it as medical documentation and rarely specifies that it is psychological harm or traumatisation. This silencing of psychological harm gives the impression that this kind of injury or documentation is less legitimate than other forms of medical documentation. This can be interpreted as an expression of how psychological harm offers few physical clues and as such does not fulfill the epistemology of clues (Valverde, 2003). Additionally, trauma evidence is chronotopically different from forensic evidence. Psychological experts diagnose a victim in a therapeutic space after some time has passed since the incident. Psychological trauma is not produced in temporal proximity to the incident and not in forensic spaces.

In all the rejected cases in this study that include an identified suspect, compensation is denied with a reference to how the case involves conflicting testimonies between the applicant and the stated wrongdoer in addition to a lack of forensic evidence. This statement of denial occurs even when there is other relevant documentation in the case. However, the Compensation Authority usually dismiss this documentation as insufficient, as illustrated in the following decision:

It appears to be contradictory testimonies between the applicant and stated wrongdoer, and the remaining documents do not substantiate the applicant’s claim to the extent that the legal standard of proof can be considered fulfilled. The journal from the Child Protection Service solely renders the applicant’s account of the incident in question. Furthermore, none of the witnesses witnessed the actual rape.

A common justification for not granting compensation is dismissal of existing documentation and witness testimonies because they do not illuminate the incident in question, but rather retell the applicant’s account of the incident. Additionally, witnesses need to reveal details of the assault, the actual rape, and not only the circumstances connected to it. The Compensation Authority problematises the retelling of the incident because it occurs outside forensic spaces that are temporally distinguished from the incident. The Child Protection Service is not part of the forensic machinery and the witnesses were not at the crime scene but in a social space related to the incident or the victim. The Compensation Authorities view evidence as detached from the applicant’s subjective accounts, something capable of independently revealing the crime. This insistence on independent and neutral clues reflects an attempt to validate the legal decision through reference to the facts, to the nature itself rather than to circumstantial knowledge. It is an attempt to objectivise evidence through purification practices in which distinct ontological zones separating nature from culture are created to achieve the (natural) truth (Latour, 1993). This is reinforced by the tendency to problematise conflicting testimonies between the victim and the accused, and, in this way, construct rejected compensation cases as situations in which there is only the accuser’s word against the accused’s. As such, compensation cannot be granted because there are no objective clues.

It is quite common to refer to forensic evidence without explaining how it is relevant. For instance, a granted decision stated, ‘We have in our consideration of your application accentuated biological traces indicating that you have had vaginal intercourse, as well as documented bruises inside your thighs.’ This common formulation illustrates how forensic evidence is specified and highlighted while some aspects of the context that are relevant for interpreting the evidence are left out. Rather than offer any explanations, the Compensation Authority combine forensic evidence (DNA evidence and documented bruises) in a manner for which they assume explanations are unnecessary because the combination of these types of evidence make them self-explanatory. Nevertheless, concerning the DNA evidence, the contested issue is not whether sexual activity
occurred but whether it was forced or non-consensual, matters for which biological clues offer little insight. Documents in the case file suggest that information regarding biological material is relevant because the defendant repeatedly told the police in the first police interview that he did not know the accusing woman, he could not recall having sex that night, and, furthermore, that he was not a person who would rape a woman. In the second police interview, conducted with his lawyer present, he recalled details from the night in question, now including having what he characterised as consensual sex with the accusing woman. By excluding this information, the Compensation Authority give the impression that the decision is solely grounded in forensic evidence and indicates that there is no need to interpret scientific facts or consider the validity or credibility of forensic evidence and testimonies. The Compensation Authority creates what Latour (1987) calls black boxes, a metaphor referring to how knowledge production is hidden from view by silencing circumstantial knowledge and not explaining how they arrived at their decision.

In general, the Compensation Authority rarely mentions or elaborates on credibility in its decisions. Occasionally, it is mentioned briefly, or a decision simply states that something is credible; however, the decisions do not explain how credibility is considered. Whenever there is a reference to a credibility assessment, regardless of whether the term credibility is utilised, it is solely the applicant’s credibility that is scrutinised, not the accused’s. The preoccupation with forensic science that seems to be predominant in this legal institution can explain the limited focus on credibility in its decisions. However, some institutional constraints also explain why decisions are rarely grounded in credibility appraisals. Every written decision includes a version of this sentence as one of the standardised phrases included in the template: ‘In accordance with legal practice from the Complaints Commission, evidence beyond a credible testimony from you is usually required for compensation to be awarded.’ This sentence can prevent the decision-maker from grounding the decision in credibility assessments because the institution does not consider them legitimate. The sentence further implies a preference for forensic knowledge. Even if credibility is communicated less in the decisions, a specific phrase that indicates a judgment of the credibility of the rape claim still appears to be commonly used. The phrase is a version of the following sentence: ‘We have emphasised how your statement is supported by documentation gathered in temporal proximity to the incident in question.’ The meaning of this phrase is not intuitive. However, some decisions elaborate on this phrase, as in the following case:

We have emphasized how your testimony to the police is supported by witness testimonies as well as documentation gathered in temporal proximity to the incident in question. We refer to how immediately after the incident, you contacted two friends and told them that you had been raped. You were clearly affected by the incident, and your friend encouraged you to report the case to the police and to go to the rape emergency room. At the rape emergency room, physical injuries on your neck, thighs and arm were documented that may be suggestive of violence. Your reactions during the first examination and follow-up sessions was stated as suggestive of psychological trauma.

This extract suggests that the aforementioned phrase refers to a quick consultation with the police and at the rape emergency room. Sometimes this specific phrase is not used, but the decision still accentuates how the applicant immediately consulted the police and the hospital. Sometimes they explicitly link an immediate response to the term credibility. Even if the decisions in general rarely utilise the term credibility, it is common to refer to an applicant’s immediate responses. In a few rejected cases, a delayed response or a lack of hospital consultation are problematised. For example, one case stated, ‘We also refer to the fact that two and a half weeks passed before the rape was reported to the police, and ten days passed before you consulted the rape emergency room.’ An immediate consultation with the police and a hospital seems to be decisive in credibility judgements. This suggests that both time and space are crucial: time because it has to be immediate and space because it is the institutional (police and hospital) consultation that is valued.
Court proceedings: Credibility appraisals and trauma discourses

The decisions made by the criminal courts, irrespective of the outcome, clearly focus on the statements of the defendant and the victim as well as witness testimonies. Forensic evidence is most apparent in decisions involving rapes committed by a violent stranger, but these cases constitute a minority of all rape trials. A typical example is case LH-2015-206410, in which the accused was convicted and considered liable to pay compensation. In the case, a highly intoxicated woman met a man on a night out and they went to her apartment. The only thing she recalled from the incident was him penetrating her while she attempted to resist, but she could not escape because he was strangling her. The defendant argued that he could not recall having sex with her that night, and when confronted with DNA evidence, he suggested that he must have been sleeping while having sex. He further denied committing any violent acts. The court states:

The court’s assessment of the evidence rests in particular on the details of what the aggrieved person [victim] actually remembers from the incident compared with medical documentation and expert statement regarding the bruises on her throat and the rest of her body, as well as findings of the accused’s epithelial cells on the places the bruises were deposited.

Later, the court also writes in relation to witness testimonies that ‘The accused’s statement is further incompatible with other central evidence of the case.’ Although the court relied heavily on forensic evidence in this decision, it did not represent the evidence as able to speak for itself but presented the evidence as part of an overall assessment in which testimonies and credibility assessments were essential.

The majority of legal decisions that concern rape perpetrated by a man with whom a victimised woman is familiar allude to forensic evidence in a limited way. If the court makes forensic evidence relevant, it is usually DNA evidence, and the court makes it relevant whenever the defendant denies any sexual contact. Unlike the Compensation Authority, the court explicitly focuses on how scientific evidence enhances or reduces someone’s or something’s credibility. For instance, in case LG-2015-78505, the court states: ‘The accused’s testimony appears to be very minimally credible. In his first two statements to the police, he refused to have had any sexual intercourse with the woman. He maintained his statement even after he had been confronted with the finding of his sperm inside her vagina.’ He did not admit to intercourse until later, and then he argued that it was consensual. In this decision, the court argues that the DNA evidence undermines the accused’s initial statement and contributes to inconsistencies in his accounts of the incident in question. The court dismisses his testimony both because it is incompatible with forensic evidence and because it is not credible due to all the inconsistencies. This means the criminal courts do not limit the spatial dimensions to forensic spaces. The criminal courts attempt to reconstruct the incident during a trial by means of oral testimonies, which means that the space of the courtroom is part of the construction of evidence. Additionally, to reconstruct the incident in court is to make the incident appear present rather than temporally distinguished. Whereas forensic evidence needs to be collected and analysed in temporal proximity to the incident, the oral testimonies in court depend upon previous narrations of the incident across time and space. Narrations in various institutional spaces at different times put the incident in motion rather than delimiting it in specific spaces in the past.

Credibility assessment is also dependent on other sources of information, such as how well a victim’s testimony fits other testimonies regarding the circumstances of the rape or forensic reports from the crime scene. In addition, how the victim presents a statement influences the credibility of a rape claim. As already mentioned, consistency in accounts of an incident influences credibility appraisals. Sometimes, the court highlights narrative features, such as the coherence of a story. Moreover, other characteristics of the accounts might apply, as is illustrated in decision LB-2016-15493, in which the jury acquits the defendant in the criminal case, but the legal judges rule on liability to pay compensation to the victim:
In the decision, the court has emphasized how B’s [victim’s] testimony appears to be detailed, neutral and credible. Her statement has substantially and on key points been consistent from the first time she talked to the police when reporting the incident until her statement in the appellate court. The court has not been presented with any conceivable motive for her making a false statement. The court has also emphasized the statements made by the witnesses C, D, E and F who interacted with B immediately after the incident, observing her immediate reactions. They all testified to how she appeared to be very upset, hysterical and crying profusely. (…) The court considers the witnesses’ observations and statements as substantiating her claim of being violated.

Although consistency is highly valued and elaborated on when considering credibility, other characteristics related to the presentation of testimony are taken for granted. In addition to references to characteristics such as detailed and neutral, I have also seen descriptions of testimonies as nuanced. When the court assesses credibility by considering how a testimony is presented in the courtroom and compares it to how the story has been presented previously in police interviews and at the hospital, credibility is constituted in various spaces across time. Moreover, the decision above highlights the victim’s immediate emotional reactions and makes them relevant to the consideration of the rape claim. Immediate emotional reactions suggest that a rape claim is authentic. The immediate reactions are in temporal proximity to the incident, but can be documented by nonprofessionals outside institutional spaces.

In trials without forensic evidence, the criminal courts tend to rely on information regarding the victim’s immediate and/or subsequent reactions to the incident in question, in addition to other corroborative information. In the quote above, the witnesses testifying to the victim’s immediate reactions were her friends and family. In another decision, the court refers to medical expertise: ‘The aggrieved person’s testimony is substantiated by the fact that after the incident, she sustained considerable psychological distress and has been diagnosed with post-traumatic stress disorder.’ The immediate reactions might comprise various emotional expressions, such as crying; utterances indicating that a crime has taken place, such as claims of being raped; and responses such as leaving the situation or perpetrator, calling for help, calling the police or consulting a rape emergency room. In comparison, reactions over time usually refer to feelings such as fear, anxiety and sadness; trauma symptoms such as sleep disturbances and flashbacks; and difficulty concentrating on routine activities. These reactions seem to constitute a mixed knowledge formation that relies in part on the trauma discourse. The trauma discourse thus becomes relevant when considering a victim’s credibility. Psychological experts in therapeutic spaces diagnose trauma some time after the incident, but the trauma keeps the incident present once diagnosed. The trauma discourse therefore moves the incident chronotopically from the crime scene in the past to the court in the present. Trauma further embodies the incident, so when the victim enters the courtroom, the incident similarly moves into the courtroom.

Expert knowledge of psychological trauma fits and complements the manner in which the court conducts credibility assessments. The trauma discourse offers the court a way of considering the authenticity of a rape claim by gaining access to the victim’s state of mind and psychological reactions to the incident in question over time. Still, the trauma discourse risks creating new demands on the part of the victim. For instance, when the legal decisions invoke the trauma discourse, the framework for interpreting the victim’s reactions may change, as in decision LH-2016-54362:

The court has considered the victim’s account of the incident in question as credible. The account has been told repeatedly, in a consistent manner, and in accordance with other witness testimonies from the party. The witnesses have testified to how the victim appeared immediately after the incident. She was crying and seemed to be strongly affected by the incident. She has been described as out of control and acting hysterically. The testimonies indicate that the victim’s reactions were experienced as true and support the claim that she has endured a traumatic experience.
The introduction of the concept traumatic in this case suggests a normative function aimed at validating the victim’s reactions in relation to the trauma framework. The court evaluates the victim’s reactions in terms of whether they indicate real trauma. In this manner, real trauma make the rape claim authentic. Following this line of reasoning, one might question whether victims must be traumatised to be considered credible, as suggested by McGarry and Walklate (2015). They argue there has been a slippage in terminology between victimisation and traumatisation, which has created a situation in which natural responses to crime must be pathologised to be considered worthy of intervention. In the following case, LE-2015-102946, the minority opinion, which voted for acquittal, seems to require trauma reactions from the victim to consider her credible.

The aggrieved person has explained how she is still affected by the incident and has withdrawn from social life. However, one of the witnesses testified to how she posts pictures on Facebook that illustrate how she is engaging in an active social life. The accused, on the other hand, is still influenced by what has happened to a greater extent than the aggrieved person.

This extract suggests that some decision-makers perceive rape claims to be less authentic when the victim is not suffering from the incident. Still, examples suggesting the opposite position also exist, for instance, in case LG-2015-170957: ‘Even if the defendant happened to rape a woman with a robust psyche, this cannot benefit him in the assessment of damages.’ The trauma discourse further constructs the legal system as a dangerous place. For example, in case LA-2015-74717, the following is stated:

To some degree, we have also based our judgement on the decision made by the accused to appeal on the question of guilt, although the evidence against him is very strong. There was no prospect of succeeding with the appeal. The appeal exposed the victim to new, demanding encounters with the legal system in which the ongoing healing process was disturbed.

The court’s line of reasoning in this quote seems to be that the victim had a bright future before the appeal because she would have healed sooner if the perpetrator had not exposed her to further trauma in the form of the legal proceedings. In other words, the judges suggest that a legal proceeding is traumatic for traumatised victims. This is sometimes referred to as the hypothesis of retraumatisation. Judith Herman introduced the hypothesis of retraumatisation to the legal system in 2003. She writes, ‘If one set out intentionally to design a system for provoking symptoms of PTSD, it might look very much like a court of law’ (Herman, 2003: 159). Herman is the author of *Trauma and Recovery* (1997), a book considered a classic in the field of psychiatry. In her work about retraumatisation, she also writes about secondary victimisation, and she uses the terms interchangeably. This suggests that she conflates the terms secondary victimisation and retraumatisation (McGarry and Walklate, 2015). By accepting the hypothesis of retraumatisation, the court loses sight of the crime, criticises the perpetrator’s right to appeal the decision and furthermore assumes that the victim’s right to participate in a trial in which she is the victim is dangerous and suggests that it should be avoided. When the court validates its own decision by recourse to the trauma discourse, the court risks placing too much emphasis on the harm of the crime at the expense of the wrongdoing. In other words, when the focus is on suffering rather than wrongdoing, the court risks undermining both the defendant’s and the victim’s legal interests and rights.

**The chronotope of the compensation authority and the criminal courts**

The decisions made by the Compensation Authority communicates that forensic science can reveal the truth of a rape claim. The Compensation Authority searches for forensic evidence and values scientific expertise and scientific truth. As a result, the Compensation Authority problematises a lack of forensic evidence and tends to deny compensation in cases without any forensic evidence. There is a clear tendency to value physical evidence based on the body to establish a concrete and objective basis for
legal judgments (Kruse, 2010; Valverde, 2003). At the same time, testimonial evidence and circumstantial evidence are silenced. Valverde’s (2003) concept of a forensic gaze is highly applicable to the practice of this legal institution. A reliance on scientific knowledge based on natural sciences suggests that the body can tell the truth of a rape claim. The legal practice of the Compensation Authority constructs evidence as something material, objective and able to speak for itself.

Summarising the practices of the criminal courts, on the other hand, demonstrates that these have a larger focus on testimonial evidence and credibility judgements. However, forensic evidence seems to be a predominant feature in rape trials involving violent and/or stranger rape. In rape trials involving non-strangers, forensic evidence becomes part of a credibility assessment if the defendant’s testimony is inconsistent with the evidence. The criminal courts communicate the legal interpretative practices and circumstantial knowledge the evidence rests on. To consider the authenticity of a rape claim, the criminal courts focus on immediate and subsequent reactions to the incident in an attempt to gain access to a person’s psychological life. The focus on emotional reactions makes the trauma discourse relevant. However, the trauma discourse risks creating new demands on the victim, if the victim has to be traumatised to be considered credible. This constitutes an example of how natural responses to a crime must be pathologised for victims to receive assurance and recognition from the law (McGarry and Walklate, 2015). The legal practice of the criminal courts construct evidence in a different manner than the Compensation Authority, namely as something dematerialised and inseparable from circumstantial knowledge and interpretative legal practice.

I suggest that this is related to the different chronotopes of the two legal institutions. The Compensation Authority is a bureaucratic office regulated to rely on written documents, and it therefore has fewer opportunities to do credibility assessments. For that reason, the incident must be fixed onto something material and included in a written report. The Compensation Authority consequently values forensic evidence created by forensic institutional spaces in temporal proximity to the incident. This is because forensic evidence relies on bodily clues from crime scenes and bodies that will disappear if not collected and tested as soon as possible after the incident. Forensic institutions transform biological clues into forensic evidence that can represent the incident. The Compensation Authority is not supposed to reconstruct the incident in its office, and, accordingly, the decision-makers silence circumstantial knowledge and the interpretation of the evidence in question. This silencing distinguishes the space of the office from forensic spaces and accordingly contributes to keeping the evidence production in temporal proximity to the incident. The Compensation Authority constitute evidence and credibility in an immediate chronotope when solely relying on knowledge produced in temporally proximate forensic spaces.

The principle of orality regulates the criminal courts, and the criminal courts’ access to oral testimonies facilitates credibility assessments. The space of the courtroom becomes the stage where the victim and the accused can perform credibility and reconstruct the incident in the present. The performance in court relies partly on previous narrations of the incident at various times and in different institutional spaces such as the police station, hospital, and social spaces. When the court reconstructs the incident, it is chronotopically transposed into the trial. Psychological trauma evidence further brings the incident into the trial because of how the diagnosis keeps the incident present in time, as well as potentially into the future. The criminal courts constitute evidence and credibility in shifting chronotopes when relying on knowledge produced in multiple and various spaces at different times.

This comparative study suggests that legal chronotopes shape the kinds of knowledge discourses adopted by a legal institution and the evidentiary value attributed to that knowledge. This means the regulations of distinct legal institutional spaces facilitate access to different truth discourses.

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