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'The Light in the Tunnel Can Be a Train': About Kafkaesque Double Thoughts

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I. INTRODUCTION

This chapter will highlight Banakar's contribution to the Law and Literature Movement as a socio-legal scholar and reader of Franz Kafka, with special focus on his article 'In Search of Heimat: A Note on Franz Kafka's Concept of Law' (2010a) with some references to analytical jurisprudence and philosophy. In the article, Banakar discusses both the novel *The Trial* by Kafka (1999 [1925]) and the parable 'Before the Law', contained in the same novel, in the context of Kafka's legal work as an insurance lawyer. In this essay we also attempt to make a connection between the field of Law as Literature and the Law and Literature Movement. We do so in the short story 'The Light' by using narratives and literary techniques to give a testimony about a fictional character, Lorentz, who finds himself standing before the law. We will at the same time pay attention to the fact that it is now 75 years since the Nuremberg trials took place, 1945–1946. They have been described as the greatest trials in history and have influenced the development of international criminal law as well as the Universal Declaration of Human Rights (1948) and modern anti-discrimination laws, but also the Law as Literature Movement. We want to highlight Banakar's contribution to the Law and Literature Movement as a source for socio-legal studies, and we will also try to present how law and literature in practice can be a method to write about law in literature. Law and literature may be thought to be connected by some essential common features. Our understanding, though, is that law and literature are not only intertwined with language, dramaturgy, storytelling and interpretation but also fantasy and perplexity – or double thoughts – by a series of overlapping similarities, reminiscent of Wittgenstein's 'family resemblance'.

Beyond the dichotomy between internal (juristic) and external (sociological) views of law, in line with a 'legal pluralism theory in sociology of law' (Clark 2007), socio-legal studies can include the relationship between law and culture as well as legal cultures, considering different socio-cultural aspects of social life. Banakar was throughout his career very engaged in grasping the social and cultural forms of different societies dominated by information (technology), legal uncertainty

and legal pluralism (including non-western legal systems and cultures) to understand how legal, social and cultural factors integrate. Law, culture and legal culture were, for example, of interest to Banakar when he wrote his book about Iranians' law, culture and driving habits (Banakar 2016a) and 'conflict management in a multi-cultural society' (Banakar 1994). According to Banakar, law – in contrast to Western mainstream legal scholarship and various schools of legal positivism – 'consist[s] of countless fragments which are not necessarily related in a formal rational manner' (Banakar 2015: 123). The limits of rationality, or even 'irrational elements of modern law, legal thought and legal cultures' (ibid), were a critical starting point for Banakar. In the intellectual journey of discovering socio-legal theory and research, a fiction writer such as Franz Kafka (1883–1924) became a natural travel companion. Hesse's novel *Steppenwolf* also raised Banakar's interest. Harry Haller, a character in the story, experiences himself as consisting of two parts: part man (a 'normal' middle class man) and part animal (driven by irrational instincts and displaying wild behaviours). Banakar discusses Hesse's novel in relation to the politics of legal cultures in late modernity by asking two concluding questions (Banakar 2015: 142):

> Firstly, is it possible that the legal cultural identity of Muslim immigrant communities is part of the 'wolf of the Steppes' of Western legal cultures – a wolf which, as mentioned above, consists not of one single but of numerous identities? Secondly, is it realistic to expect Western legal cultures of the type we find in Britain or Sweden to engage with the 'wolf' constructively, whilst they have not as yet discovered and acknowledged their own plurality of form?

Banakar, born in 1959 in Iran, moved to England in the 1970s and studied Sociology of Law at Lund University from the mid-1980s; from the beginning he was constantly interested in different aspects of multi-cultural society and ethno-cultural conflicts (Banakar 1994). His background and his lived experience also gave him a critical, reflective and dialectical intellect with 'double thoughts'. This dual and analytical mind partly reflects Banakar's own life as an immigrant in Europe and his professional role within a complex multidisciplinary field like sociology of law. At Banakar's office you could find not just an extensive library about socio-legal literature but also books about poets, Islamic culture, gypsy law, religion and biographies about, for instance, Ingmar Bergman and Kafka. It can be added that Banakar also had an interest in and knowledge of contemporary art; he used paintings to illustrate socio-cultural mechanisms and normative imperatives of modernity (Banakar 2016b).

II. LAW AND LITERATURE. A SOCIO-LEGAL PERSPECTIVE

Literature can be seen as a social collective memory of human life. Different social representations of history transferred to new generations of readers, sometimes described as a 'literary canon', become a social factor that shapes our notions of right and wrong or justice. Pillars of the modern Western literary canon are, for example, novels like *Crime and Punishment* (1866) by Dostoevsky, *The Trial* (1999 [1925]) by

Kafka; and the authorship of Thomas Mann can also be mentioned. Riemen writes, influenced by Mann:

> If humanity, truth, and eternity are big words – bigger, in any event, than what we are accustomed to these days – then let us justify artistic existence as lifelong faithfulness to language. … Language is the essence of being human. We can think, thanks to language, for thought exists only by the grace of words. Our experience and emotions are moulded by language. It is language that allows us to name and know the world. We ourselves are known by language, through prayer, confession, poetry. Language gives us a world that reaches beyond the reality of the moment, to a past (there was …) and the future (there shall be …). It is through language that eternity has a space and that the dead continue to speak. (Riemen 2008: 20)

The humanistic study of law includes imagining the law or ideas of justice through the novel, art or film, and cultural processes in law include interpretation, language, translation and narrative and rhetorical aspects. The constitution of history and memory includes the right to testimony and witnessing. The legal history of humanity can therefore be seen as related to resistance, justice and representation. Legal discourse, as studies in linguistics, rhetoric and legal analysis, is also legal theory, legal practice and legal methods within jurisprudence, even if there is a fine line to socio-legal studies because law and social discourse often overlap when it comes to normativity, justice and rights in context. Ordinary language philosophy developed at Oxford in the 1950s has sharpened our interest in how the legal discipline and legal meaning depend on their concepts of language and how that language is used by both lawyers and others. This is reflected in the late Wittgenstein's use of the concepts language-games and family resemblance (Wittgenstein 1958; Goodrich 1987: 51) as well as Hart's rule of recognition, '… as a complex, but normally concordant, practice of the courts, officials, and private persons in identifying the law by reference to certain criteria. Its existence is a matter of fact' (Hart 1961: 107). Even the anthropologist Malinowski and his early socio-linguistic work can be mentioned when viewing legal text as linguistic practice and law as social discourse or communication. It is important to note that this way of viewing law is not a theoretical nor a critical one but rather a realistic one, even if it invites a dialectic and interdisciplinary perspective. Goodrich (1987: 210 ff) writes:

> Substantive jurisprudence is a matter of legal technique, a question of reading and teaching the law in terms of vague and dubious notions of interpretation and analogy, authority and present. […] There is no guarantee, in other words, that the internal criteria of legality in any sense reflect the actual practices (formal and informal) of the legal institution and legal actors. Nor is there any overriding reason to suppose that the textual discipline of the law is best read in its own terms.

Law and literature, as an interdisciplinary field, often deals with similar perspectives and themes to those in sociology of law and socio-legal studies, for example: history, culture, politics, justice, modernity or traditions, legal ideas and norms. But critical theory, language and cultural studies also share the idea of deconstruction with sociology of law and socio-legal studies; concepts do not have a settled meaning but are affected by social context, culture, politics etc. Or, as summarised by Trevino

(2008: 117), 'Another recent and critical approach in the study of law and society is deconstruction. … The (legal) text/story is taken apart, deconstructed, and its structure and logic are questioned'. Law and literature can thus be related to postmodernist and critical legal scholarship. Literature as an emotional, creative or non-rational narrative method to understand and reason about values, norms, violence are represented through authors like Ricoeur, Derrida and Lacan, to name just a few (Cornell et al 1992; Sarat et al 2010). Cotterrell writes (2006: 2 ff):

> … law and social theory need to recognize and address the non-rational or perhaps differently rational aspects of social life. … Law and social theory both have to find ways to understand the ambiguous, complex meanings of social action, and to recognize that social relations can be of radically different types.

Banakar was influenced by a late modern view of the law, seeing it as something more than state law, and state law having more aspects and dimensions than being a formal legal system. When Banakar writes about legal culture he explains that '"Law" is understood broadly to encompass not only legislation and the rules of the legal system but also certain categories of social norms, which are used to regulate behaviour and social activities' (Banakar 2016a: 10). Banakar describes, in the same book,

> culture as a 'form of life', or a way of going about the world – seeing, making sense of and experiencing social life. We shall initially frame our definition in line with Geertz's understanding of culture as 'socially constructed and historically transmitted patterns of meaning', which are embodied in symbols, values, attitudes, perceptions, worldviews, conventions and customary practices (Geertz 1973: 89). (ibid)

Law in late modern society is, according to Banakar (2010b), related to a (new) sense of disorder. This condition reminds us of the first stage of modernity, about a hundred years ago, when Kafka wrote. Maybe it is the liquid modern life, living in an age of uncertainty, that links law and/as/is/in/ literature together and increases the interest in what has been called 'jurisliterature' (Goodrich 2021). In the next section we will discuss in more detail how Banakar reads Kafka as a socio-legal scholar through the article 'In Search of Heimat: A Note on Franz Kafka's Concept of Law' (Banakar 2010a).

III. BANAKAR READS KAFKA: SOME REMARKS

In his thesis *The Dilemma of Law: Conflict Management in a Multi-cultural Society* (1994) Banakar discusses ethno-cultural conflicts in Sweden and the legal system in terms of a number of dilemmas. His method advocates the integration of the perspective of the legal practitioner and that of an 'informed' outsider; if these perspectives are not integrated, socio-legal problems will not be solved (Banakar 1994: 338). Banakar even problematises different conceptual dichotomies throughout his academic writing, as described above; this is an academic heritage that is important to carry forward in the sociology of law. Kafka takes us beyond the instrumental understanding of law and allows us to grasp law as a form of experience, according to Banakar (2010a). Banakar (ibid) is paying special attention to Kafka's job as an insurance lawyer and bureaucrat and to his legal and clerical writings. By doing so, Banakar indirectly tells

us that Kafka's novels have something to contribute to our understanding of law. Even more, Banakar writes in his final words that Kafka is:

> … producing an imaginative understanding of law and legality as integral parts of the human condition under modernity. Without sociological or legal theorising, Kafka's fiction takes us beyond the understanding of law as an instrument of social control and reform and introduces us to law as a form of experience. (ibid: 485)

Banakar thus highlights the fact that Kafka practised as a lawyer in Prague and examines how his day job as an insurance lawyer and his night-time avocation as a fiction writer both involve writing and are in that aspect related. Banakar asks rhetorically:

> Would Kafka have thought the way he did, constantly striving 'to interpret discourse that looks like one thing but might well be another' – often its opposite – had he not been leading a double life, practicing law during the day and producing fiction at night? (ibid: 464)

The external and internal point of view become problematised; the perspective is on the norm-user instead of the norm-giver, the use of language, and people's critical reflective attitude towards rules since the 'language turn' within modern analytical jurisprudence (Bengoetxea 2020). Everyday life or custom, as repetitive praxis and thinking, is woven by many overlapping fibres of culture as literature or art. These 'Kafkaesque double thoughts' become of interest and of relevance to the reader in a context of late modernity, when we get perspective on the time when Kafka writes his best-known works, such as *The Metamorphosis* or *The Trial*. The ending of the 'long nineteenth century' (1789–1914) and beginning of the twentieth century was a special time, characterised by modernity and radical new cultural ideas within modernism.

In his article, Banakar discusses a relativistic, dialectical or even dualistic perception that fits well in late (or liquid) modernity. The popular adjective 'Kafkaesque' usually describes a nightmarish situation, something that is horribly complicated for no reason, usually in reference to bureaucracy and omnipotent power. The fact that the term is relatively often used in everyday 'ordinary' language tells us something about the social 'form of life' or life-world in society. At the same time, the idea of anti-foundationalism or non-essentialism is an integral part of modernity, perhaps most clearly symbolised by the late Wittgenstein (Wittgenstein 1958) and by ordinary language philosophy such as speech acts theory about performative utterances (Austin 1962) and so on. What law is or ought to be is also questioned by critical schools like Scandinavian realism, contemporary with Kafka; showing that essential parts of law such as rights, duties, transfers of rights and so on, are in part composed of superstitious beliefs, 'myths,' 'fictions,' 'magic' or confusion (Hart 1959: 233). As a consequence, the binding force of law becomes a question of suggestion by socio-psychological methods given an 'intersecting model' about the relation between law and political power (Zamboni 2007). The distinction between legal issues and other social dimensions like cultural, fiction or psychological suggestion becomes deliberately unclear – or even Kafkaesque. Another theme is the bureaucratic world, which Kafka described as 'no initiative, no invention, no freedom of action; there are only order and rules: it is the world of obedience' (Kundera 1988: 112); a society Kafka never really knew. He only discovered a human possibility and shed light on the mechanisms he knew from insurance offices (Constable 2005: 130).

So, through a Kafkaesque double thought, Banakar highlights how Kafka as a writer about law and legality is both 'modern' and 'late modern', at the same time. The late modern visibility of the living ruins ('New Life in the Ruins') is a metaphor within the field of law and religion in the post-secular age (Christoffersen et al 2010). Banakar captures this paradox and how he finds it relevant to our understanding of law:

> In *The Trial*, Joseph K. encounters a priest in the Cathedral who tells him, 'The right perception of any matter and a misunderstanding of the same matter do not wholly exclude each other.' I will argue in the following pages that Kafka's technique of conflating the 'right' perception of a matter with the reverse of its everyday logic – a technique that is the hallmark of Kafka's rhetoric – needs to be understood in the discursive context of his work as a lawyer. (Banakar 2010a: 464)

Most people 'standing before the law' probably view the law as fixed, magisterial and remote. Through policy-oriented concepts such as 'access to justice' a similar commodification can be discerned. But even within 'modern' or traditional descriptions of what law is, there is an awareness of something else. Hart writes, for example, about 'the open texture of law' when he discusses formalism and rule-scepticism' (Hart 1961: 121).

'Before the Law' is a suggestive parable in Kafka's novel *The Trial* that Banakar describes and analyses in his article (2010a). According to Banakar, Kafka underlines how precarious and vulnerable the normality of daily life is; the rational is therefore conflated with the non-rational and the mundane with the extraordinary (ibid: 476). *The Trial* describes how an ordinary man, 'Josef K', gets arrested and prosecuted by a remote, inaccessible court. The nature of his crime is revealed neither to him nor to the reader. Banakar presents the 'Before the Law' part of the novel by concluding with a question about the relevance of Kafka's legal background and with a reference to 'double thought' (ibid: 477):

> In the well-known parable Before the Law, the door of the law is kept open specifically for the man from the country, even as the doorkeeper standing in front of the door paradoxically denies him entry. The door is both 'dreadful and intoxicating,' and the word 'before' lends itself to several interpretations: 'standing outside of something spatially, preceding it temporally, awaiting something, or being on display before something or someone.' Would Kafka have known how to use this type of formal language, the ostensibly logical construction of which vainly attempts to conceal the illogic of the situation it describes, if he had not been familiar with legal forms of 'double thought'?

The parable, an allegorical story, often recognised as the centrepiece of Kafka's novel and considered a key to his work (Deinert 1964), ends with a dialogue between the gatekeeper and the man from the country who asks to gain entry to the law (Kafka 1998):

> 'Everyone strives after the law,' says the man, 'so how is that in these many years no one except me has requested entry?' The gatekeeper sees that the man is already dying and, in order to reach his diminishing sense of hearing, he shouts at him, 'Here no one else can gain entry, since this entrance was assigned only to you. I'm going now to close it'.

Banakar discusses several themes in relation to *The Trial* and its parable 'Before the Law' in his article, like different paradoxes. For example, the paradox about the desire

for justice: 'This is a paradox that lies at the heart of the relationship between modern law, which strives toward generality and universality, and justice, which requires the recognition of singularity and specificity' (Banakar 2010a: 480). He also discusses Kafka's notion of law as a non-state form of legality and law's reductionism with reference to Luhmann (law is normatively closed, but cognitively open). Banakar also relates to more existential themes, being an exile in life, perceived meaninglessness ('chewing sawdust') and especially 'the modern search for a lost Heimat' (a 'home,' 'native place,' or 'homeland'). Kafka has, according to Banakar, an ambivalent relationship to modern law and legal institutions and *The Trial* can be read as one of 'Kafka's numerous representations of the search for Heimat, the peaceful and harmonious community to which the modern individual would like to belong and with which he or she longs to identify' (ibid: 465). Banakar relates here to how Tönnies has described modernity as the passage from a form of society dominated by *Gemeinschaft* (community) to one dominated by *Gesellschaft* (association) (ibid). He also asks the Hartian-question 'does Kafka have a concept of law?' (Banakar 2015: 117), and answers it by referring to Kafka's work in insurance law as a parallel jurisdiction to state law, an indirect juridification implemented by bureaucrats rather than legal rules enforced by courts of law. Kafka was an insider, aware of the inherently paradoxical nature of modernity and law (ibid: 119). It is important to notice that Banakar, in his reading of Kafka, highlights the fact that he works as a lawyer. This perspective is not self-evident, as Ziolkowski (1997: 224) writes about 'Kafka and the law'; 'For many decades it was widely assumed that "the law", whenever it occurs in Kafka's works, is nothing but an image for concerns that are theological, metaphysical, psychological, or generally sociological in their meaning'. We will elaborate on different interesting legal themes in *The Trial* and about standing 'before the law' more in the next section.

IV. STANDING 'BEFORE THE LAW': SOME SOCIO-LEGAL COMMENTS

The parable 'Before the Law' takes its starting point in the fact that a man from the country seeks 'the law'. In a general sense, every social scientist or lawyer with practical or theoretical interest in law can relate to the protagonist in the parable. Here as well we can relate to Hart:

> Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question 'What is law?' … No vast literature is dedicated to answering the question 'What is chemistry?' or 'What is medicine?', as it is to the question 'What is law?' (1961: 1)

So, what is law? From a socio-legal perspective it can be seen as an empirical question. What law is depends on what function law has in society, or with a Wittgensteinian approach; the meaning of law is its use in the language. Regardless of our perspective, access to the field (justice) is of great importance, both for the client and the researcher, and here different forms of gatekeepers often play a key role (from a meta perspective, ethical considerations can also be seen as a gatekeeper). Banakar's thesis on ethnic discrimination in Sweden has the title

The Doorkeepers of the Law in English, and the doorkeepers are here represented by the Swedish Ombudsman against Ethnic Discrimination processing discrimination complaints (Banakar 1998).

One important contribution to the socio-legal field about how people understand and experience law is the book *The Commonplace of Law: Stories from Everyday Life* (Ewick and Silbey 1998). Legal consciousness and legality are the focus of the study. The authors interviewed a random sample of 430 adults of diverse backgrounds in New Jersey to gain insight into their views on law. Ewick and Silbey found that people describe law as something before which they stand, with which they engage, and against which they struggle (ibid: 47). The authors stress participation in the process of constructing legality in everyday life and how life at the same time bears the imprint of law. The idea of the law as magisterial and remote is the narrative of 'Before the Law'; the view of law as a game with rules that can be manipulated to one's advantage is the narrative of 'with the law'; and the third narrative is the narrative of 'against the law', which describes the law as an arbitrary power that is actively resisted. With a critical and empirical method, the authors find that law and legality have different faces and roles depending on the situation and the context. They describe themes similar to Kafka and Banakar's article in their conclusions. 'Mystery and resolution: reconciling the irreconcilable', law and legality have paradoxes, or people have double thoughts about the phenomena, both strange and familiar, imperfect and ordinary (ibid). They also explicitly refer to Kafka's parable: '… a powerful description of a form of legal consciousness we, following Kafka, call "before the law"' (ibid: 75). Banakar writes in line with the empirical finding that '[i]n fact, Kafka is not "inviting" us to think double thoughts, but only holding up a mirror to us' (Banakar 2010a: 476).

If most people find law and legality hardly available and they feel like supplicants in front of the law, as in the narrative 'before the law', like Josef K in *The Trial* and the ordinary man from the country in the parable 'Before the Law', then this is not surprising. If we observe law through Luhmann's systems theory, the legal system closes itself to its environment by establishing a self-referential binary code (Nobles and Schiff 2013). The open texture of rules is obvious and commonsense within legal theory as well as rule-scepticism (Hart 1961; Twining and Miers 1991). People are often disappointed after meeting the court and legal authorities; the perceived informational and interactional justice (Bergwall 2021) or perceived procedural justice and legitimacy may be low and victims can even begin to strive for justice strategies outside the legal system (Antonsdóttir 2020; see also Woodlock 2020; 2022 for similar overviews of the concepts). But, from a socio-legal perspective, the uncertainty can also be seen as something positive: if coincidence plays a significant role in the court, the parties can hardly use the trial strategically. Paradoxically, this is reinforced by the courts' conflict-resolution function (Hydén and Hydén 2019).

Another important contribution to legal consciousness research is Hertogh's book *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (2018). As the title indicates, people are disappointed, disenchanted, and outraged by the justice system and gradually move away from law. It is hard for people to know – and

subsequently identify with –law, because law is irrelevant for most people. Hertogh describes the 'legal alienation' in today's Europe:

> Legal alienation can be defined as a cognitive state of psychological disconnection from official state law and the justice system. When people are listening to the discourse of the law, they are no longer able to identify their voice at all. Instead, they hear a foreign, distant, and incomprehensible voice. (Hertogh 2018: 55)

Thus, Hertogh finds through empirical research that Josef K is in good company about a hundred years later, the Kafkaesque feeling in relation to law has become a social norm in our society. But he does it through different positions on a spectrum of four potential types of legal alienation:

> (1) Legal meaninglessness ('the sensed inability to understand the law and to predict the outcome of legal processes'), (2) Legal powerlessness ('the perceived inability to control the outcome of legal processes'), (3) Legal cynicism ('a state of normlessness in which legal rules are no longer regarded as binding') and finally (4) Legal value isolation ('the values of the law are replaced by one's personal values'). (ibid: 57)

Hertogh also discusses the distinction between internal and external understandings of law in an interesting way. He presents four normative profiles: legalists, loyalists, cynics and outsiders. He argues that the 'homo juridicus model' underlying legal doctrine is not accurate. People are never fully aware of the law and never fully identify with it. On the other hand, people are seldom total outsiders. The normative profiles may, therefore, be read as a sliding scale from 'legal identification' to 'legal alienation' (ibid: 59). If we relate Hertogh's concepts to Josef K and the man from the country in *The Trial* (Kafka 1999 [1925]), we have to use what Banakar discusses as 'double thoughts'; Josef K can be said to exhibit legal meaninglessness, powerlessness and cynicism but at the same time he is loyal in relation to his own trial. In a similar way the man in the parable 'Before the Law' is both an outsider and extremely loyal, waiting his whole life in front of the gatekeeper of the law, in some sense representing legal identification and legal alienation at the same time. These contradictions and paradoxes have captured Kafka's readers for over a hundred years, as well as Banakar, and made the adjective 'Kafkaesque' popular, even among people who have never read Kafka. A common feature of the law in *The Trial* and in Hertogh's study is the impression that the law is hidden, strange, arbitrary and recondite. 'Everything remains hanging in the air', as Brod (1947: 177), editor of Kafka's writing, describes the feeling. Ironically, when the priest tells the mysterious parable in the cathedral and Josef K replies that it sounds like a topic of conversation in the court, the priest explains, admonishing him; 'it talks about this self-deceit in the opening paragraphs to the law'. But there are different interpretations of the parable (*cf* Hegel's master-slave dialectic) at the end '[…] the autonomy of law's authority is shown to have been somewhat illusory, sustained all along by the man's cooperation and defence. Rather than being separate and remote, there is a vital and direct connection between the man and the law' (Ewick and Silbey 1998: 75). There is also a question about which law we are talking about here. Josef K in *The Trial* is aware of his legal rights but he has been caught up in a different jurisdiction; against the court you cannot defend yourself – all you can do is confess (Kafka 1999 [1925]: 106). The different

self-proclaimed experts, trying to inform and help Josef K, know the secret law only by hearsay (ibid).

According to some, we are all somehow lost in translation when we interpret *The Trial*, since the German title *Prozeß* refers to the entire proceeding, which may or may not culminate in a formal trial. How readers interpret the novel probably also depends on whether they are living in a legal culture shaped by accusatory or inquisitorial processes (Ziolkowski 1997: 226). In that sense, the parable 'Before the Law' can be applied to the whole trial and every reader of the novel. And Kafkaesque double thoughts can also contain humour and irony. When Kafka read *The Trial* to some friends (including other lawyers) for the first time, he apparently laughed so much that he could not read any further (ibid).

V. THE STORIES OF THE LAW, THE LAW OF THE STORIES

Within victimology it has been acknowledged that victims may perceive the world as meaningless and incomprehensible as a psychological reaction to crimes. Often victims also describe further victim-blaming from the criminal justice authorities, so-called secondary victimisation. As mentioned above, these phenomena can be related to different experiences of law as Kafkaesque. Modern cornerstones of victimology are the Holocaust victims and the Nuremberg trials which established that all of humanity would be guarded from crimes against humanity. What enables restoration and redress for victims is a central question within victimology. One answer is to be listened to and given the opportunity to tell one's story in court. The opposite can be what Antonsdóttir describes as becoming 'a witness in my own case' concerning the victim-survivor's view on the criminal justice process (Antonsdóttir 2020). Many victims of crimes testify about an experience of alienation and surrealism when they perceive and experience the judicial system. Their frequent experience of disappointment is described in empirical studies (Dahlstrand 2012; Bårnås et al 2021). To be able to talk about their experience in a dialogue and hear about the adverse parties' motives can be valuable according to therapeutic jurisprudence and restorative justice. The traditional criminal justice system has been criticised for depriving victims and offenders of resolutions of criminal matters. Within both victimology and the Law as Literature Movement, questions emerge about whose victimhood and whose memories, stories or experiences are interwoven with justice and justification of the subject. Testimony within literature and legal proceedings can be influenced by each other and inspire authors, parties and lawyers as well. There is an extensive literature about real and fictional trials, which portrays law in its social and cultural context. This also applies, of course, to the Nuremberg trials. Rebecca West's coverage and testimony about those trials is both reportage and great literature with percipient judgments, observations and reflections on the trial and the law. Based on her testimony from controversial trials she explores the nature of timeless themes such as guilt, crime, retribution and forgiveness (West 1955).

Below is a newly-written short story by author Mikael Furugärde about a man who seeks contact with the court as a form of existential belonging due to his

'searching for Heimat'. Furthermore we also want to meditate discursively on the way people perceive and experience law, their frequent disappointment with their experience, most people seem to experience a sense of alienation before meeting the court.

VI. THE LIGHT

This is my earliest memory: a Swedish hospital room in the dark of night. I lie newborn at my mother's bosom. She whispers in my ear that I must not ruin her marriage by acting childish, crying and screaming. Deep in my consciousness, I can recall that moment: my envy of the other infants, sharp red-painted nails pressed against my neck, the smell of brandy from her breath.

Many years later, I found out that my mother had received a telegram from my father just a few hours after my birth. It read: Keep him (or whatever it was.) I have often pondered these words. What could he have meant? Was he advising my mother against adoption? Or from giving me away, putting me up for sale or simply killing me? Perhaps it was his generous way of avoiding a custody dispute.

My mother named me Lorentz, after her beloved dwarf poodle. Growing up, I had difficulties connecting with my father. I have no siblings. I never found out if my father ever discovered that I lived with him and his wife in the big villa in Stockholm. His wife was my mother, after all. But she did not really pretend to be when she was alone with me.

Mother belonged to a wealthy old Swedish family which had managed to live in comfortable inactivity since the Thirty Years' War. She had never had a job and she disliked children. I was taken care of by Polish nannies and acquired a Polish accent early on.

Over the years, my mother faded into mental illness. One day in April, she began to hear voices in her head. She claimed that they read backwards from the Swedish Constitution and the Sturlunga Saga. Wearing her private straitjacket, designed at the exclusive department store NK's tailor shop, she was taken to a mental hospital. I was eighteen at the time.

The same year, my father had been indicted in an international court, for war crimes, genocide, slave trade, drug trafficking and crimes against humanity. While awaiting trial, he was held in a detention cell abroad and was not allowed to correspond by neither phone calls nor letters. My mother was blissfully ignorant of all this. I wouldn't have dared to tell her. Anyway, I realised that it was my legal duty, so I went to the mental hospital.

My mother received me in her room. She was standing by the window, dressed in a moss green silk dressing gown and leaning on a silver-crowned cane. Next to her bed was a large well-stocked bar cabinet. Mother often became surprisingly calm and friendly from alcohol.

The nurses had told me that her habit of drinking brandy, just before she fell asleep and just after she woke up, had a good effect on the mental health of the hospital staff.

'Hello, mother', I said. 'How do you do?'

She looked pensively out of the window. The sun had gone into the clouds. A quiet spring rain was falling outside.

'What a beautiful summer night', she said.

I corrected her gently:

'Spring day.'

'It's February', she said firmly and sat down in a large armchair she had had brought from her home; it was made of solid gold with diamond settings in the form of skulls, runes and hourglasses.

She lit a cigarillo and looked at me grimly.

'Who are you, Lorentz? What do you want from me?'

'Dear mother. I'm afraid I have some bad news. My father has been put on trial.'

A gust of wind from the open window made the curtains flutter. A mental patient was screaming anxiously somewhere. Two medicine bottles blew off the bedside table.

My mother calmly drew a puff on her cigarillo.

'So what?' she said. 'I guess we'll just have to change the law.'

'I thought so too', I said. 'But apparently that's no longer possible.'

'Did he accidentally incriminate himself?'

'No', I said. 'Actually, there are some others behind this. For some kind of moral reason, they say.'

My mother looked at me uncomprehendingly.

'What kind of nonsense is that? Should morality be above laws? What is he accused of anyway?'

'A little bit of everything', I said. 'Including crimes against humanity.'

'Maybe I lack imagination', my mother said. 'But I don't see how this is a moral issue.'

'Neither do I', I said sincerely. 'And now my father is in danger of being imprisoned. He who has never done anything illegal in his entire life …'

'Then he'll have to commit suicide', my mother said, without any noticeable sentimentality. 'His reputation is ruined anyway. If he goes to prison, he will not be able to make any valuable contacts with important people. He might as well kill himself.'

'I don't agree', I said. 'I think I like him. For some reason. Possibly.'

My mother ashed the cigarillo on the carpet.

'Then go to court', she said. 'Solve the problem, Lorentz. Get him acquitted. That's the least you can do, isn't it? Afterwards, you two can go sailing.'

'How will that work?' I said.

'You go out in a sailboat.'

'Yes, I understand. But how am I going to get him off?'

'The boat?'

'No. How do you get someone acquitted?'

My mother shrugged.

'No idea. Make something up. Go away now.'

Two days later, I bought a suitcase made of German swine-leather, and left for the foreign capital where the international trial was to take place. I was naturally determined to solve the problem – heeding my mother's orders – but without knowing how to proceed, or what the problem really was. Above all, I didn't know why I had to solve it.

I took a taxi to the courthouse, a three-storey Swiss-style building. Outside the entrance, reporters and press photographers flocked. Staring eyes. Hateful shouts. Camera flashes and screams into microphones. I tried to make my way through the crowds. A uniformed doorkeeper stood in my way.

'The court is closed', he said. 'There is a trial going on.'

'Then I'll just take another entrance', I said kindly. 'There are many others, aren't there?'
'No', said the doorkeeper. 'The accused in here think so too. But this is the only entrance and it's for everyone.'

'Then it's not for me', I said. 'I have nothing in common with anyone. I don't even have anything in common with myself.'

'In that case', said the doorkeeper wearily. 'I refer you to the court's telephone hours, between eleven o'clock and twelve o'clock. Go home. Make a call.'

'But I've never had a real home', I said, confused.

The doorkeeper gave me a curious look.

'I'm sorry to hear that', he said. 'But don't worry. There's always light at the end of the tunnel.'

'It's probably an oncoming train', I said.

The doorkeeper shook his head. He looked at me thoughtfully. Suddenly he leaned over and whispered in my ear:

'You're wrong. There is a light that never goes out.'

He said in a formal tone:

'Anyway, this is a court, not a home.'

The next day, at eleven o'clock sharp, I called the court from my hotel room. Two signals went through before a distant voice answered:

'Hello?'

'Help me', I said. 'Whoever you are.'

There was a silence on the other end. I tried to brace myself for a moment. Then I said:

'No one has ever treated me lovingly. Nothing I've been through has been right. Everything was wrong from the beginning.'

Silence.

'It's as if my life itself is a miscarriage of justice', I said.

No answer. Suddenly I felt a strong longing for human closeness.

'I could love you', I mumbled.

The line was dead.

VII. SEARCHING FOR HEIMAT

This chapter has highlighted Banakar's contribution to the Law and Literature Movement as a socio-legal scholar and dedicated Kafka-reader, with special focus on his article 'In Search of Heimat: A Note on Franz Kafka's Concept of Law' (2010a). The Law and Literature Movement consists of lawyers and literary scholars with different interdisciplinary methods and theories of reading and writing about *law in literature* or *law as literature* (Simonsen and Tamm 2010). In this chapter we wanted to connect the field of the Law as Literature and the Law and Literature Movement. Law as Literature, with different literary theoretical and philosophical angles on law as interpretation and rhetoric, production of aesthetic and ethical values, construction of the reader, the subject of the court or law, the narrative about the citizen, dramatic

and theatrical aspects on the trial etc, is of great interest and value when reflecting on law and legality as social and cultural phenomena. Literature can manifest the inherent value of striving for justice as a core element of human existence and a collective commitment, transcendentally contained in communication (Habermas 1990), or the searching for Heimat as a sense of belonging, and possibilities for participation in society. Lorentz in 'The Light' wanted to testify, but the telephone connection with the court was cut off. Heimat can be a '… bounded medium which links the self with something larger through a process of identification signified by a spatial metaphor' (Boa 2002: 61), like the trial for justice. Either the world is unjust, or Lorentz has not understood the laws; or both (Constantine 2002: 22).

With the short story 'The Light' above, we want to give a testimony about a fictional character who finds himself standing before the law, praying to give his testimony during the trial. The court did not reject him and his story: his testimony was never assessed, the interruption was due to technical issues, which offers some hope (or light). By contrast, there has been one historical figure who was rejected by the court during the The Nuremberg trials who has engaged several commentators and whose fate bears also witness to several Kafkaesque themes. Many years later a journalist, biographer and novelist gives the following testimony of this unheard victim:

> [He] … was one of the saddest men I have ever met, and he died a disappointed man at the end of a ruined life; but I hope the aid he gave me in building up a picture of his mother and stepfather will give him (posthumous though it is) the *justification* for his existence for which he was looking. (Mosley 1974: 7) (emphasis added)

We find that by witnessing these fictional and real human destinies which give a testimony about what standing 'Before the Law' can be, and how life can be Kafkaesque, our ability to think *double thoughts* is awakened. While searching for Heimat, the legality of the trial may be questioned or the banality of evil (Arendt 1963) appears, or other Kafkaesque double thoughts may emerge. Literature or other cultural expressions function as a source of knowledge about human existence. How law is described in literature is a testimony of the author, but the meaning of the text, the *storytelling*, appears in the unique meeting with the reader.

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