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Particularity and Universality in Law: Human Rights and the Literary Example

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Law speaks in generalities, literature in exceptions. This maxim holds, as most commonplaces, besides some truths also much that is untrue. To start with some falsities, legal adjudication would aim at deciding particular cases, whereas high literature is said to expose the human condition. But in legal adjudication, the particular is framed in terms of rights and principles that claim to have general or universal validity, whereas in literature it is through the vicissitudes of individual man that mankind is portrayed.

Although the generalities of law undoubtedly originated from the experiences of individual man, legal systems tend to detach from the particularities of men, and form an order, or nomos, in themselves, with their own rationality and rhetoric that is able to justify even the most inhuman institutions and enterprises.

The significance of literature for law resides in the particularity of its substance. In literature, the rhetoric of universality is framed in exemplars. It is through exemplars that much of the universal truisms of law and politics are unmasked as the exclusionary rhetoric of particular communities.

Literary exemplars include the Divina Commedia (Dante), Uncle Tom's Cabin (1852, Harriet Beecher Stowe), Max Havelaar (1860, Multatuli) and Les Bienveillantes (2008, Jonathan Littell).

1 Introduction: the poetics of law

Two phenomena that boast to have perennial value are distinctive European from origin: its literature and its legal institutions.

Let's start with the eldest heritage: European literature spans more than two and an half millennia, connecting the Greek to the present. Although all cultures have bred great poetry and epics, the Greek created the tragedy, that form of "mimicking the world" as Aristotle characterizes the arts, which focuses on character and motives rather than on action. The dramatization of a conflict became possible by extending the number of actors. According to Aristotle, Aeschylus increased the number of actors to two, and made the dialogue take the leading part in the play, whereas a third actor and scenery were due to Sophocles.¹ Just as in their sculpture and philosophy, the genuine topic of the tragedy is not myth or narrative, but the portrayal of individual man in his misery and glory. The setting of three actors and a chorus proved to be fully equipped to act out the heroic and tragic choices of the heroes and heroines. Despite their noble or even divine descent, they were human enough to identify with, and to evoke in the audience, as Aristotle coined it, catharsis – purgation, purification, or clarification of the soul.²

¹ *Poetics*, (1449a, 15).

² *Poetics* (1449b21-28).

The influence of the Greek tragedies on European literature has been enormous. Since the Renaissance, the tragedies were essential readings at the *grammar schools*. They not only served as the gateway to the repository of antique deities and heroes that populated the theatres, opera's and the ceilings of the palaces of those days, but, more importantly, moulded the European mind to address the vicissitudes of human life through the lens of the inner life of its protagonists. Via their Roman imitators, they inspired a new generation of poets in Spain, France and England, who equal their Greek predecessors in depth and broadness of scope.

The invention of print furthered the rise of the novel, which does not depend on public performances, but could be read in private. The nineteenth century is the age of the great novels – *Le Père Goriot*, *Madame Bovary*, *Anna Karenina*, *The Brothers Karamazov*, and *Emma*, to mention a few of the list of hundreds of master pieces, a list that carries on up till the present. They offer a parallel universe, as rich as our four dimensional one, in which the rich and perplexing depth of the soul is explored. In these works, a whole menagerie of poisoners, swindlers, adulteresses and misers pass, offering a *comédie humaine* which so often ends up in tragedy.

A different *comédie humaine* takes place at the stage of the courthouse. Here, a similar stream of swindlers, adulteresses and misers passes the bench. But in court, they are examined through the distant lens of the impersonal law rather than through the loupe of dramatists and poets, who zoom in on the particularities and uniqueness of the individual psyche and experience. The law holds for *classes* of persons and actions, indifferent to private differences that would catch the dramatist's eye. The generality of the law guarantees that the citizen is subjected to *rules* rather than to *rulers*.³ Before the law, all are equal. This explains that equality is considered to be an attribute of justice. Pericles, in his funeral speech (431 BC), explicitly links justice to equality:

If we look to the laws, they afford equal justice to all in their private differences; if no social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way.⁴

The principle of equality became a revolutionary concept in the French Revolution as part of the slogan *Liberté, Égalité, Fraternité* (1789). The *Declaration of the Rights of Man and of the Citizen* (art. 6) defined the principle in a way that reiterates Pericles' definition:

[The law] must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions

³ The opposition that is the topic of the dialogue between Xerxes, king of the Persians, and Demaratos, a Spartan king in exile: Herodotos, *Histories*, book VII.

⁴ Thucydides, *The history of the Peloponnesian War*, transl. by R. Crawley (1874), retrieved via Project Gutenberg.

and employments, according to their ability, and without other distinction than that of their virtues and talents.

The principle recurs, albeit in a more succinct drafting, in article 7 of the Universal Declaration of Human Rights, which states:

All are equal before the law and are entitled without any discrimination to equal protection of the law.

The Universal Declaration of Human Rights is a small document. It consists of a humble 30 articles that claim to hold for all human beings. But this document, with its universal appeal, forms the basis of a multitude of treaties, which elaborate the basic idea behind the Declaration: that human nature is the same and equal everywhere, despite the differences in race, culture, religion or gender. Those treaties, in turn, demand the governments to transpose the rights that the treaty seeks to promote into law, that is, into a coherent body of rules, which safeguards the equal treatment of those subjected to it through the generality of its precepts.

A revolutionary idea that started in a city-state – Athens – became the leading principle in a series of nations, and finished up its triumphal progress as the world's principal ideal. Compliance with the human rights has become *the* criterion for justice, whereas severe violations of the human rights are a sufficient reason for international intervention. The triumph of the universal rights of man opposes the decline of the fascist and totalitarian ideologies, which favours a particular people, a particular race, a particular ideology, or a particular religion.

The law, it seems, is Europe's most successful export product. It is a way of organising society that warrants a minimum of morality by the mere fact that it consists of *rules* rather than commands, issued by a central organ, and applied by an independent judiciary. These elements are the consequences of what Lon Fuller coined the *internal morality* of the law – the morality that makes law possible – and which consists of values such as clarity of law, consistency, the ban on retroactive laws, congruence between official action and rules, and, of course, the generality of the law.⁵ These aspects were discussed and developed in Europe and the American colonies ever since the 17th century and became the standard after the French revolution.

Although literature is unsurpassed in unravelling the lives and drives of individual man, its language of particularity and individuality is far apart from the language that the law speaks. The aspirations of justice that the law seeks to realize explain the generality of its commands, its impersonal character, and its disregard of local differences. And one wonders what law can learn from literature.⁶

2 Literature and justice

⁵ Fuller, Lon L. (1969), *The Morality of Law*, rev. ed. (New Haven: Yale University Press), esp. ch. II.

⁶ For an overview of the different answers on this question, see Dolin, K., *A Critical Introduction to Law and Literature*, Cambridge, Cambridge University Press 2007.

Can literature teach us what justice is? When Dante arrives in the second hellfire, where the cursed souls are perpetually swept along in the outer darkness by a howling whirlwind, he asks Vergil permission to talk with two of them, swirling in the air. These are the souls of Francesca and Paolo, killed by Francesca's husband when he caught them in their adultery. How did they realize, Dante asked, that they were in love? Then Francesca answered that, when they were together and read about the impossible love of Lancelot for Guinevere, they suddenly realized what they unconsciously felt all the time, so that when they arrived at the section where Lancelot kissed Guinevere, Francesca was kissed by Paolo "while he trembles all over".⁷

Dante seems cruel, writes Borges, by condemning Francesca to her punishment. But he is not the hyena, making verses among the tombs, as the other poet-philosopher, Nietzsche, viciously but with unsurpassed expressivity remarks.⁸ From the verses, said Borges, speaks an infinite pity with the fate of the two lovers. But Dante's feelings do not always coincide with the judgment of God. For there are unpardonable, capital sins:

For each he selects a person who has committed that sin. But in each there may be something admirable or worthy. Francesca and Paolo are not merely voluptuaries. They have committed no other sin, but one is enough to condemn them.⁹

One wrong step suffices for Dante's god to condemn the adulterer. In his verses, divine justice demonstrates to be strict and relentless, as rigorous as Kant's moral law, which determines the moral character of an act on the basis of just one criterion – to act out of duty, not inclination.¹⁰ But whereas man is a free creature in Kant's universe, God's omnipotence raises the problem of free will. In this respect, the divine judgments seem to be incomprehensible rather than just. That is what the decrees of the god of Abraham, Isaac and Jacob have in common with those of other gods, who seal the fate of the poor mortal even before his birth, and impose him with the burden of an irreversible offence against the world order. What blame attaches to Oedipus, we ask ourselves, who unwittingly killed his father and married his mother locaste? He cut out his eyes and was banished from Thebe, whereas his mother hung herself. To us, these punishments, whether or not inflicted by themselves, seem to be unfair and barbaric. But we, of course, live in different times, with a different *Weltanschauung* or worldview. I can imagine the question of the average student – and his model: the average lawyer: "What benefit has it to study literary works such as *Oedipus Rex* and the *Divina Commedia*? What can we *learn* from them? – except then that it reveals that the

⁷ Dante Alighieri, *Divine Comedy*, Inferno, V.

⁸ Borges, Jorges Louis, *Seven Nights*, (transl. of *Siete noches* by Eliot Weinberger) New York: New Direction Books 1984, p. 19.

⁹ Ibid.

¹⁰ "Act only on that maxim through which you can at the same time will that it should become a universal law", *Kritik der Praktischen Vernunft*, Book I, § 7.

morality of the early era's diverges from ours, and that we may be lucky to live in times that hold such sound moral opinions.

3 Universal principles in local perspective

The law speaks in rules, literature in exceptions. This maxim holds, as most commonplaces, besides some truths also much that is untrue. Let's start with some truths.

In 1776, the following words were issued in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among them these are Life, Liberty and the pursuit of Happiness.

'All men are created equal' – what did the founding fathers have in mind when they expressed this revolutionary idea that a continent incited to rebellion against the then superpower England? At least, the black and Asiatic fellow men fall outside the category of equals, as well as half of the Caucasian population. According to current international law, the fight against the Indians would be qualified as genocide. If a country would apply a similar concept of equality nowadays, it would probably be reason for the present descendants of these colonists to liberate the population of that country under the slogan of 'Enduring Freedom'.

And yet... we do not call into question the sincerity of the framers of the American constitution. What we experience to be a blatant breach of reason, by generously releasing all people first, and subsequently withholding equality to the vast majority of mankind in one fluent movement, is the result of an evolution in our thought of what makes up the essence of man. When a particular *specimen* – the eighteenth-century *gentleman* and a few dead Greek and Roman – is considered to be the true blooming of man, than those who deviate from the knowledge, manners and religion of this species will be experienced as a less developed mode of mankind, which obviously cannot exercise the full rights of man – just as children do not dispose of the rights of adults. That is not necessarily irrational, inconsistent, or hypocrite, but the result of a worldview that gives colour and content to this abstract ideal.

The colonists were not unique in their privileged understanding of the universal values. In the Netherlands of the 19th century, the universal Christian values were understood in a manner as exclusive as the Declaration of Independence in the early 19th century. In the novel *Max Havelaar*, a biting satire of, and charge on, the Dutch colonial regime in the Netherlands Indies of those days, Multatuli brings in the personage of Batavus Droogstoppel, one of the main characters of the book, and representing the narrow-minded class of Dutch

merchants.¹¹ Droogstoppel quotes with approval a preach of minister Blatherer, who regards the New Testament from the prospect of financial profit:

For Blatherer himself has said that God ordains everything in such way that right-mindedness leads to riches. 'Lo and behold!' says he, 'is there not much wealth in Holland? That is because we have the Faith. Are not battle, murder and sudden death the order of the day in France? That is because they are Catholics. Are not the Javanese poor? They are heathens. The longer the Dutch have to do with the Javanese, the more wealth there will be here and the more poverty there will be there. It is God's will that it should be so!¹²

Droogstoppel and Blatherer are, of course, the products of Multatuli's pungent satire, but the *Max Havelaar* wouldn't have been immortal if the readers had not recognized them in their fellow-citizens. The worldview of the Droogstoppels and Blatherers is one of dichotomies:

Frits says the Javanese are not heathens, but I call anyone a heathen who has the wrong faith. For I hold to Jesus Christ, and Him crucified, and I have no doubt every respectable reader does the same.¹³

In order to prevent that the heathens will end up in hell (follows: an illustrative depiction of the horrifying punishments in the eternal Gehenna), God, in His incomprehensible wisdom, granted His beloved Holland sovereignty over millions of children of the repudiated son of Noach. By having the Javanese labouring for Holland, his soul could be captured for the kingdom of God:

Isn't it clearly the finger of God, who makes the wicket labour to preserve the just? (...) Isn't that why we're told to 'work and pray', meaning that we should pray and have the work done by that black scum which doesn't know its 'Our Father'?¹⁴

The New Testament, message of love and tolerance, is also a militant book by which the submission of the overseas empires was justified.

That is the hallmark of abstract principles and Glad Tidings: every course of action can be made out to accord with them.¹⁵ Its 'pray and labour' can be read in Droogstoppel's way, a reading that enables the merchants to listen to Blatherer's preach on Sunday while the Javanese labours, but it can also be understood as Havelaar did, the hero of Multatuli's novel, whose night-time labour substituted his

¹¹ His last name is the contraction of 'dry' (droog) and 'stubble' (stoppel), his first name a Latinism of 'batavian', which is the name of a dreaded Germanic tribe that populated the Low Countries and besieged the Romans.

¹² Multatuli, *Max Havelaar or the Coffee Auctions of the Dutch Trading Compagnie*, (transl. by Roy Edwards of *Max Havelaar of De Koffieveilingen der nederlandse Handelmaatschappij*) London, New York: Penguin Books 1967.

¹³ Ibidem, p. 139.

¹⁴ Ibidem, p. 251.

¹⁵ Paraphrase of § 201 of: Wittgenstein, L. *Philosophical Investigations*, transl. By G.E.M. Anscombe of *Philosophische Untersuchungen*, Malden/Oxford: Blackwell.

prayers. And the slogan ‘all men are created equal’ did not restrain Jefferson, who contributed so much to the Declaration of Independence, from keeping hundreds of slaves, although it also inspired Lincoln’s ‘Gettysburg Address’. Each appeal to their guiding principle has primarily rhetoric value. For when we invoke a principle, we appeal to a way of life. And forms of life are not abstract, but specific and concrete, fed by incidents and examples. The import of literature for law lies in the exemplars it offers.

Purgatorio

Who is the Javanese? For Droogstoppel, the Javanese is the Other, the *degré zéro*, whose enormous defect it is not to be Droogstoppel. That has the Javanese in common with ordinary people, such as Havelaar, who has debts and lives on a garret together with wife and child. Such people are nameless and obscure, just as Havelaar remains nameless for Droogstoppel, who persists to call him Scarfman. Without a name, one lacks a history too. And without a history, an individual is interchangeable with another one. The Javanese, those are the others, the subjects of the territories overseas, the heathens to be converted and the rebellious natives, the balancing item of the credit balance-policy of the Netherlands in the East Indies.

In the frame story of the *Max Havelaar*, Multatuli interweaves the tale of Saïdja and Adinda, two native children. It is the tale of greedy districts heads, stolen buffalo’s and harsh colonial laws. It is the tale of refugee peasants and the Dutch colonial army that kills the rebels and razed hamlets. It is, as Multatuli assures, a monotonous tale. But it is also a tale of love. It is described from the perspective of Saïdja, a native boy with a name, a history, and dreams about a future with Adinda. But a future he did not have, because he finds the mangled body of Adinda at last and throws himself on the fixed-bayonets of the Dutch army.

Saïdja’s dreams do not differ largely from those of Droogstoppel’s sons: his love for Adinda matches Romeo’s love for Judith; and his bravery equals that of a Homeric hero. Through this tale, Multatuli demonstrates that this coloured native boy, who hasn’t been schooled, but ploughed the paddy fields with his buffalo, does not differ from us. Not the differences – skin, religion, class – are fundamental, but the similarities – the capacity to love, to dream, to create, and to suffer. The tale of Saïdja moves, because we ourselves could have been Saïdja.¹⁶

Eight years before, another, more influential book was published, *Uncle Tom’s Cabin* by Harriet Beecher Stowe, “the little lady who started this great war”, as Lincoln would have remarked when he met her in 1862.¹⁷ This comment is probably apocryphal and ignores that slavery, already abolished in the Northern

¹⁶ Empathy rests upon the capacity to recognize ourselves in the other, aptly pictured by Homer when describing the grief of Breseïs: “Her voice rang out in tears, and the women wailed in answer, grief for Patroclos, calling forth each woman’s private sorrows”, *Iliad*, Book XIX, transl. by Robert Fagles, London, New York: Penguin 1990.

¹⁷ Charles Edward Stowe, *Harriet Beecher Stowe: The Story of Her Life*, Boston: Houghton Mifflin 1911, p. 11.

States at the beginning of the 19th century, had been a long-standing source of conflict between North and South. Nevertheless, the book had contributed considerably to the awakening of the general public of the degrading position of the slaves, and furthered the spirit of confrontation. A novel succeeded, where the pamphlets of the Quakers and the *societies* failed. By regarding the world through the eyes of a few slaves with a name, a miserable lot, and heartless masters, we can identify with them. This, it seems to me, is literature's major contribution to our education: it enables us to put ourselves in someone else's position, and in this way become conscious of the many manifestations of man – and, sometimes, of the injustice we, more or less consciously, admit. It widens our horizon, as we share, albeit for a brief moment, the experiences of someone we are not, yet could have been.

The latter is, nonetheless, less obvious than it seems. The 19th century reader could easily identify with the aristocrat Pierre of Tolstoi's *War and Peace*, or with a lady like Madame Bovary, for they were like these personages: white, literary men and women, with similar emotions, sensitivities and judgments due to the ether of the European culture in which they moved. It is difficult to imagine the huge step the civilized, Christian European had to make to identify with an illiterate black slave or Javanese, who allegedly stood far below him or her qua race, culture and religion. In this respect, our thought has developed considerably the past century, not in the least because of the horrific experiences during the Second World War. In the occupied territories, even the elite found at their cost what it means to be second-class citizens – or less than that. Thanks to allied bombing, German terror, and frugal rations, everybody could take a look at humanity under the veneer of bourgeois civilization, and people from all walks of life proved to be surprisingly similar.

Nowadays, we are brought up with the idea of fundamental equality. At elementary school we read a children's version of *Uncle Tom's Cabin*, and at Secondary School the moving tale of Saïdja and Adinda. Then we weep for the harsh fate of Uncle Tom, and are moved by Saïdjah's lot. And one wonders, given our identification with the poor and helpless, whether we can become even more humane than we already are.

Inferno

How human is the monstrous slaughterer? This question urges itself upon us when we read *The Kindly Ones* by Jonathan Littell. "Oh my human brothers," begins Dr. Max Aue his narrative, "let me tell you how it happened."¹⁸ That is the start of the horrific tale about the war on the east front, where *Hauptsturmführer* of the SS Dr. Max Aue is closely associated with the chaotic start of the slaughtering in Poland and the Ukraine, and afterwards with the *Endlösung* in the extermination camps. The second line runs: "I am not your brother, you'll retort, and I don't want to know." Aue's reply on this imaginary objection is interesting:

¹⁸ Jonathan Littell, *The Kindly Ones* (transl. of *Les Bienveillantes* [2006] by Charlotte Mandell), London: Vintage 2009, p. 3.

Those who kill are humans, just like those who are killed, that's what's terrible. You can never say: I shall never kill, that's impossible; the most you can say is: I hope I shall never kill. I too hoped so, I too wanted to live a good and useful life, to be a man among men, equal to others, I too wanted to add my brick to our common house.¹⁹

And he finishes his introduction with an appeal to the central idea of the human rights, the fundamental equality of all man:

[M]y sincerity was betrayed and placed at the services of an ultimately evil and corrupt work, and I *crossed over the dark shores*, and all this evil entered my own life, and none of this all can be made whole, ever... I live, I do what can be done, it's the same for everyone, I am a man like other men, I am a man like you. I tell you I am just like you!²⁰

But this appeal to a fundamental equality between the SS-officer who took part in the *Endlösung* with full conviction and us, who condemn this madness from the bottom of our hearts, sounds false and deceptive. But Littell pulls the reader very skilfully into the madness of the Holocaust, just as the ordinary *Wehrmacht*-soldier was drawn into it, inch by inch, from the execution of the first groups of armed Jews, rebels and Bolsheviks behind the lines, till the transports of men, women and children to the execution camps. Littell convincingly demonstrates that not everyone who took part in the massacre was predestined to be a slaughterer. It is a process that took place in stages. After the first step (the killing of enemies as part of hostilities), most soldiers will go one step further when pressed (the execution of rebels) – to found themselves, at last, in a position that defies all description. Only afterwards, when all steps have been wiped off, and they look back to the *inferno* of the execution camps from the safe, peaceful present, they are baffled how they had been made to cross the dark river at all.

When Aue's army-unit is ordered to execute not only the male Jews, but the complete Jewish population, they all respond with disbelief. A few officers asked to be transferred, but the majority submits to the *Vernichtungsbefehl*. Aue contemplates the order:

Killing was a terrible thing; the reactions of the officers was a good proof that, even if they didn't all draw the consequences of their own reactions; and the man for whom killing was not a terrible thing, killing an armed man as well as an unarmed man, and an unarmed man as well as a woman and her child, was nothing but an animal, unworthy of belonging to a community of men. But it was possible that this terrible thing was also a necessary thing; and in that case we had to submit to this necessity.²¹

¹⁹ Littell 2009, p. 24.

²⁰ Littell 2009, p. 24.

²¹ Littell 2009, p. 103

It, then, takes only a small step to obey the horrific *Vernichtungsbefehl*:

[I]f the supreme value is the *Volk*, the people to which one belongs, and if the will of this *Volk* is embodied in a leader, than in fact, *Führerworte haben Gesetzeskraft*.²²

From the perspective of logic, Aue's deduction is to be judged as a sample of impeccable reasoning. In conversation with a captive Soviet officer, Aue discusses the political systems of both countries. Both systems fight a ruthless battle in name of ideals such as freedom, community, labourer, and purity – and every act can be made out to accord with them: the most atrocious deed proved to be an act of mercy, inhumanity the highest form of self-sacrifice, and compliance with an order an act of freedom. Little's narrative reveals the siren song of the iron logic of a system of thought, a logic that is able to justify all doings – at least for as long as we are on the level of abstract ideals and principles, from which point of view even the extermination of an entire people can be depicted as necessary.

But, and that is why Littell's book is such a disturbing one, by writing from the perspective of the perpetrators, the obscene truth, which Aue impresses us at the start of the narrative, is inescapable: "I am a man like you. I tell you I am just like you!" These words are the words of Dr. Max Aue, but it could have been the words of *Uncle Tom* or Saïdja. And that is quite an unpleasant truth. Because for a while, we don't object of being a poor black slave, or a young Javanese who is exploited, but we dare not be the *Hauptsturmführer* at the east front who seems to have lost all humanity. But this is also a man.²³ And the answer on the question whether we could be even more human than we already are, is: human, all too human!

Conclusion

Littell's book *The Kindly Ones* holds a peculiar paradox. For when Aue asserts to be a man like us, as anyone else, this statement undermines his own schematic *Weltanschauung* that consists of *Über-* and *Untermenschen*. His so-called superiority is based upon abstractions such as reason, morality, and civilization, which, despite their claim of universality, are translated into a local and exclusive idiom. One particular manifestation of man is raised to the standard – white, Christian, Germanic – and everything that deviates from this manifestation is considered to be inferior. But Aue's meticulous observations clearly demonstrate that the perpetrators are not the *Übermenschen* they think they are, neither are the victims *Untermenschen*. Aue too draws this conclusion. His ideology proves to be void, and behind it yawns the abyss.

Littell's *The Kindly Ones* succeeds where philosophical treatises on good and evil will fail: to reveal that we can never be sure not to be Dr. Max Aue if our fate would have been differently. That is literature's paradox: it tells us the history of an individual, and through this, it exposes human nature behind the unique

²² Littell 2009, p. 102.

²³ Which is the reversal of Primo Levi's 'Considerato se questo è un uomo', speaking about the prisoners of the concentration camps.

manifestation, only richer and more complete than ever can be expressed in a formula. It exhibits that the Other – the Saïdja's of the Dutch East Indies, the Uncle Tom's of the young USA, and the *Untermenschen* of the Third Reich – are not a less sort of mankind. It reveals that we could have been Dr. Max Aue, when we subject ourselves to a system of thought without questioning the dichotomies that result from it, but that we are not a superior sort of mankind. We – the Droogstoppel's, the slave-owners, the Dr. Max Aue's – are just as they are. Literature exposes that there are, in fact, no Others.

That is the function of literature for law: that it preserves us from the depravation of doctrinal systems. The law too is a doctrinal system. But laws and treaties cannot guarantee our societies to be humane. Neither the high ideals of the human right treaties, nor the flawless constitutions are able to prevent that institutions such as Guantánamo Bay are established with an appeal to the same treaties and constitutions: every course of action can be made out to accord with them. That is another way of saying that a text needs a reader in order to get a meaning, and that it depends on the reader's eye what is in the text.

If we are concerned about the human scale in law, we have to invest in a future generation of judges and officials. They shouldn't merely study the law and the constitution, but also read non-legal books such as *Uncle Tom's Cabin*, *The Max Havelaar* and *The Kindly Ones*. It doesn't turn them into more skilful lawyers, but questions our conceptions of 'we' and 'the others' that lie at the bottom of legal classifications such as blasphemers, rebels, and terrorists.