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Legal Alienation and Literature

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Legal Alienation and Literature

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*"A book must be the axe for the frozen sea inside us."*¹

Franz Kafka

¹ Kafka, Franz. From a letter to Oskar Pollak (27 Jan 1904). Found in: *Letters to Friends, Family, and Editors*. Translated by Richard Winston and Clara Winston. The Schocken Kafka Library (1990).

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Introduction

In this thesis I will be examining the phenomenon of alienation. Of course, terms like dissatisfaction, estrangement or alienation are very broad and vague, with a wide array of possible causes and consequences. Therefore, I will mostly narrow the scope of this thesis to only one of these currents of dissatisfaction: a current I will refer to as legal alienation. In this thesis I aim to give a thorough understanding of legal alienation, mostly by examining works of literature. In my discussion of work by Jacques Derrida I will show how this literary approach is philosophically warranted due to both the nature of law and literature. Furthermore, through the philosophy of literature of Martha Nussbaum I will argue how engaging with literary texts is a form of moral philosophy —and a more fruitful approach for understanding legal alienation than exclusively using traditional philosophical texts. This will justify my focus on literary texts over conventional philosophical texts.

My research question is to what extent literature is capable of enriching our understanding of legal alienation. To answer this research question I will divide it into several sub-questions. First, through a thorough examination of literary works I will answer *what* insights literature can provide into legal alienation. Second, I will answer why literature is particularly well-equipped for bolstering our understanding of law, and therefore by extension legal alienation. And third, I will be answering *how* literature is conducive to enriching our understanding of legal alienation. I should note that this third sub-question justifies my approach in the first sub-question: it will justify our looking at literary works for insights into legal alienation. So, the third sub-question will show *how* literature has provided the insights we gained through our reading of the literary texts. However, I will do more than just work out the sub-questions to answer my research question. I will also be buttressing and complementing my answers to the sub-questions by providing important context or examples. Let me now further elucidate the structure and organization of this thesis.

In my first chapter, as a short introduction I will provide a broader context to legal alienation by giving a relevant, concise overview of some of the (philosophical) debate on alienation as a whole. Additionally, to indicate the relevance of legal alienation I will also be reflecting on the possible ramifications of legal alienation by briefly looking at Stefan Zweig. After these

preliminary remarks (par. 1.1 & 1.2), I will turn to my literary anthology to answer the first sub-question, providing us with insights into legal alienation. This anthology is comprised of the following authors: Albert Camus, Ralph Ellison, Fyodor Dostoevsky, Franz Kafka, and Maurice Blanchot. Through their literary works I will identify and clarify five different forms or aspects of alienation, all of which will ultimately bolster our understanding of legal alienation.

The second chapter will answer my second sub-question by focusing on Jacques Derrida. Derrida will give a philosophical framework that shows the unique connection between law and literature, thereby showing why literature is particularly well-equipped in helping us understand law, and by extension legal alienation. We will see how the similar nature of both law and literature makes literature a useful lens through which to examine law. In the third chapter I will discuss the legal philosophy of H.L.A. Hart in order to give an analytical understanding of law and legal alienation. We will see how this analytical approach, in addition to complementing my literary approach, illuminates a possible cause of legal alienation: the supremacy of supranational institutions in the European Union. To introduce and elucidate Hart's legal philosophy I will use the *Grand Inquisitor* parable by Dostoevsky and my own interpretation of Kafka's *Before the Law* parable. And finally, in the fourth and final chapter of this thesis I will turn to Martha Nussbaum in order to answer the third sub-question. We will see how literature stimulates moral exploration, an appreciation for the singularity of moral experience, and the development of empathy. This will show how literature is a valuable tool for understanding complex moral issues, such as legal alienation. Literature's capacity for moral edification also suggests it might be a useful tool for remedying legal alienation. In order to keep the scope of this thesis feasible I will only briefly touch on this possible practical implication.

My usage of several terms requires further clarification and justification. Throughout this thesis I will mostly narrow my examination of legal alienation to its possible manifestation among legal subjects in the European Union, which I will argue is inextricably intertwined with globalization and the supremacy of supranational institutions. I will argue that the encroachment of the European Union on national sovereignty through the primacy of the European Union's law over national law —a process that I for convenience's sake will refer to as globalization— perverts law and leads to a distance between man as a legal subject

and law. Of course, this is but one among many possible causes of legal alienation. However, for the sake of clarity and brevity this distance between legal subjects and the law in the European Union will serve as my primary point of reference.

I must note right away that my usage of legal alienation is idiosyncratic, because I employ characteristics of law as defined by Hart and use these to scrutinize the problems engendered by the primacy of supranational institutions. Therefore, there is no academic debate that fits my particular usage of the term. Of course, the effects of supranational law or globalization in general have been examined in countless different studies, with estrangement sometimes being discussed as well.² Moreover, not only is my usage of the term legal alienation distinctive, but my approach to legal alienation breaks new ground as well by using literary works to understand this phenomenon.

My choice of literary works is based on several factors. First of all, Franz Kafka's work evokes and describes the feelings associated with legal alienation beautifully. Therefore, his inclusion in this thesis is very natural. The other authors, such as Dostoevsky, Camus, Blanchot, and Ellison, comprise a mosaic arrangement that presents different aspects of alienation in general. This anthology will bring the distinctiveness of legal alienation into relief. In the end, what to include in this anthology is an aesthetic choice, which I hope will be justified by the end of this thesis.

In addition to several authors of great works of literature, I will also be examining Derrida, in particular his discussion of Franz Kafka and Maurice Blanchot. The main reason for including Derrida is the remarkable connection he points out between literature and law, which in short amounts to both literature and law lacking a pure essence. By examining this connection we will see how literature is particularly well-equipped to further our understanding of law and legal alienation. Additionally, Derrida examines the inherent tension in law between its necessarily general phrasing and its singular application to a concrete case. This will provide an instructive contrast with the exterior tension that characterizes my interpretation of legal alienation.

² See for example: de Búrca, Gráinne. *The Quest for Legitimacy in the European Union*. *Modern Law Review* 59 (1996).

At the end of this thesis several things will have been made clear. First of all, through my discussion of several literary works we will have gained important insights into what I call legal alienation. Secondly, through my discussion of Derrida the unique connection between literature and law will become clear, which shows how literature is particularly well-equipped to further our understanding of law and by extension legal alienation. And finally, it will become clear how and why literature can be morally edifying and give us a profound understanding of legal alienation, thereby complementing the more analytical approach I have undertaken through my discussion of Hart.

Chapter 1: Understanding alienation: a literary approach

1.1 The European Union: alienation or unity?

During the interbellum of the 20th century, the renowned Jewish author Stefan Zweig became a vocal proponent of European solidarity in the face of rising nationalistic sentiments across Europe. In lectures all across the globe he advocated a solidarity based on a shared cultural heritage that looks beyond our arbitrary borders. Many of his ideas for the advancement of European solidarity have been implemented today. Exchanges between students from different countries, a supranational European Union, and a European capital city are nowadays all very familiar to us.³ Through the efforts of intellectuals, an emphasis on our cultural accomplishments and the start of a *Bibliotheca Mundi*, Zweig wished to unite Europe by educating Europeans on their shared heritage. However, Zweig's passionate call for European unity fatefully fell on deaf ears. His idealistic rhetoric was drowned out by the clamor of a nationalist fervor sweeping across Europe.

Looking back, Zweig's lectures look quaint and naive. We know the catastrophic events that took place shortly after Zweig's lectures. Zweig saw his dreams turn into nightmares: fascism took over Europe and any hope for European unity disappeared. Zweig's Jewish faith and his writings on a unity that transcends the nation-state or race made him an outcast amidst the pre-eminence of nationalism. Utterly dejected, in 1941 Zweig and his wife took their own lives in Brazil.

Zweig's vision of European brotherhood proved premature, yet nowadays his vision has largely been implemented. However, the unity of Europe is mostly one accomplished by supranational institutions. An overarching cultural unity still seems far away. This is evident from the fact that nationalistic political narratives have reemerged across most of Europe. It would seem most people still hold on to a national identity; being European is only an afterthought. The idea that the world is becoming a more open place is therefore not undisputed. When the Berlin Wall fell there were only sixteen border fences around the world. Nowadays there are sixty-five fortified perimeters completed or being constructed

³ Zweig, Stefan. *Messages from a lost world: Europe on the brink*. Pushkin press 2017.

across the globe.⁴ The period after the fall of the Berlin Wall may very well only be an “inter-mural” phase.⁵

Globalization has not proved to be a force that only moves us toward unification. If nowadays we live in a global village, this also means that, as the French political philosopher and sociologist Raymond Aron said, the “inequality between peoples takes on the significance that inequality between classes once had”.⁶ Our present-day global village might provide people with unprecedented opportunities for a better life, but it also amplifies and emphasizes the vast differences between different countries, resulting in further feelings of resentment, disenfranchisement, and alienation. Is Zweig’s vision of European brotherhood through the cultivation of our shared cultural heritage then but a hopeless dream? It remains to be seen if his bohemian vision can be a fruitful basis for a stronger European union.

This thesis will not concern itself with the likelihood of a re-emergence of fascism, nor attempt to give a conclusive answer to the possibility of a European cultural brotherhood as envisioned by Zweig. And I do not aim to delve deep into the realm of politics or sociology. So why have I discussed Zweig’s vision? My discussion of Zweig is meant as a reminder for what is at stake in this thesis, that notwithstanding the progress that has been made in forging a transnational union in Europe, we must remain vigilant and pay attention to currents of nationalistic dissatisfaction before they turn into a maelstrom of something much worse. In other words, we must remain aware of the possibility that the European Union’s project of harmonization and unity can also lead to feelings of legal alienation. The European Union will therefore serve as an example in this thesis for a possible stage on which feelings of legal alienation can appear. And finally, I firmly believe that Zweig’s insistence on the salutary effects of culture for transnational unity should not be forgotten. Indeed, at the end of this thesis I will briefly touch on literature’s potential capacity to be a tool to remedy legal alienation.

⁴ Vallet, Elizabeth. *Borders, Fences and Walls*. Routledge 2018.

⁵ Krastev, Ivan & Holmes, Stephen. *The Light that Failed. A Reckoning*. Penguin Books 2019. P. 2.

⁶ Aron, Raymond. *The Dawn of Universal History*. In *The Dawn of Universal History: Selected Essays from a Witness to the Twentieth Century*. Basic Books 2002. P. 482.

1.2 An excursion into debates on alienation

Before discussing the various literary works dealing with alienation, I will continue my preliminary remarks on alienation by presenting a short excursion into some important discussions on alienation. This will give us a historical and philosophical framework and point of reference for my own, distinctive use of legal alienation. After this short overview I will turn to my literary anthology of five different forms or aspects of alienation relevant for my thesis.

Alienation is often considered a modern phenomenon, arising in the 20th century from the erosion of our belief in “the greatness of man, the infiniteness of progress, and the sovereignty of reason”.⁷ Alienation became a technical term, popularized by Fichte, Hegel, and most famously by Marx at the beginning of the 19th century. Marx’s understanding of alienation was informed by a socio-economic perspective. In his early work, *Economic and Philosophic Manuscripts of 1844*, he analyzed alienated labor in the capitalist economic system, and, as Dr. Oliver Christ puts it, he demonstrated how “the alienation of individuals, in particular the worker, is tied to historically-specific economic systems and ownership structures”⁸ —and how these relationships are then reproduced by alienated labor.

Marx was not the only thinker to voice his concern over man’s estrangement. Kierkegaard, among many other philosophers, saw man’s slip into a mere “cognitive subject” as a serious corruption of man’s nature, because it amounts to a rejection of man as an existential being.⁹ With the dawn of the 20th century estrangement had become a widely discussed topic among philosophers. Nowadays, human estrangement is often seen as a product of our modern society’s inability to provide meaning. This lack of meaning is seen as a result of the atrophy of social bonds traditionally created by institutions and organizations such as religion or political parties. For example, Robert Putnam pointed out that in the United States the social capital of the American community has been diminishing for some time now.¹⁰ And, with the rise of the digital age and technological developments, the distance between man and the world might only increase. For instance, technology that is meant to

⁷ Pappenheim, Fritz. *The Alienation of Modern Man: An Interpretation Based on Marx and Tönnies*. New York and London: Monthly Review Press 1959. P. 18.

⁸ Dr. Christ, Oliver. *The Concept of Alienation in the Early Works of Karl Marx*. European Scientific Journal March 2015 Vol. 11, No. 7. P. 551-552.

⁹ Pappenheim (1959). P. 25.

¹⁰ Putnam, Robert. *Bowling Alone. The Collapse and Revival of American Community*. Simon & Schuster 2001.

connect, such as social media, seems to disconnect and weaken our social bonds as well, causing depression and loneliness.¹¹

Some thinkers, such as Hannah Arendt, considered modern man's "uprootedness"¹² a result of society's rapid industrialization, the consequent emergence of the "mass man" and the "era of crowds"¹³, and the disappearance of a common pursuit. Along the same lines, Ferdinand Tönnies famously stated that *Gesellschaft* has replaced *Gemeinschaft* in modern society.¹⁴ In short, Tönnies meant that people more often associate predominantly out of a conscious design or personal interest and not out of a sense of belonging. He considers this an attenuation of our social bond. Arendt, in a similar vein, warned us that man today is a mass man, prone to feelings of social atomization and loneliness. It is this disconnectedness that provides fertile soil for totalitarian rule, she claims.

The insights provided by Arendt immediately remind one of Kafka's work. Indeed, the totalitarian state thrives on the disorientation and disconnectedness of its subjects, thereby impeding any form of organization —and offering only a spurious unity. This is accomplished by presenting the façade of an impersonal, imposing bureaucracy. Kafka's *The Trial* is a prime example of this, as we shall see later. It is the sense of confusion, powerlessness and alienation in the face of an overwhelming state that Kafka, more so than most authors, is able to convey so poignantly.¹⁵ We might therefore even say that Kafka's protagonists are the symbolic representatives of our depersonalized age. This is why he takes a central place in this thesis.

1.3 A literary anthology of alienation

It has not been my intention to present a comprehensive summary of all that has been said on the wide-ranging topic of alienation. I have merely attempted to indicate the relevance of legal alienation specifically for the European Union and situate my examination of legal alienation vis-à-vis certain previous discussions of alienation throughout history. I will now delve into various specific forms and aspects of alienation through a discussion of five

¹¹ Melissa G. Hunt, Rachel Marx, Courtney Lipson, Jordyn Young. *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*. *Journal of Social & Clinical Psychology* Vol. 37. Iss. 10 2018.

¹² Arendt, Hannah. *The Origins of Totalitarianism*. Penguin Books 1951. P. 622.

¹³ Le Bon, Gustave. *The Crowd : A Study of the Popular Mind*. Sparkling Books 2009 (1895). P. 15.

¹⁴ Pappenheim, Fritz. *Alienation in American Society*. *Monthly Review*, New York 1949. P. 44.

¹⁵ Politzer, Heinz. *Franz Kafka: Parable and Paradox*. Ithaca, N.Y.: Cornell University Press 1966. P. 334

literary authors. I must emphasize, however, that my discussion of these different forms is ultimately only meant as a tool for understanding legal alienation. I am therefore by no means claiming this is an exhaustive list of all forms of alienation. In this chapter, then, only follows an anthology that I deem conducive to our understanding of my distinct conception of legal alienation. To do this I will identify five different forms or aspects of alienation.

First, through Camus's notion of the absurd I will discuss a primal form of alienation that I will call existential alienation. This form of alienation describes a very comprehensive state of alienation that can perhaps best be described as an estrangement from life itself. We will see how existential alienation shows that alienation can be a slippery slope, where the unmasking of reality might undermine our trust in all sorts of established conventions or shared truths.

Secondly, I will discuss the notion of alienation that occurs as a result of marginalization or a lack of agency. Ralph Ellison's *Invisible Man* will illustrate this form of alienation. Alienation as a result of marginalization or a lack of agency occurs when certain traits disqualify or marginalize certain people in society, thereby leading those people to experience themselves as being invisible to their fellow citizens. This leads to them being alienated from society. My discussion of this second form of alienation will show how legal alienation implies the severance of a connection between man and law, whereas marginalized groups never had that connection in the first place.

Thirdly, I will discuss the alienation that is depicted in Dostoevsky's *Notes from Underground*¹⁶. This concerns the estrangement that occurs when there is a dissonance between man's ideals and principles on the one hand and the hypocrisy or superficiality of society on the other hand. I refer to this as an idealistic alienation, because it concerns the tension between man's nature and society's hypocritical ideals. I will show how this idealistic alienation arises as a response against a misguided view of human nature. This third form of alienation will therefore show how alienation can occur when man's particularity is ignored.

I will then turn to Kafka and Blanchot, who both illuminate a different aspect of legal alienation. Kafka will present us with the fourth perspective on alienation by portraying how

¹⁶ Dostoevsky, Fyodor. *Notes from Underground*. Vintage Classics 1994 (1864).

the inaccessibility of the law leads to legal alienation, powerlessness, and non-closure. After discussing Kafka, I will turn to Blanchot to explain another aspect of legal alienation. This will be the fifth and final aspect of alienation I identify in this thesis. Blanchot will show how a state of ambiguity and confinement occurs when there is a lack of legal structure. Blanchot thereby shows us how being free of law creates a state of unfreedom.

1.4 Camus and existential alienation

Albert Camus popularized the term absurdity in his attempt to describe the fundamental meaninglessness of life. As Sartre points out, man's "natural misfortune" was of course a theme that had been examined before, notably in the seventeenth century by Pascal.¹⁷ Camus followed in Pascal's footsteps and decided to further scrutinize man's absurd relation to the world. In his work, Camus ponders if "it is legitimate and necessary to wonder whether life has a meaning".¹⁸ According to Camus, when man instinctively recognizes the habitual nature of life, the "absence of any profound reason for living, the insane character of that daily agitation, and the uselessness of suffering", he will be overwhelmed by a feeling of absurdity. This absurdity signifies a "divorce between man and this life, the actor and his setting".

This dissonance is clearly palpable in Camus' *The Stranger*¹⁹, where the protagonist commits a murder without much thought, remorse, or hope for redemption. The protagonist Meursault feels, as the title of the novel indicates, very much like a stranger. Or rather, Meursault seems acutely aware of the strangeness of life itself. Meursault seems somehow removed from the events occurring around him, even when they, by all accounts, should affect him greatly. This becomes progressively clearer throughout the novel, when Meursault remains indifferent in the face of his mother's death, his killing of an "Arab", and his consequent sentencing to death. But calling Meursault immoral or a "bad man" seems inadequate. There is still a sense of innocence surrounding him. In fact, as Sartre points out, he is the epitome of the absurd man who "does not hesitate to draw the inevitable conclusions from a fundamental absurdity".²⁰ Sartre says this is a natural consequence of

¹⁷ Sartre, Jean-Paul. *Camus' The Outsider*. Literary and Philosophical Essays 1955. Trans. Annette Michelson. New York: Criterion 1955. P. 28.

¹⁸ Camus, Albert. *The Myth of Sisyphus*. Penguin Books 1955. Translated from the French by Justin O'Brien 1955. Preface.

¹⁹ Camus, Albert. *The Stranger*. Vintage International: New York 1942.

²⁰ Sartre (1955). P. 26-27.

the cleavage between “man’s aspirations to unity and the insurmountable dualism of mind and nature, between man’s drive toward the eternal and the *finite* character of his existence [...]”.²¹

Absurdity is born in man when the “stage-sets collapse”, meaning the mask of mundanity of our world is lifted.²² So, absurdity is our confrontation with the “primitive hostility of the world”, which is why I call it an existential alienation. Camus acknowledges his debt to Heidegger, as well as to Kierkegaard, Chestov and many more. All of them, in their own way, recognize the absurdity of the world or the fundamental strangeness of man’s existence and plunge deep into the irrationality of man and the world —and affirm man’s revolt against reason. But Camus is unsatisfied with their conclusions, seeing their attempts to go beyond the absurd through a leap, in Kierkegaard’s case, as philosophical suicide.²³ He lauds their recognition of the absurd, but also condemns their instant abandonment of the absurd. Unlike the existential philosophies, Camus does not wish to negate the absurd through some form of transcendental escape. He decries all these attempts that start from a philosophy of the world’s lack of meaning, only to end up finding some other depth or meaning in it.²⁴ It seems this spirit of nostalgia —the drive to know the unknowable— always creeps back in.

Camus insists we must not take the leap, as Kierkegaard claims, but instead “remain on that dizzying crest —that is integrity and the rest is subterfuge”.²⁵ We must persist in our confrontation with the absurd, keeping it alive and accepting it fully. He calls this a revolt: a “constant confrontation between man and his own obscurity”.²⁶ But this revolt is not a hopeful one, because Camus considers hope to be part of that spirit of eluding or nostalgia that he detests. His revolt, then, is one where the absurd man accepts the certainty of “a crushing fate” but does not resign himself. The absurd man’s freedom comes from being unreconciled.²⁷ No other figure better symbolizes the absurd man than the mythical Sisyphus. Sisyphus, so the story goes, is condemned to the interminable task of rolling a

²¹ Sartre (1955). P. 28.

²² Camus (1955). P. 11.

²³ Camus (1955). P. 32.

²⁴ Camus (1955). P. 32.

²⁵ Camus (1955). P. 38.

²⁶ Camus (1955). P. 40.

²⁷ Camus (1955). P. 44.

boulder up a hill, doomed to repeat this meaningless task in perpetuity. His consciousness presses upon him the futility of his task, but in Camus' rendering of the story Sisyphus is happy in the face of the futility of his efforts. This is what makes him different from the ordinary man: his being conscious of his torture, but still returning to his task, powerless yet rebellious.²⁸

Much of what Camus said about the absurd and the absurd man reminds us of Kafka. The combination of naturalness and strangeness, his protagonist's extraordinary lack of "astonishment at this lack of astonishment"²⁹, and the "perpetual oscillations between the natural and the extraordinary"³⁰ all contribute to the contradictions at the heart of the absurd work. Additionally, hope, which Camus considers an act of eluding absurdity, is conspicuously absent in Kafka's work. As Blanchot puts it, salvation is an enormous preoccupation of Kafka's, but this salvation remains uncompromisingly hopeless.³¹ Furthermore, the ethic of lucidity advocated by Camus as the state of mind necessary for our confrontation with the absurd is omnipresent in Kafka's work, illustrated most poignantly at the start of *The Metamorphosis*³² with Samsa's unperturbed reaction to being transformed into an insect. These similarities are a first indication that perhaps existential alienation runs through other forms of alienation as well. I will return to this at the end of this chapter when I reflect on these insights for our understanding of legal alienation.

1.5 *Invisible Man*: alienation through lack of agency

In his *Invisible Man*³³, Ralph Ellison tells the story of the disillusionment of the young African American protagonist. Expelled from his university, he leaves the South to find his way in the North. Without family or community, he soon finds out that he is living in a society that does not truly see him: he is invisible to them. Time and again he accepts the authority and societal norms of the (white) world around him. However, as the novel progresses the protagonist loses some of his naivete and realizes he is caught in a system of prejudice. He is caught between the extremes of white supremacy and violent Black Nationalism in the guise

²⁸ Camus (1955). P. 88.

²⁹ Camus (1955). P. 91.

³⁰ Camus (1955).. P. 92.

³¹ Blanchot, Maurice. *Space of Literature*. University of Nebraska Press Lincoln, London 1982. Originally published in France as *L'Espace littéraire* Editions Gallimard 1955. Translated by Ann Smock. P. 56.

³² Kafka, Franz. *The Metamorphosis and Other Stories*. New York: Barnes & Noble 1915.

³³ Ellison, Ralph. *Invisible Man*. Penguin Books 1965 (1952).

of Ras the Destroyer. For most of the novel our protagonist is not seen as a man of his own. The Brotherhood only sees a Black pawn useful for increasing their influence in Harlem. On the other hand, his university's president, Bledsoe, wishes him to be a docile, well-behaved student, while Ras the Destroyer demands the protagonist violently affirms his Blackness to the exclusion of everything else. Throughout the novel, the Invisible Man often does not seem like a protagonist at all. He fails to grasp the machinations of people's minds and the workings of a society stacked against him. And so, as we learn from the start of the novel, the protagonist has gone underground, where he is truly invisible to the world, but finally visible to himself.

What form of alienation does this novel present? The story is our protagonist's autobiography, recounting the events that resulted in him living underground. It is through his writing that he finds redemption, or at least his first fruitful attempt at defining himself. It is a somewhat puzzling conclusion: surely alienation cannot be overcome by sequestering ourselves? However, the main recurring metaphor of invisibility provides clarity on this issue. As mentioned before, the protagonist is not seen by others. They only see their own interests and their own preconceptions. Therefore, our Invisible Man finds it impossible to relate to the world around him. Moreover, the protagonist has no sense of self: he has always defined himself through the eyes of others. And if those eyes never actually saw him, this would mean he is nothing. His act of writing is then his first true act of self-determination, of self-awareness, and of defining himself and becoming visible to himself. Like classic slave narratives, he is naming himself "before a culture that denied them full humanity".³⁴ His writing "gives pattern to the chaos"³⁵ and allows him to finally take ownership of himself. The alienation the protagonist has experienced is one that results from his lack of agency or society's marginalization of people belonging to his race.

Invisible Man proves once again that literature can give unique insight into the concept of alienation, one that is very different from what we might glean from Camus. And this has real-world consequences. The Black Lives Matter movement sweeping across the United States is just another expression of alienation, one which I refer to as alienation through lack

³⁴ Twagilimana, Aimable. *Alienation as Narrative Strategy in Ralph Ellison's "Invisible Man"*. Found in: Bloom, Harold. *Alienation*. Bloom's Literary Criticism 2009. P. 106.

³⁵ Ellison (1952). P. 580.

of agency as a result of belonging to a minority group. This movement demands attention for the marginalized and dehumanized status of Black people in the United States. *Invisible Man* gives us a small taste of that experience. Through the metaphor of invisibility, we are given a unique point of view. We are shown how the promise embedded in the concept of inalienable rights has been broken and how man's formal equality before the law does not mean he enjoys an equal position in society. At the end of this chapter, I will show how this is instructive for our understanding of legal alienation.

1.6 Notes from Underground: idealistic alienation

A metaphor can be used in different ways. This becomes evident when comparing Ellison's use of the metaphor of an Underground Man with that of Dostoevsky. In Ellison's novel the protagonist finds himself only when gone underground, hinted at from the start of the novel by having the protagonist —now enlightened— fill his underground residence with lights, whereas before his mind was chained by darkness. His seclusion is beneficial to him. This is different in Dostoevsky's short novel. In *Notes from Underground* the protagonist's voluntary underground seclusion is very much a retreat, not a victory. Whereas Ellison showed how the marginalized and oppressed are alienated through their lack of agency or visibility, Dostoevsky shows how alienation can arise from the ashes of crushed "idealistic dreaming".³⁶

However, for Dostoevsky the main metaphor is not invisibility but the Underground, signifying man's (sub)consciousness and the dissonance between our inner world and the outside world. A recurring theme in all of Dostoevsky's work is the duality of man, perhaps best personified by the twisted yet saintly Karamazov family in his *The Brothers Karamazov*. Man's paradoxical, or Karamazovian³⁷, nature is expressed differently in his novels, but a common thread in all of his novels seems to be how, as Proust described Dostoevsky, all his heroes are "found guilty with extenuating circumstances"³⁸. The protagonist in *Notes from Underground* makes you experience our inherent contradiction through the "unsightliness

³⁶ Mochulsky, Konstantin. *The Journal Epoch, "Notes from Underground". Dostoevsky: His Life and Work*. Trans. Michael A. Minihan. Princeton, N.J.: Princeton University Press 1967. P. 242-243.

³⁷ Dostoevsky, Fyodor. *The Brothers Karamazov*. Everyman's Library 1881. Translated by Richard Pevear and Larissa Volokhonsky. P. 699.

³⁸ Proust, Marcel. *In Search of Lost Time Volume 5: The Captive & The Fugitive*. Translated by C.K. Scott Moncrieff and Terence Kilmartin. The Modern Library New York 1993 (1923-1925). P. 510.

of his style, the disharmony of syntax, the irritating brokenness of his speech.”³⁹ The writer of this confession fiercely denounces society and proclaims to want nothing to do with it, but at the same time writes his confession as a dialogue, indicating some remaining desire to engage socially. Dostoevsky shows us how man can never truly live underground, can never be completely isolated, because he will always be dependent on his fellow man. Everything in the novel is the narrator’s attempt to refute this fact. Yet the narrator is only refuting his own nature, which is why self-loathing and despair permeate every sentence. The narrator maintains that to be a conscious man is to suffer. However, Dostoevsky is telling us that to be conscious and suffer is an integral part of the human condition.⁴⁰

Not unlike Nietzsche and Kierkegaard, the narrator argues that there is more to human nature than just reason. Raging and raving, the narrator shows us how man is an irrational, passionate being. And where at the start of the novel the reader is overwhelmed by both pity and disgust, by the end we understand that this tragic narrator understands something fundamental about the human condition: to be human is to be tragic.

The narrator’s polemic tone mirrors man’s polemic nature, our irrational and rebellious side. It becomes evident that the “unsightliness” of man is something which we must not turn away from. At first glance one might think the narrator is something less than human, something dehumanized and depraved. But strikingly, the dehumanization presented in the book is not just that of the narrator, but of a society and modern man that ignores our natural “dark abyss”.⁴¹ Alienation in Dostoevsky’s work is presented as a result of our willful blindness to our inherent sinfulness and irrationality. And in *Notes from Underground* this idealistic alienation is voiced through a scathing mocking of society’s hypocritical veneer of civility and empty idealistic prattling. This idealistic alienation is therefore an indictment against our tendency to turn away from that which makes us human: our inherent sinfulness, irrationality, and duality. Dostoevsky demands of us that we delve deep into our own soul and affirm something which we would rather ignore. At the end of this chapter we will see how ignoring these facts about human nature can lead to legal alienation.

³⁹ Mochulsky (1967). P. 243-244.

⁴⁰ Mochulsky (1967). P. 245-246.

⁴¹ Mochulsky (1967). P. 248.

1.7 Kafka: the inaccessibility of law

Kafka famously claimed the study of law had the intellectual excitement of chewing sawdust.⁴² After completing his legal studies, Kafka worked first as a law clerk and then at an insurance company, providing him with the material for much of his work. Kafka mostly concerned himself with, as Robin West puts it, the “contradictory nature of authority and submission in the modern world, and the resultant alienation of the human condition”.⁴³ For this reason, Kafka’s work has been the center of much discussion and scrutiny in both literary studies and beyond, ranging from theological interpretations to sociological and even medical interpretations.⁴⁴ Analyzing his work, however, is a slippery business, because the element of irrationality present in all literature, at least according to Goethe⁴⁵, is especially prominent in Kafka’s work. Goethe was of the opinion that after extracting every ounce of meaning from a work of literature there still remains a residue of something inexplicable and irrational.⁴⁶ This residual mystical element explains why even now Kafka’s work is still subject to different interpretations: his work truly has profound, unfathomable depths. The purpose of my discussion of Kafka’s work is to illuminate a crucial feature of legal alienation: the inaccessibility of law.

One of Kafka’s most famous works is *The Trial*⁴⁷, centering on Joseph K., who is faced with an unnamed charge for an unnamed offence. K.’s inability to penetrate through the fog of bureaucracy and the formlessness of law is a prime example of legal alienation —and the dehumanizing effect of law when it presents itself as an impenetrable abstraction. In my view the legal alienation portrayed in Kafka’s work does not primarily occur through some manifestation of injustice. It is not that the law is unjust or the legal system corrupt, but rather that the law and legal system remain inaccessible. Of course, the law’s inaccessibility might cause injustices to occur, but the central feeling permeating Kafka’s work is that the notion of injustice does not even seem to come up for discussion in the first place.

⁴² Pawel, Ernst. *The Nightmare of Reason: A Life of Franz Kafka*. New York: Farrar, Straus, Giroux (1984). P. 117-22.

⁴³ Ward, Ian. *Law and Literature*. Cambridge University Press 1995. P. 9.

⁴⁴ Steinhauer, Harry. *Hungering Artist or Artist in Hungering: Kafka’s “A Hunger Artist”*. Criticism, Winter 1962 Vol. 4 No. 1 (Winter 1962) Wayne State University Press. P. 28.

⁴⁵ Steinhauer (1962). P. 28.

⁴⁶ Steinhauer (1962). P. 28.

⁴⁷ Kafka, Franz. *The Trial*. Penguin Books 1925.

Therefore, in my view Kafka's work is not portraying the corrupt inner workings of a legal system, but rather the distance between man and the legal system that impedes any access to this legal system at all. My understanding of legal alienation is therefore that it is exterior to law. This should be distinguished from instances of injustice where a law, legal proceeding, or legal judgement are manifestly unjust, because any legal alienation that occurs as a result of this is caused by the corrupt or erroneous inner workings of the legal system. This distinction is important, because the exterior legal alienation that Kafka's work exemplifies *par excellence* is the central concern of this thesis.

As Walter Benjamin writes, in Kafka's world we ourselves feel as if an accusation is leveled against us. And Kafka does nothing to dispel this feeling.⁴⁸ In his works officialdom closely resembles the paternal world. However, the authority of both is somehow defiled. This is seen, for example, in the judges' courtrooms being located in murky attics in *The Trial*, or Samsa's father in *The Metamorphosis* being in a state of filth and idleness. Yet the protagonists are never able to shake off the dogged persecution of the father or prosecutor in whatever form he appears. The sons —the protagonists— are weighed down by a constant, implicit and all-encompassing sense of reproach or guilt. It is quite blatantly present in *The Trial*, but it is also discernible in *The Metamorphosis* where the father, chases, chastises, and reproaches Samsa for his transformation into an insect, whereas there is no indication whatsoever that he is at fault for this tragedy. In Kafka, just as in Kierkegaard, the unspoken sentiment seems to be that, as Walter Benjamin puts it, "man is always in the wrong before God".⁴⁹ And in a society where God is absent yet sin remains, patriarchal authority in the guise of officialdom or the father figure demands we atone for our sins. This persistent feeling of reproach creates an overwhelming feeling of powerlessness that exacerbates the overarching feeling of alienation.

It is of course no accident that Samsa is made to feel unwanted and strange in his own home among his own family.⁵⁰ The family nucleus, the most intimate of social bonds, is turned into something unfamiliar in *The Metamorphosis*. This is why the mother and sister cannot stand to look at Samsa, and the father chases his son around the room in order to

⁴⁸ Benjamin, Walter. *The Work of Art in the Age of Mechanical Reproduction. Franz Kafka: On the Tenth Anniversary of His Death*. Penguin Books 1936. Translated by J.A. Underwood. P. 54-55.

⁴⁹ Benjamin (1936). P. 74.

⁵⁰ Benjamin (1936). P. 58.

squash him like the insect he is. In the same way, in *The Trial* K. is confronted with the policemen while still in his bed. From the very first page Kafka takes away those feelings of ease and tranquility we experience in the intimacy of our own home and replaces them with a harrowing sense of doom and anguish.

In my view, many of the feelings in Kafka's work, and discussed in this chapter, perfectly describe the feeling of legal alienation legal subjects today face when confronted with the opaqueness of supranational institutions. He is therefore the author that best describes legal alienation, specifically the inaccessibility of law that in my view characterizes legal alienation most. At the end of this chapter, when reflecting on our insights, we will see how the inaccessibility of law perpetuates a cycle of non-closure and powerlessness.

1.8 Blanchot: Kafkaesque and absurd

Maurice Blanchot illuminates another aspect of legal alienation. If Camus' depiction of the absurd novel reminds us of Kafka's oeuvre, it certainly should point us toward the work by Maurice Blanchot as well. In fact, Blanchot's work almost seems more Kafkaesque than Kafka's work itself. The all-encompassing sense of bewilderment and the rapid pace of a bizarre sequence of events imbue Blanchot's work with a fundamental uncanniness. Reading *The Idyll*⁵¹, for example, we are reminded of Camus' remark that the absurd work does not try to explain the experience or offer the reader any tools for intellectual comprehension.⁵² Indeed, we are thrust into the middle of a story without any preamble or context.

Blanchot's protagonist in the *Madness of the Day* personifies the absurd man. He is aware of the irrationality and madness of the day⁵³, which we might consider just another way of describing the absurd. And the protagonist does not try to escape this absurdity, instead condemning those who want to escape death, calling this wish lamentable and strange.⁵⁴ Just like Sisyphus, the protagonist is "extremely happy" even on those days when he thought he was "utterly and completely miserable".⁵⁵ But what makes Blanchot's stories the

⁵¹ Blanchot, Maurice. *De Idylle*. Parrèsia Amsterdam 2016. Translated by Aukje van Rooden. Original: *L'Idylle*. Les Éditions de Minuit Paris 1983.

⁵² Camus (1955). P. 71-75.

⁵³ Blanchot, Maurice. *The Madness of the Day*. Station Hill Press 1981. Translated by Lydia Davis. P. 11.

⁵⁴ Blanchot (1981). P. 9.

⁵⁵ Blanchot (1981). P.7.

epitome of the absurd work is his ability to illustrate the tension between the concrete and the universal —and man’s revolt against this tension.⁵⁶

Blanchot’s work defies normal expectations of what it means to read a novel. His work is layered, abstract, and seemingly impenetrable; the storyline is incoherent, confused, and mysterious. Just like in Kafka’s work, this creates a confused reader, unsure of what the events are supposed to mean. The feeling of existential alienation is clearly visible in *The Madness of the Day*. This is seen in the many digressions the narrator takes, describing his many different attitudes and the various trials and tribulations he has gone through in his life. It becomes clear that the narrator has gone through life as a “lifeless extension, a motionless abyss”.⁵⁷ At other times the narrator describes himself becoming “vague and formless”⁵⁸ or being reduced to a “nothingness”⁵⁹ when confronted by authority in the guise of doctors who act like kings. This closely resembles those feelings of legal alienation we already saw in Kafka’s work. So, Blanchot’s work combines the Kafkaesque element of a formlessness of law with Camus’ notion of the absurd novel. However, Blanchot takes this formlessness of law to an extreme, showing how the absence of law creates an ambiguous state of freedom and unfreedom. I will elaborate on this state of ambiguity in legal alienation shortly.

1.9 Reflections

In this chapter I aimed to answer what insights a thorough examination of literary works offers into legal alienation. So far I have discussed several forms or aspects of alienation, explaining how they are all distinct from one another. However, the central concern of this thesis is to understand legal alienation. So, what have these literary works taught us about legal alienation? I will now show how these five authors have given us five different forms or aspects of alienation, which all are instructive for our understanding of legal alienation in their own way.

The existential alienation present in Camus’ work illustrated an alienation that occurs when the “stage-set” of the world collapses and man rejects the meaningfulness of reality. All

⁵⁶ Blanchot (1981). P. 9

⁵⁷ Blanchot (1981). P. 8.

⁵⁸ Blanchot (1981). P. 13.

⁵⁹ Blanchot (1981). P. 14.

forms of alienation in some sense deal with a disillusionment. In my view his work is therefore also a warning for how legal alienation can have ramifications that go beyond the realm of law, causing man to reject all sorts of firmly established institutions or truths. For example, man's estrangement from law can result in his rejection of the authority of the state that is based on those laws, thereby leading to anarchy. Moreover, if a distance is created between law and man, those that are estranged might, for example, seek recourse to extra-judicial justification in the form of natural law. A distrust in the legitimacy of the legal system might then even lead some to dismiss any *consensus iuris* at all, and instead appeal to the suprahuman authority of Nature or History, which, as Hannah Arendt tells us, is exactly what the totalitarian movements of the twentieth century did when they rejected all positive laws.⁶⁰ My point here is not that legal alienation will always turn into something worse, but that leaving legal alienation unaddressed might spread the feeling of distrust and disillusionment into other areas of life. Camus therefore complements our understanding of legal alienation by showing how all forms of alienation carry within them the seed of a deeper disillusionment and the potential for a rejection of the validity of institutions —and even the meaningfulness of the world around them.

Ellison's *Invisible Man* is instructive by illustrating the relationship between legal alienation and citizenship. For those who are not afforded agency in society the laws have never truly been there for their benefit: you cannot lose what you never truly had. Legal alienation is therefore a concept that denotes a loss of something, because a space now exists where there was a connection before. In the case of marginalization, the marginalized aren't estranged from law but excluded from society. They then fall within the purview of the law only in name; their diminished status in society amounts to society in reality not even affording them true citizenship —or protection under the law. To put it succinctly, alienation through marginalization is when man is invisible to society; legal alienation occurs when the law is not visible to man. This distinction is helpful, because it shows how alienation through marginalization is not the result of a space between man and law, but a gaping hole in the fabric of society itself. It shows how people's experiences as a legal subject and citizen are very distinct from one another.

⁶⁰ Arendt (1951). P. 607.

Dostoevsky's *Notes from Underground* is a strange yet powerful novel that, as the author David Foster Wallace puts it, is both universal and particular.⁶¹ This observation conveys the peculiar way in which Dostoevsky points out man's duality and irrationality and at the same time shows how man's paradoxical nature will always be situated within the particular climate of his age. So how should this inform our understanding of legal alienation? In my view, Dostoevsky is showing us the dangers of a top-down view that ignores man's paradoxical nature and the way in which man's particular milieu shapes him. This is highly relevant for our understanding of legal alienation, because the space created by legal alienation can be a result of a top-down view where generality is emphasized over particularity, where the law seeks to gloss over both the duality of man and the particularity of each person's life. In my view this top-down perspective of the law can be a consequence of an overly rational worldview where man's irrationality is not taken into account, instead operating on the premise that all human conduct can be governed through universal legal principles. Therefore, by emphasizing man's irrationality and duality Dostoevsky complements Kafka's project of showing us how, as Ian Ward puts it, the foundation of rationalism for our legal order is not without problems.⁶² So, the space created by legal alienation can be the result of a worldview based on rationality and generality that ignores man's inherent duality and particularity. Dostoevsky shows us how this worldview is problematic and can potentially set the stage for legal alienation to appear.

Kafka is closely connected to legal alienation, because he depicts and conveys the actual feelings related to legal alienation. I already explained how the feelings of powerlessness and confusion are a central theme in Kafka's work. He shows how the legal subject tries to make sense of the law even when the law is senseless. We saw how this occurs in *The Trial*, where K. is subjected to an accusation without any explanation or justification. Strikingly, in his predicament it is K. that tries to justify his conduct, while the burden of proof surely does not lie with him. This reversal is characteristic of Kafka's work and tells us something about legal alienation. It shows how in legal alienation the legal subject will constantly try, yet fail, to make sense of his situation by accessing the law. In Kafka's work we therefore see the protagonist in persistent, nightmarish pursuit of attaching some sort of meaning or sense to

⁶¹ Wallace, David Foster. *Consider the Lobster. And other Essays*. Abacus (2005). P. 256.

⁶² Ward (1995). P. 10.

the events to which he is being subjected. But of course, any meaning remains out of reach, because the law remains inaccessible. And this is, in my view, what characterizes legal alienation most: the law remains out of reach. We feel as if some sort of explanation is always just around the corner, but of course it never arrives. This feeling of non-closure is central for legal alienation. The authority of the law remains around us, yet actual access is never possible, and we are left powerless. It is exactly this combination of our need for clarity, our conviction that the law is around us, yet the law's persistent elusiveness, that makes legal alienation so excruciating: it is a loop that does not provide closure.

Blanchot's work sheds light on more than absurdity. He also shows what happens when the structure of law disappears. In *The Idyll* we see how Akim, the protagonist, is forced to live within a system that is either a prison or hospice. Throughout the short story Akim finds it is impossible to escape his surroundings, even when he is told he is free. Indeed, the very line between a public space and private space disappears in the novel, where the prison or hospice seems to naturally transition into the streets of the town nearby.⁶³ Throughout the story the absence of clarity is therefore central. In my view, the story can be interpreted as showing how law usually establishes order and certainty. It shapes the space in which we exist: by demarcating what can and cannot be done it gives people certainty and a space to move. However, when law disappears we are left with an endless space where we cannot distinguish a hospice from a prison.⁶⁴ As we see in the story, the difficulty of relating to the world around us creates distrust and disorder.⁶⁵

In my view, Blanchot shows us how this creates a prison of the mind. The absence of law creates an ambiguous state, where people cannot live outside the law, yet are not able to access the law. In other words, just as the presence of law establishes a certain order and certainty, *The Idyll* shows us how the absence of law and structure makes it difficult for people to relate to the world around them. Blanchot therefore shows how legal alienation puts people in the precarious state of both freedom and unfreedom: to be free of law is not liberating at all. The absence of a clear, accessible legal structure distorts the shared space within which legal subjects must move. This creates a man who lives in perpetual ambiguity.

⁶³ Blanchot (1983). P. 53.

⁶⁴ Blanchot (1983). P. 30.

⁶⁵ Blanchot (1983). P. 32.

This is why the absence of law has an oppressive, punitive effect: the vast space between man and law becomes a stifling imprisonment. Blanchot shows us the feelings of confinement that characterize legal alienation.

Through my examination of five different forms or aspects of alienation we are now equipped with an understanding of legal alienation. The next chapter aims to answer the second sub-question through the work of Jacques Derrida. He will prove crucial for answering why literature is particularly well-equipped to further our understanding of law, and by extension legal alienation. He will show the connection and similarity between law and literature, most importantly characterized by the notion of iterability and a lack of pure essence. This similarity will prove to be the main reason for why literature helps us understand law and legal alienation. Derrida's readings of Kafka and Blanchot will be central.

Chapter 2: Derrida: bridging law and literature

2.1 An introduction to Derrida

So, why is Derrida a useful guide for our examination of literature and law? As Derek Attridge puts it, Derrida's approach to literary texts is meant to confront the "undecidability" of the text and not to shy away from the demanding difficulty of texts, because these difficulties "shake the foundations" of conventional discourse. And for Derrida it is exactly those demanding aspects which "mark literature *as* literature".⁶⁶ An emphasis on the undecidability and difficulty of the text fits seamlessly with Blanchot's and Kafka's work. The method Derrida uses for this is called deconstruction, which, as Attridge puts it, amounts to an "exposing and questioning" of the foundations of a text.⁶⁷

Derrida was deeply interested in literature, calling it an institution that "allows one to say anything"⁶⁸ and calling it the "most interesting thing in the world".⁶⁹ This first statement has to do with the fact that literature is an "institution which tends to overflow the institution". Derrida sees literature as something that can defy its own law and create something new by breaking free of the rules that govern its existence. Interestingly, as Derrida himself points out, authors such as Blanchot and Kafka examine their own possibilities and the fragility of literature that is a result of a certain inherent lack of specificity.⁷⁰ They all in some way ask the question "what is literature?".⁷¹ Derrida sees literature as having no (natural or ahistorical) essence. Instead, he argues, there is only an experience of literature.⁷² Yet we are constantly trying to pin down an essence; literature then becomes the place where we experience this trouble of essence.⁷³

For Derrida, philosophy and literature cannot be easily separated. Indeed, they are both distinctive and full of "co-implication".⁷⁴ His reading of literary texts amounts to a "close

⁶⁶Derrida, Jacques. *Acts of Literature*. Routledge New York 1992. Edited by Derek Attridge. *Introduction: Derrida and the Questioning of Literature*, Derek Attridge. P. 7-8

⁶⁷ Derrida (1992). P. 8.

⁶⁸ Derrida, Jacques. "This Strange Institution called Literature": *An Interview with Jacques Derrida*. Found in: *Acts of Literature*. Routledge New York 1992. Edited by Derek Attridge. P. 36.

⁶⁹ Derrida (1992). P. 47.

⁷⁰ Derrida (1992). P. 42.

⁷¹ Derrida (1992). P. 41.

⁷² Derrida (1992). P. 45.

⁷³ Derrida (1992). P. 48.

⁷⁴ Derrida (1992). P. 13.

engagement with its language and its argument”, where Derrida demonstrates “the text’s privileging” of one of two terms in a classical opposition, something he calls logocentric.⁷⁵ Derrida’s examination of conceptual underpinnings both undercuts and affirms these conceptual foundations; by closely examining and deconstructing texts we are shown how meaning is constructed and situated in each different reading.

Derrida draws distinctions that are latent in the literary text, and demonstrates how these distinctions are dependent on something they cannot themselves grasp.⁷⁶ At the same time, as Attridge points out, it is only through the particular act of reading that deconstruction occurs; there is in fact no “abstractable or applicable argument, concept, or method which could be laid out independently of such readings”.⁷⁷ Yet we are inclined to extract an immutable meaning or theme from our reading. The act of reading, however, is “irreducibly singular” and celebrates this uniqueness and mutability without experiencing it as an obstacle. Moreover, literature is, or should be, the supreme, distinctive domain where we most feel at ease with not finding or extracting a timeless, immutable meaning, instead feeling compelled to reread the text over and over —and finding it refreshing and new every single time.

The “situatedness” of literature —the fact that it is written and read at particular times and places— is something that Derrida emphasizes, consequently rejecting the “transcendentalizing and universalizing” tendency of many when it comes to reading literature. This situatedness of literature implies a lack of a “core of uniqueness that survives mutability”⁷⁸. This betrays the profound difficulty of examining and analyzing literature, because it acknowledges the fundamental singularity of each act of reading.

Strikingly, this “iterability” —the repeatable yet always different confrontation with the text— of literature is similar to the singularity of law. Law is also characterized by a perennial conflict between the “singular occurrence and a general law”.⁷⁹ An appreciation for the “iterability” of law is therefore central for my argument in this thesis, because it shows why a generalized, abstract approach to law is insufficient. Derrida’s discussion of

⁷⁵ Derrida (1992). P. 8.

⁷⁶ Derrida (1992). P. 8.

⁷⁷ Derrida (1992). P. 14.

⁷⁸ Derrida (1992). P. 16.

⁷⁹ Derrida (1992). P. 18.

iterability shows how in each case the general rule must be read with completely fresh scrutiny; it shows how literature can teach us to appreciate the singularity of law.

Derrida doesn't just point out the singularity or iterability of literature, but goes further by demonstrating the "structural interdependence" between singularity and generality that paradoxically coexists in literature.⁸⁰ So, it would be wrong to assume all generality or universality has no place in literature or law. The literary text and the law must have some generality in them, because this allows us to connect it to some form of meaning. This is why the "readability" and the changing meaning each time we read a text implies a "repetition, a law, an ideality of some type".⁸¹ This structural interdependence exists in law as well —and this is a first indication of how literature can help us approach law.

2.2 Returning to Blanchot: genre and law

The concept of genre carries with it the issue of law, meaning the question of an institutionalized classification.⁸² It is important to explain what Derrida means when he talks about "law". Law is often used by Derrida to denote ideality or generality, as opposed to the singular or concrete. Whenever a literary text carries a mark that signals its belonging to a genre, it at the same time "potentially exceed the boundaries that bring it into being". For Derrida this is a constitutive property of genre. He calls this the "law of the law of genre". In Blanchot's *The Madness of the Day* this property of genre is clearly visible. The narrative seems to fight against its own boundaries, thereby revealing the inability of a law of genre to retain "absolute purity".⁸³ By examining the concept of genre in *The Madness of the Day* we can therefore better understand the relationship between "law" and literature.

When a genre announces itself, it is telling us to "respect a norm" and not "cross a line of demarcation" or risk an "impurity, anomaly or monstrosity".⁸⁴ Derrida at first explains how it seems like an axiom that the law of genre is pure, because a genre implies that it cannot be mixed with other genres. Indeed, this would deprive it of its purity, because a genre is defined by it having certain boundaries. At the same time, Derrida points to an essential

⁸⁰ Derrida (1992). P. 15.

⁸¹ Derrida (1992). P. 15.

⁸² Derrida, Jacques. *The Law of Genre*. Found in: *Acts of Literature*. Routledge New York 1992. Edited by Derek Attridge. P. 221.

⁸³ Derrida (1992). P. 222.

⁸⁴ Derrida (1992). P. 224-225.

disruption, an internal division of the trait of genre. These disruptive anomalies occur through repetition.⁸⁵ This counter-law, as he calls it, summons and is summoned by the law it threatens. And the existence of this principle of contamination, this law of impurity, is what Derrida calls the law of the law of genre. It signifies a participation without belonging, which is a consequence of the fact that “the trait that marks membership inevitably divides”.⁸⁶ In other words, the trait that marks membership to the genre will at the same time overflow the boundaries of this genre. The purity that a genre implies can therefore not be maintained.

For something to belong to a genre we must be able to identify a certain trait that marks this something as belonging to the genre. Derrida argues that such a “distinctive trait *qua* mark is however always *a priori* remarkable”.⁸⁷ What he calls the re-mark is an integral part of art and literature, because they will always have an irreducible uncertainty —the re-mark— that makes it different from the genre. This is similar to what Derrida points out in *Signature Event Context*, where he stresses that iterability makes something readable.⁸⁸ Only when signs are repeatable can they be understood. This is why Derrida says that a text never properly belongs to any genre; it just participates in a genre. Derrida calls this the axiom of non-closure, because it “enfolds within itself the condition for the possibility and the impossibility of taxonomy”.⁸⁹

Derrida reads *The Madness of the Day* as a testimony to the law of genre. The *récit* is a mode of discourse that is central to the story, being demanded by representatives of the law, but at the same time not being responded to by the narrator. Yet the very structure of the story defies that of a *récit*, because it overflows its boundaries with its generality.⁹⁰ Strikingly, the invagination that Derrida mentioned as a feature of non-closure is clearly visible in the story, the most obvious example being the end of the story where certain lines of the beginning of the book are repeated. And this “folding” of the narrative undermines the very idea of a *récit*, because this non-ending marks a “collapse that is unthinkable,

⁸⁵ Derrida (1992). P. 226.

⁸⁶ Derrida (1992). P. 227.

⁸⁷ Derrida (1992). P. 229.

⁸⁸ Derrida, Jacques. *Signature Event Context*. In Limited Inc. Northwestern University Press 1972. P. 7.

⁸⁹ Derrida (1992). P. 231.

⁹⁰ Derrida (1992). P. 235.

unrepresentable, unsituable within a linear order of succession”.⁹¹ In *The Madness of the Day* boundaries are never clearly visible. In my view this sheds further light on the notion of “law” for Derrida. Whereas law is characterized by limits and binding obligations, the supreme trait of *The Madness of the Day* is its “unlimited affirmation”.⁹² In other words, law is negating, because it sets limits to what is and what is not. *The Madness of the Day*, however, affirms and brings forth a new space, or at least a perpetual opening of possibilities. Law, then, is played with in this story.

I think *The Madness of the Day* shows the strained relationship between the law and man’s overflowing of the law’s negating boundaries.⁹³ We are shown the tension between genre and that which “belongs” to genre. And in the same way applications of law, just like with genre, must contend with the fact that they participate in that genre called law, without ever completely belonging to it. If globalization and the consequent increase of supranational institutions continues, this means institutionalized classifications —i.e., laws— will proliferate as well. As more laws implies more generality this might create an imbalance in the structural interdependence between the singular and general. In my view, this means it becomes increasingly more important that we are aware of the unreducible uncertainty of all those cases that “belong” to the genre or law. We must therefore be wary of the misconception that the law of genre can be pure. Translated to law this misconception consists of an ill-considered faith in the generality of law.

2.3 Derrida on *Before the Law*

Derrida’s examination of Kafka’s *Before the Law* parable complements his reading of *The Madness of the Day*. Just as in Blanchot’s short story, Kafka’s parable questions typical features of a literary text such as its boundaries and its uniqueness. *Before the Law* is particularly relevant for the relationship between the singular and the general, which is an issue we saw was inherent in literature and genre. But more importantly, *Before the Law* shows how this relationship sits at the heart of the law as well. As Attridge puts it, through his discussion of *Before the Law* Derrida shows how law can only be “understood as self-

⁹¹ Derrida (1992). P. 236.

⁹² Derrida (1992). P. 247.

⁹³ Blanchot (1981). P. 17.

contradictory, lacking in pure essence, and structurally related to what Derrida terms *différance* or, in its non-metaphysical sense, ‘literature’”.⁹⁴

Central in *Before the Law* is the confrontation between our singular experience of law and the generality of law.⁹⁵ Being before the law is an image that expresses this encounter between law and singularity. It is a story that revolves around a paradox. The inaccessibility of the law, represented by the doorway that is only meant for the countryman yet remains closed⁹⁶, is this paradox.

The law is something that is without story, because it is without history or derivation. This is a direct consequence of the fact that the law, by definition, has categorical authority. Derrida calls this the law of the law. Any story on the law must therefore be external to it, because the law cannot be affected. In the same way, the countryman approaches the doorway to the law, but remains external to it. What resides behind the doorway is thus best described as the law of the law, a phenomenon that is without history and is not affected by anything external. Derrida sees a connection between this feature of law and literature. Just like the man from the country when he is confronted by the law, we are also detained and paralyzed by the possibility and impossibility, the readability and unreadability, the necessity and prohibition of the story.⁹⁷

The story, then, is essentially deferred just like the law. In other words, the countryman’s access to the law is constantly deferred just like the story. This does not mean the story and the law are completely inaccessible, but rather that they are constructed or situated in a very concrete way. Derrida proceeds to show the many ways in which “before the law” can be interpreted, thereby illustrating how the text is “iterable” or can be interpreted in different ways. Moreover, through his presentation of these many interpretations Derrida also reiterates one of his recurring arguments, namely that a term receives its meaning only through its specific position vis à vis other terms. This is why he states that “before the law” can mean so many things; this does not mean, however, that meaning is arbitrary. Being before the law can be interpreted as a temporal statement, meaning the countryman exists

⁹⁴ Derrida, Jacques. *Before the Law*. Found in: *Acts of Literature*. Routledge New York 1992. Edited by Derek Attridge. P. 182

⁹⁵ Derrida (1992). P. 187.

⁹⁶ Derrida (1992). P. 187.

⁹⁷ Derrida (1992). P. 196.

before there is law. The story would then signify the countryman existing antecedently to law, but attempting to create law or gain access to the place where law is formulated. “Before the law” can also be understood as a term of respect or deference. The doorkeeper would, having his back turned to the law, then be disrespecting the law, while the countryman, facing the law, would be presenting himself to the law respectfully. Both countryman and doorkeeper are, spatially, before the law, but they are nevertheless in opposing positions because they are facing each other.⁹⁸

When we come before the law, we mean to say we are in the presence of the law, not that the personification of the law is before us. This usage is also at play in the parable, because the countryman is present before the law, but at the same time is not truly confronting the law, which is hidden somewhere behind the doorway.⁹⁹ The title “Before the Law” is then very different from the first line of the parable “Before the law stands a doorkeeper”. Derrida points out that this shows how the same mark can be heterogeneous: they are different yet identical.

Derrida shows how we, as legal subjects, are outside the law —an outlaw— when we are before the law. The law prohibits certain behavior, but it is itself also prohibited. We encounter and confront in fact only the law’s representatives; the law itself cannot be located. But at the same time, the law’s prohibition allows man a certain degree of self-determination.¹⁰⁰ This is expressed in the parable when we learn that the doorman only meant the countryman cannot enter at the moment, the future remaining unclear. Additionally, the countryman is told he can try to enter regardless of the doorman’s warning, but other doormen will await him. The indefinite deferring of the doorman’s explicit permission for the countryman to enter is another instance of what Derrida calls *différance*. It is a constant deferring, an indefinite delay of entrance into the law. And this is the law of the law, because the law itself defers this permission. Derrida points out how the law is lacking in essence, and any attempt to access this essence must be deferred indefinitely.¹⁰¹

⁹⁸ Derrida (1992). P. 200.

⁹⁹ Derrida (1992). P. 201.

¹⁰⁰ Derrida (1992). P. 205.

¹⁰¹ Derrida (1992). P. 205-206.

In my view Derrida examines an inherent tension in law, where the difficulty of reconciling the law's necessarily general phrasing with its application to a concrete case is examined. It is important to emphasize that this inherent tension of law as discussed by Derrida is different from legal alienation, which is exterior to law, because legal alienation signifies the distance between man and the legal system that impedes access to the legal system. However, in the next chapter I will offer my own interpretation of the *Before the Law* parable to show how it can also illuminate this tension that is exterior to law.

Derrida's examination of the parable tells us something about law, but it also uncovers much about literature. The element of unknowability of the law is constitutive and essential to literature as well.¹⁰² Literature also lets us wait, allows us to determine ourselves freely in its presence and non-presence. And just like law, literature is singular and unique in that it is "specifically destined and determined for you"¹⁰³. Just like the law literature is lacking in pure essence. And just as in law, we are left waiting in front of the door that defers entrance. The deferred admittance in the case of literature is the impossibility of our acceding the text's proper significance.¹⁰⁴ The *Before the Law* parable can therefore also be read as concerning our experience in reading literature. Indeed, the parable is an exposition of the "paradoxical logic of boundaries"¹⁰⁵ and reveals the enigma that occurs when "the categorical engages the idiomatic"¹⁰⁶.

2.4 Conclusion

This chapter set out to answer the question why literature is particularly well-equipped to further our understanding of law, and therefore by extension legal alienation as well. I started this chapter with an overview of central concepts in Derrida's thinking that are indispensable for our understanding of his discussion of Kafka and Blanchot. I discussed how in literature we experience a lack of pure essence, which makes literature incredibly potent for the discussion of law and complex issues such as alienation, because it requires a constant questioning, struggle and engagement with the text and its presuppositions. Derrida showed how the act of reading is "irreducibly singular". I discussed how the

¹⁰² Derrida (1992). P. 208.

¹⁰³ Derrida (1992). P. 210.

¹⁰⁴ Derrida (1992). P. 211.

¹⁰⁵ Derrida (1992). P. 213.

¹⁰⁶ Derrida (1992). P. 213.

“iterability” —the repeatable yet always different confrontation with the text— of literature is similar to the singularity of law, and thereby helps us understand the perennial conflict between the “singular occurrence and a general law” inherent in law. In other words, there is a tension in law where we must be careful the general rule does not reign supreme at the expense of any appreciation for the singular. Therefore, Derrida’s discussion of iterability is integral for our understanding of both literature and law: it shows how each text and each case of law must be met with completely fresh scrutiny. This appreciation for the singularity of literature also bolsters my argument for why literature is particularly apt for our comprehension of morality: literature’s acknowledgement and affirmation of the singular matches the uniqueness of moral conundrums. This argument will return in the final chapter of this thesis.

I also explained how Derrida’s insights on genre are helpful for our understanding of law and legal alienation. I argued how a move to more generality will occur with the increased supremacy of supranational institutions. This is dangerous because globalization and a centralized, top-down view of law moves law away from man, thereby overemphasizing generality at the expense of the singular. Understanding Derrida’s insights on genre and the overflowing of boundaries teaches us that we must affirm the singular and rein in the generalized, top-down view that globalization implies.

After the discussion of Blanchot and genre I turned to Derrida’s discussion of *Before the Law*. Central in the text is the singularity of our relationship to law and the difficulty of reconciling this singular experience with the generality of law. Being before the law is an image that expresses this encounter between law’s generality and the singular experience of attempting to access law. I showed how Derrida is in fact examining an inherent tension in law, where the difficulty of reconciling the law’s necessarily general phrasing with its application to a concrete case is examined, whereas my discussion of legal alienation concerns an estrangement that is exterior to law, having to do with the space between man and law.

Before the Law showed how literature, just like law, has a paradoxical logic of boundaries, and how both law and literature constantly have to deal with the categorical engaging the idiomatic. Derrida has therefore proved paramount in showing the important similarities between law and literature. The implications of this similarity will be central in the final

chapter of this thesis, where I will show how our approach to law and morality can be trained by our engagement with literature, precisely because of their similar tension between the categorical and the idiomatic.

So, Derrida has shown that the similarities between literature and law make literature particularly well-equipped for bolstering our understanding of law. I will now turn to my analytical approach of legal alienation, to complement my literary approach and to elucidate the specific manifestation of legal alienation in the EU that is my focus in this thesis. In order to do so, I will once again first use a literary text to introduce the relevant legal philosophy. I will then expound on the legal philosophy of H.L.A. Hart. And finally, I will offer an interpretation of the *Before the Law* parable that is different from Derrida, but explains much about the specific manifestation of legal alienation that is my concern in this thesis.

Chapter 3: Legal alienation: an analytical approach

3.1 *The Grand Inquisitor*

In Dostoevsky's masterpiece *The Brothers Karamazov* there is a short story, told by the troubled Ivan to his saintly brother Alyosha, about Christ returning to Earth in the 16th century during the violent Inquisitions occurring throughout Europe. This story is, just like *Before the Law* in Kafka's *The Trial*, a parable that could very well stand on its own. The parable is called *The Grand Inquisitor* and tells the story of Christ performing miracles in Seville in the 16th century, after which he is arrested by the local Inquisitor. The Inquisitor admonishes him for returning to Earth, saying to Christ that he has no right to "add anything to what you already said once".¹⁰⁷ Ivan points out that this implies that Christ might as well not have returned. The Inquisitor boasts that people have renounced their freedom by giving it to the Church and are happier for it.

Ivan struggles with the question of theodicy. He represents a cynical view of human nature, one where human freedom and choice are burdens without which we would be better off. Ivan argues that Christ should have accepted the serenity that comes with succumbing to the Devil's authority and rule. The docility with which the crowd acquiesces to the Inquisitor's demand that Christ be arrested shows their willingness to obey authority. Their meekness is meant to underscore Ivan's main point: man is better off without freedom and the terrible anguish of choice and personal responsibility.

But I think this story can also be interpreted as a parable on the alienation between man and law. My interpretation of this parable will once again show how literature can help us conceptualize legal alienation. Imagine that Christ in this story personifies justice or law. The Inquisitor then represents a distorted law or authority. Exactly what I mean with this distinction between these two forms of law will become clear when I discuss Hart's legal philosophy. After witnessing Christ's miracles the crowd is completely enthralled by him. However, when the Inquisitor orders his arrest the crowd disperses and meekly allows the authority, or perverted law, of the Inquisitor to triumph over Christ's true law. There is something deeply peculiar here. The Inquisitor as an agent of the Church derives his power from the fact that he is a representative of God on earth. Surely, then, Christ should

¹⁰⁷ Dostoevsky (1881). P. 250.

supersede any authority or legitimacy the Inquisitor might have. But somehow the crowd does not see this obvious fact. They have become accustomed to obeying the Inquisitor, even at the expense of Christ himself. In my opinion a similar phenomenon in our legal system might alienate man from law.

Alienation from law occurs when something integral to law has been distorted or undermined. This perverted form of law causes man to be estranged from law. However, man still follows this perverted law out of habit or obedience to authority. In the same way, the crowd is alienated from their faith: they follow a mere representative of Christ instead of Christ himself. It should be noted that this alienation is different from the inherent tension that resides within law, as I touched on in the previous chapter. This tension is caused by the difficulty of reconciling the law's necessarily general phrasing with its application to a concrete case. This tension is intrinsic to law, whereas the alienation I am concerned with now is exterior: it concerns the relationship between man and law.

To put this more precisely, the estrangement is one that occurs when a distance has been created between man and law, just like a distance between the crowd and Christ occurs in the parable. This distance is created by putting between man and law a great deal of institutions or representatives that obscure rather than reveal law. In the parable of *The Grand Inquisitor* the Church as an institution and intermediary muddled the message of Christ; in our present society supranational institutions such as the European Union might similarly obscure a clear vision of the law.

To elaborate on man's estrangement from law I will have to present my view on what law is exactly. The aforementioned notion of perverted law vis-à-vis proper law will then also become clear. Specifically, in order to explain how law can be perverted I will have to offer an account of exactly what constitutes law —and how this might be different from law in the EU. Therefore, I will turn to a theory of legal philosophy that illustrates how our relationship to law has subtly changed. This theory is the legal positivism espoused by H.L.A. Hart.

3.2 The concept of law

Hart was a proponent of legal positivism, a doctrine that, in short, takes law to be identifiable by formal criteria. His legal positivism was a response to the simple model of

Austin, which sees law merely as an order backed by threat.¹⁰⁸ In his *The Concept of Law*, Hart seeks to explain how law is much more than just an order backed by threat. Surely, Hart reasons, law is different from a gunman ordering you to do something? Central in his work is Hart's attempt to explain how rules are not just predictions that hostile reaction will follow, but also a reason or justification for such reactions and for applying sanctions.¹⁰⁹

To explain this, Hart distinguishes the internal from the external point of view of law. In the external view we are mere observers of the rules, while in the internal view we are members of the group who accept and use the rules as guides for our conduct.¹¹⁰ According to Hart, Austin misjudges legal rules when he only sees them as obligations without any psychological foundation in the legal subjects in the form of beliefs and motives to follow the rules. The rules aren't just predictions that hostile reactions will follow, but are a *reason and justification* for these hostile reactions and sanctions to follow, Hart argues. The internal view explains the actions, motives and purposiveness of agents.¹¹¹

The external view would be one taken by an alien visiting earth and observing the local traffic rules. After some time the alien would observe that a red light means traffic will come to a halt. The alien would not yet say traffic *should* come to a halt. The internal view of legal subjects is different from the external view of the alien, because the alien does not have a "critical reflective attitude to certain patterns of behavior" and he would consequently not display this in the form of "criticism, demands for conformity, and in acknowledgements that such criticism and demands are justified".¹¹² The internal view therefore finds expression in the normative terminology of "ought" and "must".¹¹³ When it comes to law, Hart claims, we take the internal view: we take legal rules to be a reason and justification for certain conduct.

This distinction between the external and internal view is helpful for explaining the alienation between law and man that I think might be occurring in the EU. A distance between the law and man as a legal subject has reduced him to a mere observer of the

¹⁰⁸ Hart, H.L.A. *The Concept of Law*. Clarendon Press Oxford 1994. Second Edition. P. 6

¹⁰⁹ Hart (1994). P. 84.

¹¹⁰ Hart (1994). P. 89.

¹¹¹ Hart (1994). P. 41.

¹¹² Hart (1994). P. 57.

¹¹³ Hart (1994). P. 57.

rules. And when the internal view is lost, the rules lose that essential characteristic that confers on them the name of law. Legal rules then only create mere predictions that hostile reactions will follow disobedience, instead of being a reason and justification for refraining from certain conduct. This would mean law loses something essential: people would only follow law to escape sanctions, not because they believe they should.

However, according to Hart this is not all that distinguishes law from an order backed by threat. People take legal rules to be a reason and justification for certain conduct not because of their content, but because of certain formal criteria that have been met in establishing the legal rules. In Hart's line of reasoning, rules still count as law if the formal criteria for establishing those rules have been met. And here lies another indication for why a distance has been created between law and man. It is my contention that one crucial formal criterium Hart formulates has eroded in our current society, tarnishing law and the internal view. Crucially, I think the criterium of pedigree has been undermined —and the relationship between man and law distorted.

3.3 Pedigree and a democratic deficit

Hart presents a clear structure of law and how it is different from mere orders backed by threat. According to Hart, law consists of primary rules supplemented with secondary rules.¹¹⁴ Primary rules are concerned with what individuals must or must not do; secondary rules are concerned with the primary rules. The secondary rules remedy certain deficiencies of a primitive primary-rules-only society: they deal with the uncertainty, static character, and inefficiency of law in such a simple society.¹¹⁵ For my thesis the uncertainty of law will be my sole focus here.

To see why these secondary rules are necessary we can envision a primitive society with only primary rules. Such a society would have a lot of uncertainty about which rules exist in the first place, so an acknowledgement of the authority of a certain inscription or writing would be needed to dispose of doubts about the existence of a rule.¹¹⁶ This is called the rule of recognition. In short, it tells us which procedures are to be followed in order for a rule to gain the status of law. In other words, the rule of recognition provides the criteria by which

¹¹⁴ Hart (1994). P. 91.

¹¹⁵ Hart (1994). P. 94.

¹¹⁶ Hart (1994). P. 94.

the validity of other rules of the system are assessed.¹¹⁷ Key to this rule of recognition is that it is ultimate, meaning it does not exist in virtue of any other rule: it is simply accepted. As Hart points out: “For whereas a subordinate rule of a system may be valid and in that sense ‘exist’ even if it is generally disregarded, the rule of recognition exists only as a complex practice of the courts, officials, and private persons in identifying the law by reference to certain criteria. Its existence is a matter of fact.”¹¹⁸ The rule of recognition must therefore be accepted as “common public standards of official behavior”¹¹⁹.

If man’s understanding of law is determined by pedigree —i.e., the rule of recognition— we should look at the formal criteria that determine the proper way of establishing law.

Nowadays, more than ever, citizens in the member states of the European Union are subject to the supranational jurisdiction of the European Union. The laws and regulations of the European Union supersede our national laws. This primacy of EU law over national law was established in the hallmark case of *Costa v ENEL* back in 1964.¹²⁰ This seminal case resulted in a weakening of the sovereignty of the nation-state. It is my contention that it has also compounded the EU’s democratic deficit, thereby damaging the rule of recognition and resulting in legal alienation.

The lack of accountability of the EU’s institutions and a lack of democratic accessibility for ordinary citizens is referred to as the democratic deficit of the European Union. In short, this democratic deficit means there is no effective way for ordinary citizens to reject or engage with European politics, a lack of accountability for its institutions, and an opaque political process.¹²¹ National parliamentary control of the EU is weak, and the only body of the European Union that has elections, the European Parliament, has very limited power. The powerlessness of the ordinary citizen engendered by this democratic deficit is perhaps best expressed by the consistently low turnout for the elections of the European Parliament.¹²² It is this impotence of the ordinary legal subject in the face of the EU that has weakened

¹¹⁷ Hart (1994). P. 105.

¹¹⁸ Hart (1994). P. 110.

¹¹⁹ Hart (1994). P. 116.

¹²⁰ 6/64 *Costa v ENEL*. 1964 ECR 585.

¹²¹ Crombez, Christophe. *The Democratic Deficit in the European Union. Much Ado about Nothing?* European Union Politics Volume 4 (1) 2003. P. 105.

¹²² Found on: <https://www.statista.com/statistics/300427/eu-parlament-turnout-for-the-european-elections/>

acceptance of the rule of recognition for the EU's laws, and pushed legal subjects from the internal view into the external view. This shift can lead to legal alienation.

I should note that I am not going to discuss to what extent this democratic deficit exists, because this is still up for debate. However, I do not think this is a problem for the purpose of this thesis. Alienation is something that is felt. So, if people experience powerlessness and perceive a lack of democratic accountability this can already lead to a distance being created between man and law. A perceived democratic deficit would then lead to people no longer accepting the rule of recognition.

3.4 An alternative reading of *Before the Law*

Let me return to the parable of the Grand Inquisitor. The distance between the crowd and Christ I equated to the distance between man and law. Through the dogmas of the Church and its many representatives the crowd had grown estranged from Christ himself. In the same way, man as a legal subject has been confused by the many distant and seemingly inefficient institutions of the European Union. The rule of recognition has therefore eroded. Because of this, citizens no longer feel connected to the law, and instead, the internal view having been traded in for the external view, they only follow authority out of habit without actually subscribing to the rules. The crowd in the parable, just like legal subjects of the European Union today, only observe — they no longer truly believe.

The arguments presented above also lead me to an alternative reading of Kafka's parable *Before the Law*. The doorkeepers in my reading represent the institutions assigned with the task of both safeguarding and providing access to law. The man from the countryside is then an ordinary legal subject. In the parable the doorkeeper tells the man from the countryside that he cannot provide access to the law at this time. This confuses the man from the countryside, because he came to the law thinking it would be accessible to him. Is the law not meant for him? However, just like the crowd in Dostoevsky's parable, the man from the country acquiesces and waits until the end of his time. So, we see here once again how the power, or mere presence, of institutions is enough to discourage man from attempting to access law. Man accepts the authority of the institutions, yet remains an observer outside the law: he has taken the external view. Another poignant point is the fact that the doorkeeper warns the countryman that there are many other, even more imposing,

doorkeepers further on. To me this is a clear illustration of the opaqueness and distance created by the very institutions tasked with safeguarding and dispensing law. These institutions are meant to carry out the law, but instead only frustrate the legal subject's attempt to access and understand law. The daunting prospect of circumnavigating the obstacles thrown in the way by the many institutions —the doorkeepers— is enough to dishearten anyone attempting to access the law.

3.5 Conclusion

This chapter has complemented my literary approach with an analytical approach, buttressing our understanding of legal alienation. Hart's legal philosophy elucidated the specific manifestation of legal alienation in the EU that is my sole focus in this thesis. I began this chapter by sharing Dostoevsky's parable of the *Grand Inquisitor*, thereby illustrating how a perversion of authority can cause estrangement. I argued that a similar phenomenon has occurred through globalization, resulting in legal alienation.

To explain exactly what aspect of law I take to be perverted I turned to the legal philosophy of Hart. His distinction between the internal and external view showed how people can follow rules out of habit or prudential reasons instead of actually subscribing to these rules. Hart also distinguished between primary and secondary rules, showing how the secondary rules, determining how we should recognize primary rules, are integral to us considering something law. Specifically, I showed how the rule of recognition is key for something to be considered law. However, I argued that the European Union has weakened and undermined this rule of recognition as a result of its perceived democratic deficit. This powerlessness has created distrust in the European Union's legislative process, leading to people no longer accepting it as a proper pedigree for law. However, people will still follow the rules out of prudential considerations, thereby becoming mere observers instead of actually subscribing to the rules. Thus, law has been perverted. This creates an alienating distance between man and law.

I then offered a final reading of the *Before the Law* parable that portrays this legal alienation. I showed how the countryman's appearance before the doorkeeper represents the distance created between man and the institutions in charge of formulating and safekeeping the law. The many, obscure doorkeepers represent the many obstacles that

impede the ordinary legal subject's access to law. Man is thereby a mere observer left waiting at the door, and law becomes an abstraction that is inaccessible and alien.

By now it should be clear exactly what I take legal alienation to be, including its possible manifestation in the European Union. However, throughout my thesis thus far a certain unspoken supposition has been present. This is the notion that literature can convey important truths about complex issues such as alienation. Indeed, that is why in the first chapter I used literary works to gain insights into legal alienation. In the next chapter I will clarify why I think literature can provide these insights. The next chapter will therefore answer my third sub-question, explaining why and how it is that literature can provide profound insights into morally complex issues.

Chapter 4: The value of literature

4.1 Literature as moral philosophy

Both dramatic poetry and philosophical inquiry in ethics are concerned with the ultimate question of how human beings should live. As Martha Nussbaum tells us, the ancient Greeks did not consider aesthetic questions and moral-philosophical questions to be separate sets of questions in the area of human choice and action.¹²³ Similarly, in my view literature is just like the tragic drama in ancient Greece a way to engage with moral issues. We must reclaim this wisdom of the Greek world in which art was thought to be a practical and communal project toward self-understanding.¹²⁴ Therefore, in this chapter I will argue that literature serves, like Socrates, as a midwife that can guide us through the intricacies of moral choice. It does not avoid the complexity and perplexity prevalent in morality and everyday ethical problems, but bolsters our moral imagination so we can navigate the treacherous terrain of ethical deliberation. This chapter will show how literature is conducive to enriching our understanding of legal alienation.

Nussbaum follows Henry James and Marcel Proust in claiming that “certain truths about human life can only be fittingly and accurately stated in the language and forms characteristic of the narrative artist”.¹²⁵ In this view, literature, as the ultimate expression of the narrative artist, is an invaluable part of our efforts to comprehend important truths in law and morality. Nussbaum believes literary texts draw us into a “complex activity of searching and understanding” that provides us with the tools necessary for moral deliberation.¹²⁶ Reading literature is therefore an act that belongs to the domain of moral philosophy.

Nussbaum points out that the style mostly associated with the abstract theoretical treatise cannot adequately convey certain important truths about our world. This is why the literary style is so important. But in the case of law many will argue that we seem to purposefully maintain a rather bland, non-narrative tone, because this is meant to convey a sense of neutrality and objectivity. However, I will argue that an emphasis on neutrality and a non-

¹²³ Nussbaum, Martha. *Introduction: Form and content, philosophy and literature*. Found in: *Love's Knowledge. Essays on Philosophy and Literature*. Oxford University Press 1990. P. 15.

¹²⁴ Nussbaum (1990). P. 16.

¹²⁵ Nussbaum (1990). P. 5.

¹²⁶ Nussbaum (1990). P. 6.

narrative style strips us of something crucial. Importantly, I am not arguing that all law should be written in a more literary form, but rather that an engagement with literature is desperately needed if we want our relationship with law to remain one of true understanding and proper moral exploration.

If I am to argue that literature is a form of moral philosophy, I must first establish what I consider moral philosophy.¹²⁷ For Aristotle the purpose of moral philosophy was to determine how to live the good life. I follow Aristotle and Nussbaum in saying that ethics is an active, practical search for the “specification of the good life for a human being”.¹²⁸ This means that moral philosophy is a “working-through of the alternative theoretical conceptions”. And literature stimulates this working-through of alternative conceptions.

This conception of ethics is of course very different from, for example, a rigid Kantian interpretation that would reject the notion of moral edification through literature because of its empirical and contingent content. Of course, Kant had a lot to say about the aesthetic judgement as well, but his emphasis on reason in ethics is what, to me, seems somewhat misguided. Edification through literature has the benefit of being tailored to the individual, because the individual is offered an array of moral lessons that might be particularly relevant for their lives. Literature, like life, is multi-faceted and diverse. Contrary to a Kantian categorical moral imperative, literature will therefore more accurately reflect our experiences and obstacles. Additionally, another aspect to consider is a person’s susceptibility to moral edification. Literature augments this susceptibility to moral edification, because its moral lessons are offered —not imposed— through immersive storytelling. Just like Proust, James, and Nussbaum, I believe that only through the literary narrative style can certain “important truths about the world”¹²⁹ be fully grasped and conveyed; only through the “richness of reflection”¹³⁰ present in literature can the winding roads through our moral landscape be navigated. And only as an “active adventure of the deliberative intelligence”¹³¹ are we engaged in moral philosophy in a meaningful way.

¹²⁷ Nussbaum, Martha. *Flawed Crystals: James’s The Golden Bowl: Literature as Moral Philosophy*. Found in: *Love’s Knowledge. Essays on Philosophy and Literature*. Oxford University Press 1990. P. 138.

¹²⁸ Nussbaum (1990). P. 139.

¹²⁹ Nussbaum (1990). P. 6.

¹³⁰ Nussbaum (1990). P. 141.

¹³¹ Nussbaum (1990). P. 142.

Nussbaum rightly points out that moral deliberation is not a “fixed antecedent ordering or ranking among values” but rather a matter of “intuitive perception and improvisatory response”.¹³² Indeed, both moral problems and literature must be approached with a responsive, intuitive perception and a willingness to alter your “prima facie conception of the good in the light of the new experience”.¹³³ This means that both literature and moral philosophy demand a “cognitive engagement of both thought and feeling”. Reading literature is an activity of “exploration and unraveling that uses abilities, especially abilities of emotion and imagination, rarely tapped by philosophical texts”.¹³⁴ Nussbaum makes the excellent point that emotion and imagination are crucial parts of the moral assessment process that are often ignored in traditional philosophical texts. It is Nussbaum’s affirmation of our very natural moral bewilderment that makes her argument especially appealing, because, like Aristotle, she understands that moral theory is a “matter of the practical”.¹³⁵ It seems to me that this approach to moral theory is the only one that fully embraces the sheer complexity of moral choice.

Nussbaum argues that our ethical task of living well can only be accomplished by an “intense scrutiny of particulars”.¹³⁶ And it is through engagement with the novel that this moral attention is developed. The term “novel” seems particularly apt, considering it is the novel’s ability to confront us with novelty that awakens our moral imagination. I have already mentioned how literature is well-equipped to train our moral imagination, because it can help us navigate the complexities of moral choice.¹³⁷ Let me now elaborate on this moral imagination.

4.2 The moral imagination

Imagination is often considered the “free play of images and ideas unconstrained by reason”.¹³⁸ Morality, on the other hand, many would consider a system based on rational principles. At first glance a moral imagination might then seem like a *contradictio in*

¹³² Nussbaum (1990). P. 141.

¹³³ Nussbaum (1990). P. 141.

¹³⁴ Nussbaum (1990). P. 143.

¹³⁵ Nussbaum (1990). P. 141.

¹³⁶ Nussbaum, Martha. “*Finely Aware and Richly Responsible*”: *Literature and the Moral Imagination*. Found in: *Love’s Knowledge. Essays on Philosophy and Literature*. Oxford University Press 1990. P. 148.

¹³⁷ Nussbaum (1990). P. 149.

¹³⁸ Johnson, Mark. *Moral Imagination*. Found in: *The Routledge Handbook of Philosophy of Imagination*. Edited by Amy Kind. Routledge Taylor & Francis Group New York 2016. P. 355.

terminis. This view is a result of the pre-eminence of rationalistic moral theories, such as Kant's theory of pure practical reason. It is my contention, however, that the imagination is constitutive of moral deliberation. Sadly, throughout history this has mostly been a minority view, marginalized by the hegemony of rationalistic moral theories, such as that of Kant.

Kant argued that moral laws must be universally and necessarily binding on all rational creatures and that empirical (a posteriori) considerations based on experience must be rejected, because they cannot serve as categorical, absolute truths. Our particular concrete experience must, for Kant, be brought under the moral imperative. So, Kant considers our use of imagination as a surrender of authority over oneself —or a subordination of rationality to frivolous imagination.

In the early twentieth century John Dewey took aim at the rationalist conception of morality, considering it an attempt to “freeze conceptions of right and wrong for all time, based on the erroneous assumption that we inhabit a closed and completed moral universe that operates under the constraint of absolute moral laws adequate for appraising any possible ethical situation”.¹³⁹ Instead of this limited view, Dewey argued we need an “intelligent process of moral inquiry that helps us resolve conflicts, harmonize competing values, and expand possibilities for growth of meaning”.¹⁴⁰ The imagination, more so than reasoning, allows for a dynamic, fluid, and exploratory process. The exploratory nature of moral problem-solving through our use of imagination is in essence a “rehearsal of possibilities for developing various courses of action”: it is our imaginative projection.¹⁴¹

If imagination is in large part just our brain running simulations, it becomes important for our mind to be trained in running these simulations. And it is by engaging with literary texts that we are prompted to imagine, feel, and understand other people's inner worlds and simulate their experiences and feelings. Literature is a playground for our imaginative projection, enabling us to develop our empathy —i.e., the “vicarious sharing of an affective state”¹⁴²— and become morally sensitive agents.

¹³⁹ Johnson (2016). P. 361-362.

¹⁴⁰ Johnson (2016). P. 362.

¹⁴¹ Johnson (2016). P. 363.

¹⁴² Stueben, Karsten. *Empathy and the imagination*. Found in: *The Routledge Handbook of Philosophy of Imagination*. Edited by Amy Kind. Routledge Taylor & Francis Group New York 2016. P. 369.

Nussbaum maintains that the act of imaginative interpretation draws out that which is morally salient. Moreover, the images presented to us are only salient because there is a certain “lyrical splendor”.¹⁴³ In other words, the moral imagination is activated by the richness of the novel’s text. Importantly, this tells us that moral knowledge is not simply the “intellectual grasp of propositions”.¹⁴⁴ Rather, it is a reflexive, responsive perception that is permeated with imagination and feeling. That which is morally pertinent cannot be presented through a summary or a set of propositions, but can only be experienced, felt, and profoundly imagined. Therefore, anything less than a true engagement with the text and its imagery would be to reduce and devalue moral meaning. It would mean we are confining ourselves to the universal at the expense of the particular.¹⁴⁵ Instead, according to Nussbaum ethical problems should be approached through a dialogue of “mutual involvement”¹⁴⁶ between the particular and the rule-governed universal. It is important to note that this does not mean that Nussbaum discards the moral role of general rules altogether. She merely attempts to show how these rules can only be understood when shown “inside a story that situates rules in their appropriate place vis-à-vis perceptions”.¹⁴⁷ Through literature this dynamic back-and-forth and the “irreducibly particular character of a concrete moral context”¹⁴⁸ is elicited —and our moral imagination activated. This irreducibly particular character also reminds us of Derrida’s observation that literature, like law, lacks a pure essence, meaning a certain irreducible uncertainty will always remain. Literature is the place, as Derrida said, where we experience this issue of a lack of specificity. Literature’s acknowledgement and affirmation of the singular matches the uniqueness of moral conundrums. It is therefore particularly apt for dealing with the irreducibly particular character of a concrete moral or legal context.

Some will contest this argument and wonder how an obtuse, morally insensitive reader of any novel will somehow find his moral imagination stimulated. How can someone lacking the moral abilities literature allegedly fosters be open-minded enough to allow those moral abilities to be developed in the first place? Nussbaum responds by pointing out that in our

¹⁴³ Nussbaum (1990). P. 152.

¹⁴⁴ Nussbaum (1990). P. 152.

¹⁴⁵ Nussbaum (1990). P. 157.

¹⁴⁶ Nussbaum (1990). P. 159.

¹⁴⁷ Nussbaum (1990). P. 160.

¹⁴⁸ Nussbaum (1990). P. 162.

personal lives there are many obstacles that blind our perception of the particular, such as personal interests, motives or bias. A novel is different because it is removed from our personal lives: it “places us in a moral position that is favorable for perception”¹⁴⁹, and it prompts us to see things from a different perspective.

4.3 A different kind of knowledge

Throughout the arguments presented by Nussbaum, a certain unusual perspective on knowledge can be discerned. This “knowledge of the heart” is opposed to the more familiar account of knowledge as a scientific matter that is exclusively situated in the intellectual realm.¹⁵⁰ It is Nussbaum’s central claim that the intellect is not a “sufficient criterion of truth”.¹⁵¹ As literature shows us, emotional reactions penetrate deeper into our mind than our deceptive rationalizations accomplish through intellectual self-scrutiny. Through a comparative cost-benefit analysis the intellect closes us off from truly recognizing and experiencing the depth and importance of many matters close to the heart.¹⁵² Therefore, the process of intellectual scrutiny can be a process of self-deception and complacency that impedes any further, meaningful inquiry into the self, whereas there is a profound inescapable meaning intrinsic in emotive reactions. As Proust says, the only “true voyage” is that in which we “see the universe through the eyes of another”.¹⁵³

This view on knowledge has roots in antiquity. The Stoic philosopher Zeno argued that, as Nussbaum puts it, certain “perceptual impressions” by their own internal character “certify their own veracity”.¹⁵⁴ This creates a cataleptic condition: a “condition of certainty and confidence from which nothing can dislodge us”.¹⁵⁵ Proust called this an “indelible imprint”¹⁵⁶, and Camus said something similar when he wrote that “like great works, deep feelings always mean more than they are conscious of saying”.¹⁵⁷ So, in this view powerful impressions impress on us a reality that is inescapably true. These impressions are so

¹⁴⁹Nussbaum (1990). P. 162.

¹⁵⁰ Nussbaum, Martha. *Love’s Knowledge*. Found in: *Love’s Knowledge. Essays on Philosophy and Literature*. Oxford University Press 1990. P. 263.

¹⁵¹ Nussbaum (1990). P. 263.

¹⁵² Nussbaum (1990). P. 264.

¹⁵³ Proust (1923-1925). P.343.

¹⁵⁴ Nussbaum (1990). P. 265.

¹⁵⁵ Nussbaum (1990). P. 265.

¹⁵⁶ Proust (1923-1925). P. 570.

¹⁵⁷ Camus (1955). Ch.: Absurd Walls.

intense, vivid and uncontrollable that they must be real. And more importantly, Nussbaum argues that the act of suffering these overwhelming impressions is knowledge, in the same way that turning away from these impressions would be to deny oneself knowledge of one's heart.¹⁵⁸ The cataleptic impression is therefore not a route to knowledge but *is* knowledge. As Camus said, "great feelings take with them their own universe, splendid or abject".¹⁵⁹ By responding with anguish we are comprehending what is true, because the suffering itself is a piece of self-knowing.¹⁶⁰ To illustrate her point she employs a chemical analogy used by Proust. A catalyst, she tells us, does not reveal chemicals that were there all along. Instead, it produces a chemical reaction that both reveals a chemical structure and creates something entirely new. The cataleptic impressions act in the same way.

This view on knowledge and the cataleptic impression is not without problems. An obvious argument against this view is that emotions, surely, can also be deceptive in the same way that the intellect can be. Although this is a legitimate worry, I think that we should not too readily dismiss Proust's¹⁶¹ and Nussbaum's line of thought. We should be cognizant of the fact that intellectual introspection has its limitations and that impressions can help us acknowledge our own "vulnerability and incompleteness".¹⁶² At the same time, we should note that our impressions are also not infallible. Indeed, the solitary nature of cataleptic impressions incorporates no "element of mutuality or exchange" and must therefore be approached with caution.¹⁶³ This is why Proust advocates we reflect on our impressions using our intellect, thereby linking and generalizing these impressions into general laws and ideas.¹⁶⁴ Our impressions are then the raw material from which our intellect extracts generality. So, even though cataleptic impressions have a certain evidential value, we must be wary they do not push us into a dangerous solipsism.

If we accept this view on knowledge, we must conclude that most philosophical texts do not evoke any emotive, cataleptic impressions. Philosophical texts are overwhelmingly skeptical

¹⁵⁸ Nussbaum (1990). P. 268.

¹⁵⁹ Camus (1955). Ch.: Absurd Walls.

¹⁶⁰ Nussbaum (1990). P. 267.

¹⁶¹ Proust (1923-1925). P. 215: "[...] our knowledge is not of the external objects which we want to observe, but of involuntary sensations [...]".

¹⁶² Nussbaum (1990). P. 270.

¹⁶³ Nussbaum (1990). P. 271.

¹⁶⁴ Nussbaum (1990). P. 272.

and mistrustful, whereas narrative stories require openness of the reader.¹⁶⁵ At the same time, Nussbaum reminds us, it is philosophy that shows us the limits and boundaries of the story through a reflective, intellectual attitude. So it seems a balance must be found, where “knowledge conveyed in emotional impressions must be systematized and pinned down by the activity of reflection”.¹⁶⁶

Camus had similar thoughts about knowledge and literature as Nussbaum. Camus tells us the absurd novelist does not believe in a “principle of explanation”, but considers art “both as an end and a beginning”. According to him, the absurd work of art must signify nothing more than itself. It is carnal and but a piece of experience that does not aim to explain itself. The absurd novel is therefore opposed to the thesis-novel, where a thesis is illustrated and a truth shared. Camus detests this form, considering it smug, whereas the absurd novel is limited, mortal, and rebellious.¹⁶⁷ Just like Nussbaum he therefore denounces a dry, instructive tone, and instead advocates a literary style that speaks to something more than just the intellect. In essence, Camus’ vision of the absurd novel seems to personify that well-known adage that is often applied to literature: “show, don’t tell”. Some of these novelists who illustrate this “divorce and revolt” more so than any other are Dostoevsky and Kafka, which is why they seem capable of helping us profoundly understand complex feelings and moral challenges, such as alienation.

4.4 Kafka: understanding legal alienation through the moral imagination

So far, I have argued two main points. First of all, I have shown that moral philosophy cannot be conceived of without taking into account the important role our moral imagination plays in our moral problem-solving. Secondly, I have argued that literature is the medium *par excellence* for developing our moral imagination. However, there is an additional point that follows from these arguments. Moral philosophy is not some abstract, theoretical endeavor. Indeed, as Aristotle and Nussbaum remind us, moral philosophy is very much a practical, everyday activity. Therefore, considering that our moral imagination is an integral part of moral philosophy, we are practicing moral philosophy every time we contemplate moral choice, either when we are confronted by moral problems ourselves or

¹⁶⁵ Nussbaum (1990). P. 283.

¹⁶⁶ Nussbaum (1990). P. 285.

¹⁶⁷ Camus (1955). P. 84.

when we imagine and empathize with the moral trials and tribulations of others. It is important to acknowledge both the commonplace nature of moral philosophy and the importance of moral imagination, because it reveals how important moral imagination — and therefore literature— is for all areas of life, both professional¹⁶⁸ and personal.

That being said, in this thesis I mainly focus on the value of literature for our understanding of law and the plight of man as a legal subject. That is why in this thesis I have discussed works of literature that help us understand alienation, and in particular the phenomenon I have called legal alienation. I will now continue to show why literature can specifically help us understand legal alienation. However, first a distinction needs to be made between a discussion of “law in literature” and a discussion on “law as literature”.¹⁶⁹ Law as literature focuses on applying literary critique to legal texts. Law in literature, on the other hand, discusses the possible relevance of literary texts for our understanding of law. It is this latter discussion that I will be concerning myself with.

Throughout history there have been legal traditions that incorporate metaphor and parables as their primary form of legal texts. Notable instances are the central place of parables for the legal tradition of the native peoples of North America, and the use of parables and metaphors in the Sharia and Talmud for Islamic and Jewish law respectively.¹⁷⁰ As Kierkegaard claimed, storytelling and metaphor help us approach those “grand questions of law” with sensitivity where a direct approach is not always possible.¹⁷¹ More importantly, literature offers a different approach from the scientific worldview that reigns supreme in our modern times. Art, such as literature, should complement this worldview. As Ian Ward said quite accurately, through literature we can examine and profoundly understand the “alienation of the individual in the modern analytical legal world”.¹⁷²

Kafka’s work is a prime example of this. As Erich Heller astutely points out, K’s inability to understand the charge mirrors the reader’s feeling of nightmarish impotency engendered by the, at first glance, lack of discernible meaning in Kafka’s story.¹⁷³ The feeling of unease and

¹⁶⁸ Weisberg, Mark & Duffin, Jacalyn. *Evoking the Moral Imagination: Using Stories to Teach Ethics and Professionalism to Nursing, Medical, and Law Students*. Journal of Medical Humanities 1995.

¹⁶⁹ Ward (1995). P. 3.

¹⁷⁰ Ward (1995). P. 5

¹⁷¹ Bonsignore, John. *In Parables: teaching through parables*. Legal studies forum, 12 (1988). P. 207

¹⁷² Ward (1995). P. 10.

¹⁷³ Heller, Erich. “*The Trial*.” *Franz Kafka*. New York: Viking Press 1974. P. 71-79.

discord present in all of Kafka's work is compounded by the unsettling mixture of a naturalistic style of writing with an irrational, dreamlike sequence of events. Another great example of this is the matter-of-fact tone with which at the beginning of *The Metamorphosis* Kafka announces to the reader that Gregor Samsa woke up one day to find himself transformed into an insect. Kafka's work presents, as Heller puts it, a "sensible vision of an insensible world".¹⁷⁴ The disconcerting feeling this generates gives us a glimpse into the whirlwind of emotions the protagonist must be experiencing. Our mirroring of K's and Samsa's inner world is a good example of how literature stimulates that state of mind most conducive to true (moral) comprehension: the imagination. In a similar vein as Kafka, the narrator's polemic tone in Dostoevsky's *Notes from Underground* mirrors man's polemic nature, our irrational and rebellious side. Dostoevsky thereby also places us in the mind of the narrator and shows us that the "unsightliness" of man is something which we must not turn away from.

Besides mirroring the feelings of confusion, Kafka also stimulates our moral imagination by incorporating paradoxes in his stories. By making us engage with these paradoxes he helps us navigate the ambiguities, and at times seemingly paradoxical nature, of moral problems as well. The paradox is built on the "castration of logic"¹⁷⁵, as Heller puts it. It thrives on incompatibility and discord. The logic that is undermined in Kafka's work is that of a reasonable world. With this I mean that we have a certain reasonable notion of how things should unfold in the world, yet in Kafka's work events occur capriciously and nightmarishly. A paradox baffles us in the same way: it engenders the same feeling of disquiet and unreasonableness that permeates Kafka's work. Might we not say that Kafka's works are paradoxes transmuted into stories? And just as with paradoxes, those who are confronted with Kafka's work will fall short in their interpretation, in their desire for a logical solution to the problem presented. Our attempts to resolve a paradoxical problem are, just like our interpretations of *Before the Law*, merely "expressions of the despair engendered by this".¹⁷⁶

¹⁷⁴ Heller (1974). P. 73.

¹⁷⁵ Heller (1974). P. 76.

¹⁷⁶ Kafka (1925). P. 174.

This view of Kafka's work explains why the inconclusiveness of, for example, *The Trial* should not be lamented but affirmed, because it reflects the protagonist's confusion and failure to grasp up until the very last moments of his life exactly what he is punished for. It helps us understand the true depths of legal alienation. As Heller says, *The Trial* fails in "ethical logic" by failing to provide us an end to the many ambiguities present in the novel. But can we really call this a failure? If we take a view of ethics not centered on the stringently logical but with room for the imaginative, we accept the interstices and particularity of morality. We then might be more prone to accept or understand the unreasonableness of the world. This is something that Kafka can teach us. Morality does not come to us clear-cut with a definitive beginning and end. Instead, we must explore its depths, affirm our bewilderment, and extract meaning through our imaginative moral sensibility. Only then can we understand something as complex as legal alienation.

4.5 Literature: a possible remedy for legal alienation

So far in this thesis I have shown the way in which literature can help us understand legal alienation and law in general. However, I not only think literature can help us understand legal alienation, but I will now argue it can even be a possible, partial remedy for feelings of legal alienation. Literature's potential for salutary effects is in my view closely related to its capacity for helping us understand complex (moral) issues.

First of all, as I already discussed, the training of our moral imagination through literature fosters our ability, as Nussbaum said, to work through different theoretical conceptions. This means reading literature helps people develop the empathy necessary to see the other side of an issue. The advantages this provides for our dealing with legal alienation are abundant. For example, this training of the moral imagination and empathy would help legislators and government officials dealing with people suffering from legal alienation to truly understand their experience. The perceived inaccessibility of the law might then be accommodated by those officials, going beyond a strict adherence to law, and truly seeing the predicament of the legal subject.

So, literature can help us create a climate of understanding to counteract a rigid adherence to law, which might only estrange man and not provide the help he needs. However, in my view literature could provide more than just an encouragement for government officials or

the judicial authorities to help estranged legal subjects in their day-to-day dealings with them. Indeed, in my view literature can teach legislators and people in power how a new approach must be cultivated to law in general. Specifically, reading Dostoevsky or Kafka might alert those in power to the fact that a purely top-down, general approach to law is misguided. Literature might apprise them of the fact that, as Kafka and Dostoevsky showed, the foundation of rationalism for our legal order is not without problems. I think this reevaluation is particularly relevant now, because a top-down view is becoming more and more the norm as a result of increased globalization. This top-down view, needed in order to encompass increasingly larger territories, will come down to a worldview that is based on general, rational principles. Of course, a rationalistic, general approach is to a certain extent necessary —indeed, inevitable— to be able to address issues concerning a large population. However, as I have argued, this must not come at the cost of the singular experience of man before the law. And it is exactly this appreciation for the singular that literature can teach us, thereby helping us reevaluate and balance out a myopic, top-down (legal) worldview.

4.6 Conclusion

This chapter aimed to answer what exactly happens when we read literature and how this is conducive to enriching our understanding of complex issues, such as legal alienation. I have argued that literature can be considered moral philosophy. I showed how ethics is an active, practical search for the specification of the good life for a human being, meaning ethics is a working-through of alternative theoretical conceptions. This Aristotelean conception of ethics as a social study of human beings closely resembles literature.

Following Nussbaum, I then argued that certain truths about human life can only be accurately conveyed in the language and forms characteristic of the narrative artist. I argued how literature augments our susceptibility to moral edification by stimulating the moral imagination through immersive storytelling. I emphasized the exploratory nature of moral problem-solving and stressed that by reading literature our moral imagination can be cultivated, because literature helps us draw out that which is morally salient. Engaging with literature, just like engaging in moral deliberation, is a dynamic back-and-forth that acknowledges the irreducibly particular character of a concrete moral context. This explained how engaging with literature is conducive to enriching our understanding of legal alienation.

I then explained how a shift in our thinking is necessary if we are to truly appreciate the value of literature for us as moral agents. Moral philosophy is not just an intellectual enterprise. Only through the acceptance of our own vulnerability and an openness to the feelings and thoughts of others is our moral imagination awakened; only by acknowledging and employing our moral imagination are we properly equipped to confront ethical problems. And it is through exposure to the richness and moral diversity of literature that we are trained to do so.

After this discussion I turned to Kafka once again to show how literature's capacity for edification provided us with the insights presented in the first chapter. I explained how Kafka makes the reader mirror the protagonist's confusion and powerlessness, thereby creating and stimulating a state of empathy and moral imagination that is profoundly instructive for our understanding of the legal alienation at play in the story. Moreover, by creating a paradoxical, non-conclusive story where there is an apparent failure of ethical logic, Kafka teaches us that morality does not come to us clear-cut with a definitive beginning and end. Instead, Kafka teaches us how we must explore morality's depths, affirm our bewilderment, and extract meaning through our imaginative moral sensibility.

And finally, I presented several ways in which literature can potentially prevent certain feelings of legal alienation. First, reading literature trains the moral imagination and empathy, thereby helping legislators and government officials deal with people suffering from legal alienation and truly understand their experience. And secondly, literature might help lawgivers and people in positions of power develop an appreciation for the singular, making them reevaluate and balance out a top-down (legal) worldview that overemphasizes generality and legal principles.

Conclusion

I set out this thesis intending to answer several questions. My overarching goal has been to profoundly understand alienation—in particular legal alienation. My research question was to what extent literature is capable of enriching our understanding of legal alienation. I divided this research question into several sub-questions. First, through a thorough examination of literary works I answered what insights literature can offer into legal alienation. Second, I answered why literature is particularly well-equipped for bolstering our understanding of law, and therefore by extension legal alienation. And third, I answered what exactly happens when we read literature, and how this is conducive to enriching our understanding of legal alienation. So, what were my most important findings?

First of all, I illuminated my conception of legal alienation by identifying five forms or aspects of alienation. First, Camus' existential alienation showed us that alienation can be a slippery slope that might cause man to reject all sorts of firmly established institutions or truths. Second, Ellison's alienation through marginalization showed how legal alienation implies the severance of a connection between man and law, which is distinct from the alienation that occurs through marginalization. Third, Dostoevsky's idealistic alienation showed us how alienation can occur by emphasizing generality over particularity. This third aspect of alienation therefore illuminated something about the misguided mindset that might lead to legal alienation. Fourth, Kafka's depiction of the inaccessibility of the law explained much about the powerlessness and non-closure central to legal alienation. And fifth, Blanchot's portrayal of the ambiguity that the absence of law can create showed how the lack of a legal structure can produce a feeling of punitive confinement. Together, these five forms or aspects of alienation answered my first sub-question by providing us with illuminating insights into legal alienation.

Through Derrida I then moved on to the second sub-question, where I discussed how literature is particularly well-equipped for our understanding of legal matters. In short, I showed how literature and law are both lacking in pure essence and are both characterized by a certain irreducible uncertainty in each confrontation with the text or the law. This showed how literature can help us understand the singularity of man's dealings with the law, because it requires an engagement with the text that is similar to our confrontation with the law.

Before turning to Nussbaum in order to show the way in which literature helps us understand legal alienation, I complemented our literary approach to legal alienation with an analytical approach through the legal philosophy of Hart. This chapter also illustrated a possible cause of legal alienation in our present-day society. In short, Hart showed how an attenuation of the rule of recognition has resulted in people becoming distant from law: they have turned from true legal subjects into mere observers and only obey the rules for prudential reasons. This erosion of the rule of recognition, I argued, has been precipitated by the proliferation and increased supremacy of supranational institutions.

Whereas the literary texts gave us a better understanding of legal alienation, my discussion of Nussbaum's views showed *how* literature helps us understand legal alienation, which is the third sub-question I set out to answer. I discussed how moral philosophy is a working-through of different moral conceptions, which is something that is trained through literature. I emphasized the exploratory nature of moral problem-solving and argued that by reading literature our moral imagination can be stimulated, because literature helps us draw out that which is morally salient, in addition to acknowledging the irreducibly particular character of a concrete moral context. Literature is therefore incredibly useful for training that part of our moral faculties that is crucial for our understanding of complex issues, such as legal alienation.

So, I have now presented my most important findings. Let me now reflect on the value and limitations of these results. This thesis did not attempt to give an exhaustive description of alienation. Instead, I presented my own understanding of a specific form of alienation I called legal alienation. I also have not argued that only through literature legal alienation can be understood or remedied. I have merely shown how literature can be an important tool for understanding legal alienation. However, it should be noted that alienation as a phenomenon is changeable and elusive. Specifically, alienation as a concept attempts to describe and thereby circumscribe myriad feelings. It will therefore necessarily remain somewhat vague and imprecise, with the exact limits of what counts as alienation remaining blurred and disputed. This is endemic to the discussion of a term and field of study that is constantly subject to change and interpretation. Nevertheless, by narrowing down the scope of my usage of legal alienation I am confident this thesis has meaningfully contributed to the discussion of legal alienation and the value of literature. Possible other interesting

avenues for further exploration might be to what extent literature can remedy legal alienation, something I only briefly touched on in this thesis.

In the first chapter of this thesis, I mentioned Zweig's ill-fated vision of a united Europe. Nowadays, despite much progress, the European Union's project of harmonization, globalization, and its attempt at spreading liberal values are being met with resistance in several European countries. In their book *The Light that Failed*, Ivan Krastev and Stephen Holmes explain how the rise of populism and anti-liberal sentiments can be attributed not so much to an actual violation of national sovereignty, but instead to an imagined affront to their national dignity.¹⁷⁷ People's deep-rooted sense of identity and feelings of alienation are therefore important feelings we must take into account. In this thesis I have attempted to show how literature can enrich our understanding of the fraught phenomenon I called legal alienation. In this way, Zweig's dream of cultural unity might still come to fruition.

¹⁷⁷ Krastev & Holmes (2019). P. 74.

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