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## A problem of judging. The question of human rights in J. Bernlef's novel *Out of mind*

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### Abstract

In this century, one of the greatest health challenges “is a growing silent pandemic” (Project Alzheimer’s Value Europe, 2021), i.e., the rise of neurodegenerative diseases of the elderly, including Alzheimer’s. In literary texts of the 19th century, “Morbus Alzheimer” could not have been used to characterize a person of old age (Seidler, 2010, p. 433), at least not labeled with this name. Around the turn of the millennium, literary fiction popularized the topic of “dementia”. Still, one of the earliest literary novels that deals with this formerly tabooed topic is the 1984 bestseller *Hersenschimmen* by the Dutch author J. Bernlef. Translated into English as *Out of Mind*, this unique book provides one of the first narratives that describes many disease-related changes from the point of view of an Alzheimer’s sufferer himself. Bernlef’s novel is put in a constellation with Kafka’s “Before the law”, another literary text that tells of a man who is confronted with the law as well. Kafka’s parable can shed light on the problem of judging, especially since the mental capacity of his “countryman” also declines in old age. This opens up the question of human rights for the elderly with ongoing mental disabilities in the literary discourse. How are the rights of people with dementing diseases narrated? What happens when ailing humans lose their ability to reason and to communicate? Both, Kafka and Bernlef, implicitly touch the ethical problem of human rights in different ways and point to the problematic position of persons with dementing diseases.

**Keywords:** Bernlef, *Out of mind*, dementing disease, human rights, Kafka

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Human rights can be seen as internationally recognized ethical principles. Among them are, for instance, the right to freedom of movement and residence, and the right to equal protection by the law. They may come into existence as fundamental norms of law that are created by customs and enactments of law. How are human rights formulated? The term “human rights” evokes conjunctions with organizations like the United Nations who on December 10th, 1948 formulated “The Universal Declaration of Human Rights” (United Nations, n.d.); together with other protocols it forms the “International Bill of Human Rights”. What knowledge does the mode of a declaration imply? The term “declaration” goes back to the Latin *dēclārātiō*, meaning enunciation and revelation (*Der kleine Stowasser*, 1979, p. 124). It describes, among others, “a statement made by a party to a legal transaction usually not under oath”. (Merriam-Webster, n.d.) It also signifies a document for various legal purposes, including a customs declaration, which announces the content of a shipment and could be read as “postal message”. According to John L. Austin, a declaration could also indicate a class of speech acts in which what is said also happens at the same time; this implies that a declaration does more than state a simple fact but performs actions (Buchanan, 2010, p. 31).

The norms of human rights are only concerned with humans (e.g., they are not applied to animals), which leads us to the question: what is a human being? A basic assumption can be found in Article 1 of “The International Bill of Human Rights”, which lays down the philosophy on which the declaration of human rights is based:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act

towards one another in a spirit of brotherhood.”

(*Universal Declaration of Human Rights [UDHR]*, art. 1, 1948)

Accordingly, humans are characterized as living beings that are equal in rights, and in its formulation two features are also emphasized, “reason and conscience”. The noun “reason” can be explained as “a statement offered in explanation or justification” (Merriam-Webster, n.d.), for example as something that makes some facts intelligible, supports a conclusion, or sufficiently explains a fact. Accordingly, another meaning of the term “reason” implies “the power of comprehending, inferring, or thinking especially in orderly rational ways,” as a synonym for the noun “intelligence” or “sanity” (e.g., as the cognitive abilities and amount of intellectual powers). The question thereby arises if it is possible to actually measure and judge the sanity of a human, since many situations can be seen from various perspectives, depending on the context and different norms of different cultures. The second term “conscience” that is mentioned also carries different meanings, e.g., “the sense [...] of the moral goodness or blameworthiness of one’s own conduct” and “the part of the superego in psychoanalysis that transmits commands and admonitions to the ego” (Merriam-Webster, n.d.). “[C]onscience” could be read as a synonym for the term “conscientiousness,” which describes being conscientious and conforming to social norms. The term “conscience” is linked to an archaic form of the noun “consciousness,” and there are different forms of consciousness (e.g., a state of consciousness due to sensory information in the body, or, being conscious in relation to an abstract concept). While later, the UN adopted the 2006 “Convention on the Rights of Persons with Disabilities,” which comprises in its Article 1 “[p]ersons with disabilities [...] who have long-term physical, mental, intellectual or sensory impairments” (CRPD, 2006, p. 3), its subsequent formulations target foremost persons with distinct bodily disabilities and do not specifically cover elderly persons with a dementing disease.

Cognitive abilities and intellectual powers are very difficult to describe, and they have been reformulated again and again. Although the biological discourse classifies human beings as *homo sapiens*, i.e., Linné’s

term for “wise (hu)man,” not all humans act reasonable all the time. Some may not even be “endowed with reason” in connection to the ability of comprehending, inferring, and personal decision-making from birth, and others may lose former abilities due to a dementing disease. Still, one of the significant differences to most animals is that humans have self-awareness and are able to recognize themselves in a mirror, which means they are self-conscious. Hence in psychoanalysis we find the concept of the Lacanian “Mirror stage,” a permanent structure of subjectivity (for more about this, see below). Still, some people might not fully develop a superego, or they may suffer from a deterioration of the cognitive function (Platzek, 2014, p. 231) and gradually lose the ability to act with conscientiousness. This means that while they lose conscientiousness, they still have conscious experiences (as a result of their brain processes in connection to the perceiving body, but without cognition). This raises the question of how rights for persons are narrated who lost the gifts of “reason and conscience” in old age. What happens to their rights when they are not able to differentiate between the goodness and blameworthiness of their own conduct anymore? In the following, we will exemplarily analyze in Bernlef how the question of human rights is interlinked with the tale of a dementing disease. To begin with, we have a look at another literary figure whose “reason and conscience” also diminishes in age.

## 1 The inaccessible law: Kafka and the aporia of judging

Writer and lawyer Franz Kafka’s works satirize impenetrable large bureaucracies and an oppressive legal system. His parable “Before the law” (“Vor dem Gesetz”), written in his typical allegorical writing style and published in 1915, touches the problem of access to the law and to rights. There is an extensive literary reception with numerous different interpretations of this enigmatic parable (Andringa, 1994, pp. 9-12), and they often emphasize the encounter with bureaucracy and totalitarianism (Ghosh, 2009, p. 4). Due to its polysemous openness, the parable can also provide a constellative frame to contemplate the problem of human rights for persons with dementing diseases. As will be seen,

Kafka's multilayered text can be seen in a new way, especially concerning the rights for the elderly with ongoing mental disabilities.

Kafka's parable "Before the Law" is as well included in the ninth chapter of his 1925 novel *The Trial (Der Prozess)*. In *The Trial*, the protagonist is drawn into a nightmarish labyrinth of a surreal bureaucracy until his death, a case which could be seen as a conviction before any crime was committed. While in the dark of the Prague minster, a priest starts telling the parable and discusses it with the protagonist: "You fool yourself in the court [...] it talks about this self-deceit in the opening paragraphs to the law" (Kafka, 2005). Fooling oneself implies directly that the narrative of the parable is a distorted version due to "self-deceit," while the access or gate "to the law is open as it always is" (Kafka, 2005). The parable's theatrical scene opens in a third-person narrative with two characters without naming them as individual:

"In front of the law there is a doorkeeper. A man from the countryside comes up to the door and asks for entry. But the doorkeeper says he can't let him in to the law right now. [...] The man from the country had not expected difficulties like this, the law was supposed to be accessible for anyone at any time."

(Kafka, 2005)

Due to their position, or time "before the law," both, the countryman and the doorkeeper, seemingly do not have access to the law (Derrida, 2018, p. 49). Signifying the doorkeeper Kafka used the outdated German compound word "Türhüter" (Kafka, 1962): the noun "Tür-" stands for a door, and "-hüter" denotes a person who guards something. Since he guards the law or "Gesetz," this can be read as metonymical deferral of the related noun "Gesetzes Hüter," which could be translated as law enforcer and at the beginning of the 20th century, it was used as synonym for lawyer as well.<sup>1</sup> When a lawyer ironically only protects the entrance, Kafka takes the metaphor "Gesetzes Hüter" literally to tell his story about the law's (seemingly non-existing) access as entry. Ensued

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<sup>1</sup> See, e.g., the passage "[I]ch besuche selten die Kirche – vertrete aber als Jurist, als Gesetzes Hüter, ganz entschieden die Ansicht, daß die Masse der Religion bedarf" (Conradi, 1889, p. 64).

as a result of this metonymy, the story is narrated as if the abstract notion of the law would be spatial and excludes any historicity, which it is actually not. The law should rather be described as a system of rules, either handed down orally or written down on a formal script.

The naïve assumptions of the countryman about the law have been proven wrong, which implies he did not know how to judge the doorkeeper. Following the rejection of access, “[t]he doorkeeper gives him a stool and lets him sit down to one side of the gate. He sits there for days and years” (Kafka, 2005). The countryman’s expectation of free entry can therefore be read as a self-deceiving, an “unsophisticated view in which it does not foresee the exploitation of right by the might of the doorkeeper, [and] does not anticipate that a law supposedly governing all would be controlled by a few” (Foshay, 2009, p. 197). Obviously, he lacks life experience or cognitive abilities to think ahead, but this does not protect him from the consequences. The countryman appears to be successfully prevented from entering in a way that is a permanent deferral.

Deferrals also require time, and due to Kafka’s surrealist humor the countryman has to sit “[o]ver many years, [...] almost without a break” (Kafka, 2005). The doorkeeper is characterized by the attributes wealth (a “fur coat”) and cultural foreignness (his “long thin tartar-beard”). Any attempts at bribery fail, but he still takes the countryman’s property, which indicates his corruptibility. For Kafka, court officials are all corruptible and paradoxically, their “corruptibility is the only hope for humanity” (Benjamin 2012, p. 168). If this is the case, it means that the countryman’s situation is hopeless. While at the beginning, he had to bend over and look into the opened door—which indicates that he is tall—, later, his size has changed when seated and aged, and the doorkeeper has to bend down to reach his ears. Benjamin (2012) has stressed in Kafka a dissolution of what is happening into the gestural (pp. 175-176). Since gestures are of great importance, a change in the power relationship of the parable’s two characters can be assumed. Whereas the countryman ages, the doorkeeper does not age at all. This leads to the conclusion that the doorkeeper cannot be human but signifies an ambiguous metaphor (e.g., it could be an allegory of bureaucracy, or of

hermeneutical interpretation).

In the process of aging a forgetting sets in, and the countryman “becomes senile” (Kafka, 2005): he does not only cling to a childlike belief in authority but becomes childlike. His hearing fades, and he is not able to tell if his perception is correct anymore. In this delusional state he tries to talk to “fleas” (Kafka, 2005), which seems like absurd behavior. Open to question is whether his sensual perception plays a trick on him and any mystical “inextinguishable light” (Kafka, 2005) is imaginary and merely created by his declining cognition. When the countryman starts to lose his faculties and his consciousness, his understanding of what is going on mirrors the readers’ lack of understanding. He cannot be regarded as fully endowed with reason, and together with his conscience he seems to have lost his rights. In Kafka, meaning as such is undermined, and the countryman can as well be read as a representation of the readers (Jahraus, 2007, p. 258) in their perpetual quest for meaning.

Benjamin already concluded in his 1931 essay “Karl Kraus” that Kraus proved “justice and language remain founded in each other” (Hanssen, 2004, p. 62). With Derrida (2018), Kafka’s parable can also be read as demonstration of the paradigmatic relationship between law and narrative since the law as text of tradition needs to be interpreted and judged, as is the literary text. The correspondence between literature and law becomes means for his exploration of judgement, of naming, and of the (non-existing) origin of literature and of the law. Derrida traces the polysemous term “*Préjugés*” as prejudice, bias, and judgment before judgment. He describes the countryman as being “to infinity, but finitely, the prejudged (*le préjugé*). Not in the sense of being judged in advance, but of being in advance of a judgement that is always in preparation and always delayed” (Derrida, 2018, p. 55); accordingly, anybody has to judge before judging, and this process of judging never stops (p. 19). The question of how to judge can have a paradoxical effect on an accepted judgment since signifiers are always ambiguous, and this applies to any literary text as well as any legal text. While law can be seen as calculable and fixed, Derrida (2018, pp. 14-15) addresses the aporia

of judging with these formulations:

“I interpret the absence of a criterion less as the absence of rules [...], than as the terrifying or exalting effect of that scene of judgment of which we just have caught a glimpse [...] the absence of criterion is, one might say, the law. If the criteria were simply available, if the law was present, there, in front of us, there would be no judgment. At best there would be knowledge, technique, application of a code [...]. There would be no reason to judge” .

Accordingly, the law is never present and must be negotiated, because otherwise there would be no judgment. While established rules of the law are applied (and thereby kept and conserved), at the same time new law is founded simultaneously at the moment of decision in a judgement. This reinterpretation results in conserving, destroying and founding law (i.e., a non-identity of the self). In this aporetic dilemma of conservation and destruction of the law, its legitimacy seems to be threatened because each case is different and should be treated as unique, but previously established rules should be consistently applied. According to Derrida, the law receives its significance not by its meaning but by the deferral of its meaning (Jahraus, 2007, p. 259). In other words, the uncertainty of the rules of law is a requirement of any judgement’s existence.<sup>2</sup>

“Before the Law” unfolded a hierarchy of public servants and lawyers over aged, ill people, and has drawn attention to the limits of under-

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2 Reading Heidegger, Derrida (2018) argues that the man is excluded from the law because the doorkeeper is a “guardian who guards nothing, since the gateway is open, and open on to nothing” (p. 55). This implies that the power of the law lays in the impossibility of the countryman to reach a place where he already is. A human being recognized by the law cannot step outside of it without obliterating and erasing itself. The law seems autonomous and has its goal in itself. Derrida (2018) reads this as “a consequence of the essential inaccessible nature of law” (p. 42). Kafka’s narrative “Before the law” can be read as the narrative of the inaccessibility to its narrative and the history of this impossible story. This actually resonates with Benjamin; with him we could say that the history of law is inaccessible due to the hidden violence of its establishment and continuous law-making violence (or “rechtsetzende Gewalt,” Benjamin, 1992, p. 116). In his famous essay “Critique of violence” Benjamin has discussed how violence and law relate to one another. He argued that after the establishment of an origin of the law, its dialectical fluctuating of law-making violence (“rechtsetzende Gewalt”) and law-preserving violence (“rechtserhaltende Gewalt”), back and forth, leads to oppression. Accordingly, law is always repressive, and at the same time, the recurrent violence of law-making is weakened by itself. This oscillating ambivalence is inscribed in the law (and challenges its legitimate power). Any background (hi)story of the law would subvert its normative character.

standing. Reading the doorkeeper with Derrida as a possible allegory of hermeneutical interpretation corresponds to the undecidability of the text's interpretation. Kafka's parable implicates that there is always an uncertainty of the law. The countryman is not able to enforce his rights, in particular when he develops senility and his perceptions are breaking down. He remains powerless as a senile human who has been left dying. Kafka's parable reveals there are no rules that determine that anyone is ever allowed before the law. This poses an ethical challenge because the law should be valid for anyone, including humans without "reason and conscience". Kafka questions the modern civil legal ideas of law that are built on the moral-political achievements of the Enlightenment. In other words, they are built on the fixation on an autonomous, mature subject as well as the guarantee of the social sphere of action of individual citizens through the social constitutional state which regulates the interpersonal life (Kilcher, 2013, p. 213). We may therefore say that the emancipatory ideal of the Enlightenment seems "most optimistic and perhaps most naïve" (McCormick, 2001, p. 404), and in Kafka the instability and uncertainty of the law is exemplified. Thus, the author/lawyer Kafka functions himself as "Gesetzeshüter": due to the ambivalent relationship between literature and law, literature stands literally "before the law" (i.e., outside of it) and opposes law as the injustice of the extraterritorial (Kilcher, 2013, p. 220). Interlinking Kafka with Bernlef, in the following, we exemplarily analyze passages of the novel *Out of mind* in order to discuss the deferral of the human rights.

## **2 The human being: J. Bernlef's novel *Out of mind***

Following on from a medieval blind Frisian poet, the Dutch author Hendrik Jan Marsman took on the pseudonym "Bernlef" (Krüger-Fürhoff, 2015, p. 102). Linking himself with the *topos* of the blind seer —a mask of the implicit author (Bruynooghe, 2007, p. 29)— also suggests a connection to Tiresias in Greek mythology, a figure of clairvoyance and wisdom. This discloses the typical shift in perception in Bernlef's texts, e.g., using the sense of hearing and touch instead of sight to capture different modes of observation and to demonstrate that we cannot know

how humans perceive reality. After “several periods of Bernlef’s self-styled ‘cyclical’ development had passed” (Dull, 1989, pp. 33-34), he received great recognition with the publication of his 1984 novel *Hersenschimmen*. It was the first novel that is known to imagine the interior perspective of a person who is affected by a dementing illness (Hartung, 2016, p. 187). Its flashbacks and memories revolve around the major themes of remembering, forgetting, and disappearing of the self. The sophisticated original title *Hersenschimmen* consists of a compound noun. Its first part stems from Dutch “hersen-”, which could be translated to English as “brain” (Cambridge, n.d.). The second part “-schimmen” stems from the noun “schim” that could be translated as “shadow” (Dict.cc, n.d.), indicating an area of darkness, caused by light being blocked out. It alludes to the sudden change of the protagonist, an emigrated 71-year old Dutchman named Maarten Klein, who lives already for 15 years with his wife in a town near Boston. He becomes a shadow of his former self and morphs into a kind of specter to others who—due to the decrease of his powers of recall—have to be careful of what they say to not confuse him. The polyvalence of the title also alludes to imaginary ghostly phantasm, thereby insinuating illusionary perceptions of the protagonist, including, for example, his nightmarish encounter with people he wrongly believes would invent fictive stories to test his sanity. In addition, the Dutch title refers not only to the opaque traces of the past, including his childhood, which recur in Maartens’ head while his mind drifts away, but also to everything that happens around him. Because he is no longer able to think clearly, all kinds of events are merely specters to him. At the same time, the metaphor *Hersenschimmen* hints at the idea of a mind which does not work as clear as it should and which therefore cannot decide if anything is just a figment of the imagination.

The equivocal meaning of the novel’s English title *Out of mind* can imply an absentmindedness, or a person without a sound mind. It also hints to medical knowledge and to the term “dementia,” which can be traced to its Latin root *dēmēns*, meaning out of one’s mind, insane, nonsensical, and foolish (*Der kleine Stowasser*, 1979, p. 130), which are possible characteristic symptoms of mentally ailing people. In the *Dictionary of*

*Medieval Latin from British Sources* (1975), on the one hand, the noun “dementia” is translated as “madness” (p. 606), but on the other hand, it is also associated with the reference to heresy. Accordingly, already in the 13th century we find a connection to the law when it was noted that a “fool” or a foolish person who is a thief in prison is considered not guilty. It was important to judge whether an offense as unlawful culpable act is a delict (respectively a crime), or if the liability in torts is not given (*Carl Creifelds Rechtswörterbuch*, 2017, p. 293). This illustrates that the determination whether someone was “out of one’s mind” and/or a sufferer of a dementing disease touched the juridical discourse from early on. And as will be seen, although the protagonist of the novel *Hersenschimmen* is not a religious heretic, in everyday life he seems to behave strangely.

Bernlef focuses on the perspective of a man in transition between life and death. Following the inner view of the protagonist, the novel progressively deploys “incoherence” and dissemination of meaning to mimic the slow process of becoming helpless and losing grip on everyday life. Bernlef does not enumerate chapters, and his paragraphs are getting shorter and shorter until finally, the sentences are fragmented. The novel starts in italics with Bernlef’s enigmatic snow motif (“*Maybe it is because of the snow that I feel so tired,*” 1989, p. 1), that also refers to Hemingway’s *The snows of Kilimanjaro* (Leipelt-Tsai, 2021, p. 275). The fatigue of Bernlef’s protagonist is attributed to monotony due to a weather phenomenon instead of the commencing illness (i.e., his fast progressing Alzheimer’s disease). Bernlef combines the winter (1989, p. 24) as conventional *topos* of old age in relation to time, predicting the process of dying and the transience of man. The inner monologue describes the protagonist’s chaotic impressions and generates the feeling of spatial expansion:

“Flakes. Plural. There is only plural in the world, multiplication, the world expands more and more. [...] Shut your eyes! But it goes on snowing. It snows even inside me. No more defence anywhere.”

(Bernlef, 1989, p. 118)

These linguistic expressions of an impossibility can be interpreted as reference to the protagonist's deluged perception: he produces distressing images even with closed eyes. When trying to explain his situation, he is so bewildered that he has given up on reasoning but poetically describes the infringement with a kind of synesthesia. Bernlef's ambiguous motif of snow functions as well as a metaphor for solitude and refers to the confusion of the aged protagonist's perceptions. Because the snow covers anything and displays a blank surface, its color reminds us of void and emptiness. Instead of white as a color that is traditionally read as a symbol for innocence, the whiteness of the snowflakes in Bernlef rather recalls the disturbing static white noise of an analogue TV with its characteristic effect of electromagnetic patterns. The torpor of the winter insinuates not only a gleaming whiteness and coldness, but a stiffness and numbness that are connected to the protagonist's body and mind. In retrospect, it can be interpreted as reference to Maarten's surrender to the onset of his thought-disturbing disease.

### 3 Misjudgements. Bernlef's mirror scenarios

Bernlef's novel gradually circumscribes the onset of the protagonist's illness and the following months. The pensioner Maarten starts to get lost on walks with his dog "Robert". He forgets what he wanted to do before he starts something (Bernlef, 1989, p. 23), and his mental faculties deteriorate as the story progresses. While at the beginning, the protagonist is able to emotionally connect with his wife and can play the piano by heart (Bernlef, 1989, p. 29), later, he has lost these abilities (Bernlef, 1989, p. 94). He feels "entrainment in conversations with others" (Hartung, 2016, p. 61), and his mental deterioration is marked by disrupted language while "he experiences idiomatic language, set phrases and proverbs as easier" (Hartung, 2016, p. 190). It becomes increasingly difficult for him to come up with the words with which he wants to express himself: "I can think this with words, but they do not cover what happens" (Bernlef, 1989, p. 111). This problem with language and communication indicates that he still has some cognitive abilities but loses a certain amount of intellectual powers. In his blurred perception, he confuses and mistakes the people around him for someone else,

e.g., among others, he is no longer able to recognize his family members and wrongly takes his wife Vera for his mother (Bernlef, 1989, p. 74). In other words, his judgements can be seen as foolish misinterpretations of other people and his surroundings. At clear moments, the protagonist is uncertain about what happens to him and he is ashamed of his behavior and inabilities. For example, in one scene he seems to be tied down to the bed and has lost control of his emunctories:

“Terrible stink here. [...] Jesus, have I befouled the matrimonial bed? How do you like that! It’s not my fault. If you tie a man down to his bed. [...] I wish I could bear the smell of my own shit as well as Robert. ‘Robert! Robert!’

No one. Perhaps they’ve all gone. [...] Feel how hands strip the pyjamas from my body. They want me to move forward. Must open my eyes now and see an old man in the mirror, an old man with a slack wrinkly belly streaked with shit. I smile with relief. At least that isn’t me!”

(Bernlef, 1989, p. 96)

This passage demonstrates the abject misery of a person with a progressed dementing disease, who is not able to uphold the necessary cleanliness anymore. Although suffering from memory-loss, Maarten is still capable of thinking in a certain way and can reason with himself, but he does not recognize himself in the mirror, mistaking himself for another person. The episode proofs that Maarten is misjudging, and Bernlef’s novel signals, e.g., via counter-narratives (Bruynooghe, 2007, pp. 22-23), that the narrator is partially unreliable.

The psychoanalyst Jacques Lacan described in his famous lecture about the Mirror stage a structure of misjudgment, when he outlined how the permanent structure of subjectivity is formed, starting “from the age of six month” (1977, p. 1) in what can be called the imaginary order. According to Lacan’s draft of the human ego formation, the instance of the ego, or “I” (i.e., the phantasm of the *moi*), is bound up with the function of a misrecognition. In the Mirror stage, the reflected other is seen as a mirror image of the ego, but the other is actually different. In

Lacan, the mirror reflection conveys a coveted ideal self (with an actually no yet fully developed body coordination), upon which the subject develops. According to Lacan, the initial confluence of the two plunges into an aggressive competition. Bernlef's narrative can be compared with the Mirror stage. There is no time-paradoxical recognition of the ego as in Lacan's Mirror stage, and it is not a young child but an elderly grown-up, which means there is a time difference. Instead of evolving, a regression takes place in the subject, and the key function of the ego as structure of human subjectivity is in danger. In place of the creation of the illusion of a new (paradoxically false) self, the ego of Bernlef's protagonist shows a significant difference in that he loses his sense of self-identity. While Bernlef describes the structure of a misjudgment to represent the dissolving identity of the ego, his novel shows an inversion of Lacan's narrative. If the Lacanian Mirror stage is indeed a permanent structure of subjectivity, Maarten is losing his subjectivity.

Due to the dementing disease, Maarten's contemporary time frame is mixed up with past times, and he forgets repeatedly that his father has died (Bernlef, 1989, p. 104). In his mind, he continues to return to earlier times in his life, his childhood and youth, and the Nazi occupation of the Netherlands ("You've got the wrong man. [...] Maybe I was no hero, but I wasn't on the wrong side," Bernlef, 1989, p. 110). Talking to an American in a jeep who picks him up after getting lost, the protagonist notices that his (former second) language is suddenly foreign to him. Due to his strangely different form of reasoning and his historical knowledge of the Second World War, he mistakes this encounter—including the following consultation by a medical doctor—as the liberation of the Netherlands by the American army (Bernlef, 1989, p. 109). This misjudgment and the misinterpretation lead hereinafter to him guessing that instead of a liberation an occupation occurs, and that a war has broken out. His inner state and the phantasms of his perception start to become frightening. This demonstrates again that he is an unreliable narrator:

"It thumps somewhere in my head. (Or is it this house that is making that noise?) I cautiously push the curtain aside, take a

few steps back. In the black glass hangs a room, a piano, a desk. An old man in pyjamas looks at me, imitates a live man with his hollow black eyes and his long white thin hands which he now raises, defensively, palms turned outward, to breast level. Quick, close the curtains!

Good God. A man is hovering above the snow out there! A man, a piano, a desk, a whole room floating above the snow out there in the night.”

(Bernlef, 1989, pp. 111-112)

In this ostensibly absurd scene, he does not recognize himself in the mirroring window again. The situation in its chaotic juxtaposition seems strange and funny at the same time. This scene with a repetition of the snow motif indicates again that the protagonist has lost his ability to recognize his own mirror image. When a ghostly silhouette on window glass is perceived distorted by the protagonist, he mistakes his mirror image as another man floating in the air. He can no longer grasp its physical background since he has seemingly lost his intellectual power to comprehend. Bernlef’s writing combines impossible things and conditions that exceed reality. His protagonist can still think but without grasping the situation. The protagonist’s spontaneity and loss of control is expressed, while reason seems redundant, as in the tradition of Surrealism.

To showcase the shattering of the ego formation, Bernlef uses multiple mirror scenarios. In his novel, these repetitive narrative pattern of the protagonist’s self-loss accumulates in form of non-recognition. In other words, Maarten’s misinterpretation demonstrates his many erroneous judgements. Analogous to Lacan’s Mirror stage, an aggressive competition can also be found in Bernlef. When the protagonist does not recognize himself on old photos anymore (“Nothing but photographs [...] and there is that man in the snow again, only younger,” Bernlef, 1989, p. 112), he destroys them. This abolition of his personal images can be read as aggressive competition with his younger other, which is a parallel to the ego of the Lacanian Mirror stage. This can be seen as the underlying cause why the protagonist reacts fiercely (“hatred in those eyes,”

Bernlef, 1989, p. 112) and burns the photos. Already Heike Hartung highlighted Bernlef's metaphor of the camera: while the protagonist at first compares his own perception with a "neutral, detached camera" (Hartung, 2016, p. 191), later, as his Alzheimer's disease progresses he "experiences the destruction of [...] his personal] photographs, which he no longer relate to emotional memories or reminiscences, as liberating" (Hartung, 2016, p. 190). After the protagonist Maarten has lost his ability "of comprehending, inferring, or thinking especially in orderly rational ways" (Merriam-Webster, n.d.), his misrecognition indicates a split of his self-perception. Now, a dissociation shattered the false sense of self (that created the illusion of being a self via the Mirror stage). Subsequently, the protagonist can neither adjust nor create a seemingly coherent world anymore, i.e., he is not able to act in a (supposedly) "normal" way to follow the social norms that are required.

In his essay about the Mirror stage Lacan uses another form of division in grammar that distinguishes two forms of the pronoun "I": *je* and *moi*, a synthesis of inside and outside (as self and own reflection) divides the subject's ego. At the very end of Bernlef's novel, signifying a split as well, the first-person narrator subsequently no longer refers to himself only as "I" but alternates the "I" with the personal pronoun "he". Lastly, just the pronoun "you" (Bernlef, 1989, p. 130) is used in the function of a shifter when Maarten dialogues with himself in his thoughts, and the pronoun "it" (Bernlef, 1989, p. 129) becomes a representation of his split-off outer bodily entity, marking the total divergence of the protagonist while his identity vanishes. By using the position of the narrator in this experimental form to tell about the misjudgment and confusion of the protagonist, the text leads to a deconstruction of the opposition of narrator and protagonist. Bernlef tries to poetically depict the experience of persons with a dementing disease from an inner point of view by way of revealing an otherness as foreignness, especially in the process of losing their sense of self-identity (as the illusion of a self). Their impossibility to judge the situation undermines the dichotomy of reality and imaginary world.

#### **4 Insinuations. Foreignness as self, language, and foreign country**

In addition to the narrative of a progressing bodily disintegration of the elderly protagonist, the linguistic form also proves significant in Bernlef's novel. Employing the techniques of modern literature, e.g., snippets in the mode of a stream of consciousness and several ellipses, Bernlef forces the readers to guess how the text could be deciphered. Through its obviously missing linguistic parts and grammatical faults, he performatively demonstrates that the narrator is in a progressed state of mental disarray while producing the text. Finally, the psychological and physical stress for Maarten's deeply saddened wife proves overbearing and homecare is no longer possible, so he has to leave home:

“They carry me out of the door and I call out to her, ‘Vera!', but I no longer see her and am again tilted through a doorway and lie crying in the snow, flakes land on my lips, on my cheeks, and I see her once more, [...] and then the white doors of the ambulance close and driving begins in this rocking car which is also a ship Vera and also a snowflake in which I lie tied down and which skims past tree tops where other snowflakes chase along with us, accompanying us like falling stars and so we fall through space Vera [...] until we fade away or burn out, become white flakes, or black specks, what's the difference? *Question of mistake or exchange?* ... a tall bare space with concrete flower troughs full of pitch black earth [...] men and women in mouse-grey overalls ... sometimes distant, sometimes frightening near.

SUDDENLY THEY ARE STANDING BEFORE ME  
deportation? ... only English is spoken here ..." [capitalization and periods are in the original].

(Bernlef, 1989, pp. 118-119)

In the mode of a stream of consciousness fragmented verbal snippets without periods describe the thoughts of the protagonist which cannot fully be reflected but are dominated by impressions of shadows and the gleaming white. It does not become clear who is signified by the

ambiguous plural pronoun “we”: is it Maarten and an unknown group (“they”), is it Maarten and his wife, or is it Maarten’s splitted self as a plurality? In this way the question how to judge touches the readers as well. This passage indicates that when the extremely confused protagonist is being taken to a nursing home, he cannot find any reasonable explanation for it. While being transported, in Maarten’s dubious thoughts the ambulance (“car”) is equated with a ship and a snowflake. At first glance, these poetic metaphors seem to be contingent. Still, Bernlef makes use of equivocal allusions from other works; e.g., “flakes land on my lips” can be read as an insinuation to Heiner Müller’s 1977 play Hamletmaschine, where a (formerly suicidal) Ophelia says in the second section “The woman with the overdose ON THE LIPS SNOW The woman with the head in the gas-oven. Yesterday, I stopped killing myself.” (Müller, 2001, p. 547, translated by the author). With this intertextual hint to an overdose of cocaine, the ambiguous metaphor of the snow in Bernlef not only refers to a blurred perception and the impossibility to verbally communicate (“lips”) due to Maarten’s illness, but also to possible thoughts of suicide. Read with Müller, the motif indicates that Maarten contemplated but rejected suicide, and denies the victim role as well, similar to Müller’s protagonist. Both texts are very dense, and although they are different and belong to distinct genres, parallels can be found in the narrative: just as Müller’s Ophelia in the play destroyed her home, tore photos and set fire (Müller, 2001, p. 548), Bernlef’s protagonist tears photos and sets fire. And while at the very end of Müller’s play Ophelia was bound by men in doctor’s coats, Maarten is also finally tied up in bandages by such men. Both characters remain subjected and oppressed. Lost and buried in thought, Maarten is neither able to interpret nor to judge his situation (“mistake or exchange?”) anymore. He therefore is startled by the apparent suddenness of movement by “men and women in [...] overalls.” Dots of an ellipsis and majuscule letters are used to emphasize the big impact this has on the frightened protagonist. The poetic description of his traumatic experience demonstrates the ambiguity of human perception and memory. The situation becomes so threatening to him that, in his delusions, he construes the transportation to the nursing home as a possible deportation.

An especially unsettling feeling is produced in Bernlef by the fact that the protagonist simultaneously feels foreign not only in his own body and mind, but also in his surroundings. By recognizing that the spoken language is foreign, Bernlef deploys an additional alterity that functions as alienation, although the “full isolation” (Dull, 1989, p. 36) of the protagonist is lost in the English translation due to its missing code switching. Still, the motif of the foreign other is repeated when it is emphasized that the protagonist in residential care is the only one who speaks Dutch (“I come from the Netherlands, the only one here... vomit,” Bernlef, 1989, p. 119). Eventually, the sentences in Bernlef’s novel become more fragmented and missing more and more words. Sometimes they are reduced to singular words; for example, when describing the courtyard of his nursing home:

“In the snow-covered courtyard stands a birch, spindly branches end in fine, motionless twigs, dark patches on the thin twisted trunk, a

BIRCH

He still has that word and therefore I still see you beloved... [...] A birch surrounded by snow ... if only I could be where that birch is ...

YOU’RE MR KLEIN?

the birch in the snow ... it can’t help me either ... I am led away ... wave one last time... shall never see her again.” [Capitalization and periods are in the original].

(Bernlef, 1989, pp. 119-120)

Often broken by dots which form an ellipsis, the fragmentary sentences produce a strong ambiguity. It seems as if the first-person narrator is split in two and produces two alternating views: one outside of himself using the pronoun “he,” and one with an inner view, using the pronoun “I”. To communicate has become almost impossible for him. Again, the motif of snow is utilized and marks the protagonist’s final isolation (Bernlef, 1989, pp. 118-120). Instead of asking other people for help, the thoughts of Bernlef’s protagonist are seemingly engaged with a linguistic sign that is linked to a tree silhouette and supposedly connects

him socially, the word “BIRCH”. In context with the earlier insinuations about a “deportation,” the mentioning of the tree name “BIRCH” reminisces the trees of Auschwitz-Birkenau, because the name includes the name “birch meadow” in German language. The birch trees stood and still stand in this extermination camp (Teßmann, 2013, p. 3). Although his biological life in the retirement home is not actually threatened, the tree name implicitly indicates that the protagonist interprets the situation differently. His ill-stricken, limited mental capacity restricts his thinking ability, and in his view, he has seemingly lost his human rights. In the time of World War II, to talk about a person with a dementing disease was taboo because it also meant that (s)he would be in danger of being deported and killed by the Nazis. Analogous to the historical victims in the intermediate mental homes that served the killing facilities of the so-called ‘euthanasia’ program by the Nazis (Death camps, n.d.), Maarten is taken and displaced against his will. While he experiences multiple losses, including his personal identity and his social connections, he has to bear a multiple form of exile: he is seemingly situated in a foreign country (or, possibly among foreigners who occupy the Netherlands) and has to live together with completely unknown people in a kind of camp.

Bernlef’s novel reflects the problem that the fundamental norms of human rights are seemingly not applied to humans who suffer from a dementing disease: they are classified as not sound, or *Out of mind*, and excluded from society. Like Kafka’s countryman, the suffering protagonist in Bernlef obviously expected that the principles of law (as rights) should be accessible to anyone, including himself. Therefore, we may ask: is he correctly treated according to his rights? Or did he lose his human rights? On the border between life and death, Maarten is judged and designated as “confused” (Bernlef, 1989, p. 59) and loses his personal identity; the capacity to be a subject of legal rights and duties is taken from him. When he ends up in a nursing home against his will, his rights to be free and to freely choose his whereabouts are permanently delayed. From his perspective, the declaration of human rights seems to remain an empty promise. However, the problem remains how to judge his situation: letting him stay at home could be

called a negligence, because he might set fire again and hurt himself and others. Would the human rights be upheld when the protagonist is moved to a nursing home against his will, or are they upheld when he stays at home? Should he feel free, or should he be protected from physical harm? This is an irresolvable conflict and demonstrates that human rights are ambiguous. Maarten owns rights and loses rights at the same time. This undecidability in the human rights is a tension that cannot be resolved. Maarten's claim and the expectation of legal certainty stand in conflict with the protection against physical injury. So it becomes crucial that a decision is made about him and in his place: it seems necessary to protect him from physical harm by moving him to a guarded place, even against his will. As a result, we can say that it remains problematic to decide what the human rights actually imply. The "Declaration of Human Rights" seems to carry rather an idea of future laws-to-come and their execution remains impossible.

## **5 A problem of judging**

Kafka's and Bernlef's narratives correspond in that both could be read as a demise of aging men who are deceived and misjudge their situation. Both protagonists encounter an uncertainty of the rules of law. In "Before the Law," the countryman mistakes the situation and decides to wait (seemingly making a wrong judgement). The "senile" dying man in Kafka becomes an age-worn person who, at the last stage of life, is not able to trust his perceptions and cannot differentiate them from his imagination. Bernlef's protagonist also misinterprets and misjudges his surroundings (e.g., he takes his family members for somebody else). When memory deteriorates and becomes unreliable, the mind shatters and drifts away. Both, the protagonists in Kafka and in Bernlef, lose the ability to understand, judge and explain their situation. Whereas the countryman is confused by the foreign and strange appearance of the doorkeeper, Bernlef's protagonist is caught between the foreignness as foreign country, a foreign language, and as splitted other of the self. In his desperation, he experiences not only the outer world as strange (e.g., when foreign men take him away), but also his inner world as

strange (e.g., when his perception encounters non-existing snow). They both are hovering between delusional reasoning and the power to form judgements.

While the doorkeeper's groundless interdiction can be seen as a principle of law and a judgement that permanently delays the access to the law, the rights of Bernlef's protagonist are as well suspended. These delaying tactics can be read with Derrida as always belonging to the inaccessible nature of law. It is impossible not to judge before judging: even if one is not aware of it (or, applying the priest's words in Kafka, when one fools oneself in "self-deceit"), any human being is always pre-judged and subjected to the law. This corresponds to the human rights, which are abstract and empty principles. In other words, the human rights are valid, but at the same time, they mean nothing: human rights actually are only effective norms and not laws in the real sense. Although declared by the United Nations, the declarative mode does not performatively bring the human rights into existence. The UN's declaration as "postal message" of values is a dispatch supposedly addressed to any human worldwide; yet, as has been shown, it can only reach the ones who are "endowed with reason and conscience".

Our reading has illustrated that while human rights should be valid for anyone, certain rights may be denied and stay delayed. The question stays where to set the limits for interference with the fundamental rights. While Maarten's human rights seemed to be violated through paternalism and an incapacitation of his rights by the health care system, at the same time, paradoxically by way of this transgression he is protected (e.g., from harming himself by fire). This suggests that human rights are not independent from the social-political context. Accordingly, when people lose their nationality, there remains no authority to guarantee their human rights (Arendt, 1962, pp. 267-302). Similar to the invoked situation of stateless people, a person with a severe dementing disease becomes bodily and mentally disabled and loses his/her social-political context as well., i.e., (s)he will face a breakdown of the legal relationship between the state and the subject since (s)he is not able to reason and/or is not fully conscious of anything. Considering Arendt's claim that

the dignity of the human rests on his/her politico-linguistic existence, namely the “capacities of speaking, judging, and acting” (Azar, 2019, p. 3), for an elderly person with a dementing disease such precondition decreases day by day.

While the human rights may introduce “a compulsory *a priori* recognition of a sovereign *position of uttering (position d'énonciation)* to every individual” (Močnik, 1999, p. 122), for a person with a dementing disease who is not capable to judge anymore, this uttering position stays in question. As a result, the human rights discourse loses its significance for persons with a dementing disease. The state does not seem to be able to ensure their inclusion in the domain of citizenship anymore, so eventually they will lose their political life of a citizen (*bios politikos*) and only own the non-political life of the human (*zoē*). The particularity of the human rights is that they presuppose the human being to be a member of an ordered political community, a relation that a person with a severely dementing disease cannot maintain since (s)he is not able to act as a political and linguistic being anymore.

## **6 Ambiguous human rights. The promise of universality**

Literary texts can be the door to start thinking about the interrelation of narratives of illnesses and human rights. In this essay, we put Bernlef's novel *Out of mind* in a constellation with Kafka's parable “Before the law” to discuss the question of human rights for people with dementing diseases. Revisiting Kafka's “Before the law,” the interplay between reading and judging became obvious. Literature is connected with the question of the law and human rights. Firm and flexible at the same time, the law can be read like a literary text by the judging readers and needs to be interpreted on a case-by-case basis. The framework of age and dementing disease can be used to question the human rights. We re-read Kafka's doorkeeper parable as ironic metonymic deferral of the term “*Gesetzeshüter*” (as law enforcer and lawyer), a figurative principle that stands before the non-existing access to the law. Corresponding to Kafka's parable that brought the notion of law into shifting, we

also found the idea of human rights in Bernlef unstable and ambiguous. Reminiscent of Heiner Müller, Bernlef writes in a logic of association and produces a poetic text that stays open to interpretation. His enigmatic snow motif tells, among others, of a cognitive void and predicts the protagonist's illness and death. The attraction of the senile figure in Bernlef lies in the entanglement of an apparent return to the past and the ongoing state of emergency through social control. Literary illness in Bernlef poetically demonstrates isolation and permanent social exclusion, and thereby produces an emblematic figure in-between owning and losing human rights. Bernlef's broad hint to the Holocaust's extermination camp which was preceded by pseudo-euthanasia programs points to the catastrophe that lies behind this: the historical event of a systematic murder of ill and disabled people. His literary figure not only refers back to the tabooed exclusion in the totalitarian state of historical Germany, but interestingly also turns out to be significant for today. Bernlef's novel invites us to re-examine history, thereby demonstrating that what (just) seems to be a law always contains the possibility of suspension. Furthermore, our question could be extended to today's situation in the Covid-19 crisis, which requires a new perspective on the protection of the elderly in nursing homes by suspending certain rights (e.g., the right to visit, and the right to move freely).

Our constellation has shown that the belatedness of the human rights corresponds to the belatedness of the law in Kafka. The "Declaration of Human Rights" is primarily about formulating rights so that no human should be excluded as "unworthy life," which had previously happened under the Nazis in a purely technocratic way. While unlike in historical times, today, there is no despotic power in democratic European countries that decides about the bare life, however, it appears to be symptomatic of the structure of modern societies that the fundamental right to self-assertion of persons with dementing diseases is violated when they start to lose their cognitive health. It becomes especially problematic to judge and determine if they are actually disenfranchised in their alterity, which demonstrates the ambiguity and limits of the human rights. Our reading suggests that humanity and the human rights cannot be based only on positive definitions of who or what a person is, but they require

a firm stance before all existing laws. In order to uphold humanness (as the quality of being human), laws must never violate humanity but should protect against displacing humanness, and they must be negotiated in ethical responsibility. In its Article 1, the “International Bill of Human Rights” implicitly excludes persons who are not “endowed with reason and conscience” in the positivistic formulation of the human being. Accordingly, the knowledge of human rights that are thought of as law emerges just as a promise of rights that cannot be enforced via speech act but stay opaque. While literary texts are intertwined with ethical issues, the declaration of any universality of human rights turns out to be a promise that promises too much.

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