

THE JURIDICAL VOICE OF LITERATURE: A PERSPECTIVE ON LITERATURE'S
ENTANGLEMENT WITH NORMATIVITY

KATRIN BECKER

katrin.becker@uni.lu

<https://uni-lu.academia.edu/KatrinBecker>

Katrin Becker studied Law at the University of Trier and at the University of Bonn. She received a bachelor's degree in German and Romance Studies from the Universities of Bonn and Paris-Sorbonne University as well as a master's degree in German and Romance Studies from Paris-Sorbonne University. She completed her PhD at the University of Luxembourg and Paris-Sorbonne University with a thesis on "Zwischen Norm und Chaos: Literatur als Stimme des Rechts. Legendre, Kafka, Hoffmann." She is currently a scientific researcher for "law and culture" at the University of Luxembourg. In her work she focuses on cultural anthropology, metaphysics, legal philosophy and literary studies.

KEYWORDS

aesthetic basis of culture, Hoffmann, Legendre, normativity, testimony

PUBLICATION DATE

Issue 3, July 31, 2017

HOW TO CITE

Katrin Becker. "The Juridical Voice of Literature: A Perspective on Literature's Entanglement with Normativity." *On Culture: The Open Journal for the Study of Culture* 3 (2017). <http://geb.uni-giessen.de/geb/volltexte/2017/12999/>.

Permalink URL: <http://geb.uni-giessen.de/geb/volltexte/2017/12999/>

URN: <urn:nbn:de:hebis:26-opus-129996>



The Juridical Voice of Literature: A Perspective on Literature's Entanglement with Normativity

Abstract

Based on the logic of the Lacanian mirror paradigm, Pierre Legendre claims that every culture needs to create a metaphysical entity of *Reference*, for the sake of the legitimacy and validity of its normative system. This entity disguises the abyss at the core of culture and legitimates it by staging itself as its origin. As such, the *Reference* not only authenticates individual and cultural subjectivity, but also becomes the foundation of law. Given that Legendre attributes a fundamental role to aesthetics in the creation of this entity, my essay will identify the role of literature in this respect, arguing that, on the one hand, literary texts help confirming the readers' attachment to a specific order of Reference, i.e. of normativity and imagery. On the other hand, my essay claims that literature also has the capacity to reflect on the basis of cultural normativity and to unveil the contingency of normative truths. This results from what I call the cultural *structures of testimony*. Thus literature unleashes emancipatory forces with regard to a culture's normative system. The essay tests this hypothesis by analysing E.T.A. Hoffmann's *The Sandman*, a narrative that because of its play with the categories of fiction and reality is particularly salient.

1 Introduction

The most important fact of law is making humans subject to representation.¹

This quotation from the French legal historian and psychoanalyst Pierre Legendre comprises the most central elements of his unique approach regarding the relationship between law, aesthetics, and the subject.² According to Legendre, the legal system of culture can only be effective if it is based upon an aesthetic fundament, in other words, if "music, [...] poems, [...] choreographies and rituals"³ establish a realm representing the origin of law, i.e. making it visible and speakable and thus seem valid and legitimate. At the same time, it is this interplay of aesthetics and law which, according to him, enables the subjects to adhere to the system of culture: by being offered images and words, the subjects can relate to it in both the irrational and rational dimension of their being, they find themselves represented within the cultural system, and are thus enabled to constitute their culture-specific identity.

In what follows, I would like to argue that literature plays a crucial role with regard to this interplay of law and aesthetics. This, I claim, is on the one hand due to the nature of literature, which features exactly those structures that – according to Legendre – form the basis of both the legal system of culture and the human's subjectivity: a normative setting of relationality – here: scripture – and a realm of culture-specific imagery

– here: those images hidden in the text which are brought to life within the reading subject. During the act of reading, the reader finds herself or himself addressed in both those dimensions that situate her or him within the normative system of culture; moreover, and by speaking to the realm of imagery within the reader, and by thus connecting it to the cultural imagery, literature substantiates the very aesthetic dimension that, according to Legendre, law refers to for the sake of its validity. It contributes to the shaping of the fundament of what he calls the *Reference* and at the same time fortifies the subjects' attachment to it.

In order to corroborate this hypothesis, I will sketch out the main features of Legendre's cultural anthropology, which he calls *dogmatic* for two reasons: first, to point out the fact that the ultimate legitimation for culture is and has to be staged as unquestionable, in order to veil the fact that it is but a *trompe l'oeil*; and secondly, because the setting up of this ultimate legitimating entity is achieved through aesthetic means – in the sense of the second semantic field of the word dogma, namely “tributes, embellishments and decoration.”⁴ In a second step, I shall turn my attention to the role of literature in the aesthetic production of a given culture and set this process against the background of Legendre's theoretical approach; more specifically I shall connect the role of literature to his conceptions of alterity and representation, his identification of the function of the so-called *interpreter*, as well as to his focus on the concept of text. The hypothesis about the emancipatory and normative power of literature that is developed here goes beyond Legendre. It will be tested out by using a specific concept of “the witness” which I will develop through a combination of aspects of both legal and literary contexts of testimony in order to then examine the ability of literature *to undo law*. A fourth and final section of this essay is devoted to demonstrating this approach in an analysis of the story *The Sandman* by E.T.A. Hoffmann. In my view, as a piece of fantasy literature whose explicit goal is to make it impossible for the reader to distinguish between fiction and reality, this narrative is particularly suitable for the analysis I'll be undertaking: The “tension between openness and mystification,”⁵ which is often said to be the reason for the lasting fascination of *The Sandman*, touches in a specifically inspiring way upon the dogmatic-anthropological conceptualization of the relationship between fiction and reality, or between normative and aesthetic fiction.

2_ The Central Principles of Dogmatic Anthropology: Alterity and Representation – The Mirror Paradigm

The human being is a legal being – a *homo iuridicus*. This is the basic thesis of Legendre’s dogmatic anthropology and, according to Legendre, the human is introduced to law via three different elements that constitute the “human material”: the word, the image, and the body. Here, Legendre’s intellectual debt to Lacan becomes evident, as he draws upon the latter’s mirror paradigm to explain how this introduction into law is taking place through two steps at the beginning of the human’s life: the child’s first glimpse in the mirror, involving, according to Lacan, the identificatory assumption of the “total form of the body”⁶ as reflected in the mirror, and the moment of language acquisition.

For Legendre, these two moments are especially significant, to the extent that they both contribute to the creation and acceptance of normative relationships which ultimately prove, for him, to constitute the basic structure of the normative system of culture in general: the relationship between the child and its mirror image; and the relationship between the word and the thing, the signifier and the signified. To demonstrate to what extent the logic of these relationships serves as basis for Legendre’s conception of the institutional system of culture, I shall first elaborate a bit further on Lacan’s proposition.

Lacan in particular has drawn attention to the relationship between the child and its image in the mirror as a relation of fundamental significance for the constitution of the subject. Lacan explains that the moment of self-identification also entails a distancing: the child looking into the mirror must accept that what it sees in the mirror, i.e. something external to itself, is itself. It therefore becomes crucial to bridge this distance, a distance that necessarily implies a chaotic and unsettling dimension. According to Lacan, this bridging is achieved through the intervention of a parental Third, “who is assisting the child”⁷ and confirms that what the child sees is indeed itself: *Yes, that’s you*.

In Legendre’s interpretation, however, this moment goes beyond the purely familial dynamic of subject formation. On the one hand, through the process of linguistic confirmation, the child enters language, the primary normative system of culture. On the other hand, the subject is never merely a ‘you’ or an ‘I’; it is always a ‘son’ or a ‘daughter,’ a ‘pupil’ and a ‘club member’ etc. The first look in the mirror is thus also the moment in which the subject enters into the institutional order. Following the Roman

formula of “*vitam instituere*,” Legendre calls this moment the *institutional establishment of life* or the “second birth.”⁸ The relationship of the child to itself, and at the same time the “abyss”⁹ which opens up at the basis of this relationship, thereby become embedded in the normative institutional structures of culture. Thus in Legendre’s perspective, this primal relationship of the subject to its mirror image can be seen as a blueprint for all institutionally related positions of the subject in society, for the roles and masks that are offered to or imposed on it by cultural institutions during its lifetime.

Yet the question arises of who or what entity functions in these subsequent relations as Third, that is as the witness who confirms and legitimates. The problem of the need of a guarantor on the cultural level becomes particularly obvious in reference to language: who or what can confirm that the link between the word and the thing is ‘true’ and valid, and that everything that is presented as a given norm is true?

Clearly an abyss also underlies the normativity of language, the abyss of contingency, an abyss that, according to Legendre, underlies all normative relationships in a culture in the same way that it underlies the individual’s relationship to itself in the mirror. This abyss has to be filled or bridged in a way that legitimates the total institutional network of relations and beliefs in a given culture. Culture, in Legendre’s terms, is a politogenetically established community that is based upon common “founding images” and a geohistorically specific handling of the “*anthropological material*”¹⁰ – and it is in the light of this logic that he claims that each culture needs to establish a third point of authority, through imaginal and linguistic means, that fulfills this necessity of bridging. In other words that confirms, attests, and empowers the culture both in its identity and in that same culture’s function of confirming, attesting, and authenticating all the relationships inherent in it. In this context, Legendre develops the concept of *Reference*.

He explains that every culture creates the fiction of such a third entity, the *Reference*, with regard to which it can claim that its normative settings, its institutions, laws, and definitions, are ‘true’ and valid.¹¹ In the case of “Western culture,”¹² for example, normative settings refer, for the sake of their legitimation, to *God*, the *State*, or the *People* etc. The Reference is thus an abstract, metaphysical concept, *in the name of which* a culture speaks and confirms its own identity as well as that of its subjects. This is the authority that pronounces judgement, that is able to speak the cultural ‘Yes, that’s you,’ and thus in the last resort fulfills the function of final guarantor of the culture. However,

it is only able to fulfill this function effectively when the subjects of the culture believe in it, that is to say are attached to it also through the irrational dimension on which their own subject-structure rests. In order to do this, the culture must make this authority visible, speakable, and lovable, and it does so by deploying the aesthetic – i.e. the means to touch both the irrational and rational realm of the human being, or in Legendre's words: the means to "fabricate the link between the inner fantastic dimension, the dreams and phantasms, and the world of the materiality of things which each individual needs to live in."¹³ In this very capacity, aesthetic products are, in Legendre's perspective, able to address the realm of desire, love, etc. in subjects and thus to channel them in the direction of the Reference. They are thereby revealed to be an essential prerequisite for the force with which the validity of law is asserted.

In addition to the alterity that derives from transferring the logic of the mirror to the cultural level, Legendre finds representation, as inseparably interwoven with alterity, to be the central logic of the structure of human existence in culture. By way of the formula *in the name of*, he refers on the one hand to legal representation, i.e. agency, which he understands to be essential for both individual and cultural speech, or identity structure: according to him, the "most abstract idea of law is the idea of *representation* itself. Somebody else speaks instead of me, represents me, and what is said is still me."¹⁴ On the other hand, the meaning of the idea or depiction, i.e. the pictorial representation, of an idea or an object is hidden behind the concept of "representation." Thus, from Legendre's point of view, these two semantic fields become one when it comes to supporting the (alterity-based) identity construction both linguistically and pictorially: "Images exist only if they have been linguistically authenticated, mirrors must speak in order to be able to reflect credibly."¹⁵ The subject's position within the normative order of law, which is mediated to him or her by language, cannot do without reinforcement through images, and vice versa. It is the task of the law to organize this connection. On this, Peter Goodrich says:

It is [...] to the system of images (*systema simulationis*) that the subject adheres, and, in its role as inaugural speech, law is the medium through which the subject sees in the image the institutional or political fate of the soul: being a subject is in classical terms becoming a mask, a shadow of shadow, a fleeting simulacrum or image amongst images.¹⁶

This institutional mask ties the subject to itself and, at the same time, to the *Reference* of a culture; and thus the identity of the subject proves to be triangularly structured.

The abyss that appears both in the mirror and in language is filled by culture, by a visible and speakable Third, which, in its authenticating function, becomes indispensable to the constitution of subjectivity.

Interpreters

According to Legendre, the establishment and mediation of this metaphysical authority, the Great Third, is the task of so-called interpreters who, by using images and words, stage the “theatre of attachment,” as Goodrich explains. Culture is thus an “issue of the mask or role or identity that will bind the individual to law.”¹⁷ According to Legendre, this task of interpretation was traditionally handled by jurists in the Roman-Christian tradition of the West. Thus as Goodrich glosses Legendre: “The function of the interpreter, the lawyer was and is that of making the truth visible [...], to provide an image of what could not itself be seen.”¹⁸

However, according to Legendre, artists, too, play a crucial role when it comes to making tangible the triangularity of human existence: art, in Legendre’s sense, is the means through which society implements the “structural constraint [...] of *accepting the unspeakable*”¹⁹; an acceptance that is ensured through the work of the artists who are able to sense the nature of this primary source of cultural identity and to give expression to it in their work. By virtue of their work, through their “poetic celebrations of Reference,”²⁰ they contribute to “the societal staging of the foundations of image and language.”²¹ Speaking in mirror-logical terms: by fictionally reproducing the world²² aesthetic products not only provide the institutional system of culture with sufficient specular material, but also serve as “protective wall”²³ in the culture’s subjects confrontation with the world, in the last resort with the abyss.

Text as Pictorial Montage

If one now asks what role literature could play in the definition of aesthetics that has been proposed here, Legendre’s dealing with the concept of emblems comes into focus. With reference to the tradition of heraldry and the use of legal emblems,²⁴ Legendre points to the power of the interplay between word and image that was used in law and through which, according to him, an actually empty place is “indicated” and thus “populated.”²⁵ In other words, and following the logic of triangularity, word and image refer in the body of the emblematic text to the sacral place, which serves as *Reference*. It is in the interplay of word and image that the emblematic textual body not only represents

and incorporates the law, but also speaks – in the sense of the mirror logic – to the irrational dimension within the subjects, “elicits their love,”²⁶ and thus stages the same dynamics as the subjects’ confrontation with the “self-image [that] appears in the mirror.”²⁷

On the basis of this emblematic logic, Legendre starts to conceptualise the text as a pictorial montage, an approach which is essential to my hypothesis of the juridical voice of literature. Through the example of the technology of printing, Legendre draws an analogy between the “*mirror-image* relation of letters and paper” and the one between the text and the reader.²⁸ In this perspective, the “printed page,” just like the image, integrates into the specular structure, by confronting the reader *as if* it was occupying “the place of the other who in the mirror is me.”²⁹ Accordingly, it is precisely through the confrontation with the printed text that the “fundamental *as if*” lights up – the bearer of human existence, to which “[a]ll forms of art” are subjected.³⁰ Thus the encounter with the printed page speaks to all three tracks of the above-mentioned identity construction – word, image, and body. Analogously to the mirror experience, it mobilises both the symbolic and the imaginary orders of culture and thus creates a graspable body of representation.

Yet how does this interplay of aesthetics and normativity work in the context of the literary text, i.e. to what extent is the literary text capable of mobilising normativity?

3_Literature as Normative Entity

To repeat, for the subject, the task of aesthetics entails “taming an inner universe, a chaos which is ignorant of the principle of non-contradiction,”³¹ the very basic principle which law, on the contrary, is based upon. Law, in that sense, is the means to ensure the subject’s separation: by (linguistically) bestowing the subjects with a specific civil status, it offers them a mask and role, a place within the institutional system. By virtue of this institutional attribution, the subject achieves to constitute its identity and experiences itself as being part of a “law which goes beyond it.”³² Law is the means to “inject the limits”³³ into society, not only by forbidding the subject to melt with its own self-image, to feel omnipotent, to create its own system of meaning and sense; but also by embedding the limits of human nature into a coherent system of meaning shared with others, into a system of rationality – and in that, it necessarily relies on aesthetics, e.g. legal rituals and the imagery that shapes the institutions of culture.

Art, on the contrary, by speaking directly to that realm within the subject that is the place of narcissist desire, the desire to overcome the separation reminds us of the fictitious foundation of those institutions and normative settings which results from the very fact of their dependency on aesthetics. It reminds us of “our unspeakable ties, those strings of fiction by means of which the institutions are holding together.”³⁴ At the same time, it contributes to their legitimacy and validity. By integrating itself into the specular logic, it offers images and words for representing the Reference at the institutional-societal level, and thus occupies the dimension of the uncanny and unspeakable that opens up at the moment of the individual look into the mirror:

*We experience the omnipotence of the aesthetic without noticing it: it is based on the belief in images. Again and again we encounter the extraordinary dimensions of the mirror dogma. Whoever creates an aesthetic work participates in the societal manoeuvring of the mirror and thereby in the control of identity on the cultural stage. Art is an offer of identification, not a theoretical conclusion. Starting out from a stage which has a separating function like the mirror, it addresses the Narcissus within each of us, and does so in the mode of the symbolic.*³⁵

Due to its written nature, literature has a special position in the aesthetic production of culture. Basing itself on the specular logic described above, writing stages the aesthetic repetition of the gaze into the mirror. Being essentially based on the linguistic-normative structures of alterity, it puts itself in the place of the Other, in which the reading subject may recognize itself and thus feel confirmed in its identity.³⁶ The literary text therefore becomes a culturally specific medium for the individual identification process and, given its inevitable link to the cultural order of imagery and discourse, it reconfirms – through the act of reading – the subject’s inscription in the order of Reference.

Because the writer himself is equally institutionally embedded in the order of Reference, the literary text can primarily be conceived of as a direct expression of the Reference, and thus also of the normative order of culture. Both word and image mirror the structure of culture, i.e. not only its linguistic-normative structure, which embeds the subject into culture institutionally, but also the veil by which it fictitiously-figuratively covers the abyss in order to ensure the imaginary attachment of the subjects (and their desire) to the Reference.

However, as Legendre points out when referring to Burgos, aesthetic production is never a “slavish reproduction of law.”³⁷ Literary-poetic fiction is not only embedded in the normative order of Reference, but it also plays an essential part in shaping the struc-

ture of the aesthetic fundament of normativity, by way of its ability to create an “additional reality.”³⁸ It does so by means of a dimension which Legendre calls the “underside” of culture. Just like the individual unconscious, this underside is the invisible, irrational dimension of culture which arises in the attempt to bridge the abyss of human existence, finds its culturally specific expression in aesthetics and bestows the visible, rational construct of society with a deeper meaning, with a “veneer of humanity,”³⁹ thus assuring the subjects’ adherence to the system. Literature, as explains Schmitz-Emans, has the potential to reveal the invisible “behind the visible,”⁴⁰ i.e. to “bring [...] to mind in the present that which is not present.”⁴¹ However, this capability, according to the logic described here, goes far beyond the “hallucinatory-evocative”⁴² nature with which it is commonly associated.

Seen from the point of view of its structure, the literary work can be described as the interplay of word and image, of the symbolic and the imaginary, within the written body of the text. As such, it encounters the reader as a language-supported and culturally authenticated form of identification. Thus, in the end, literature reflects on the structure of the identity creating foundations of culture, i.e. the structure of that fiction which, as *in the name of*, lies behind culture constituting aesthetic production and the normative order. It thus stages the structure of the hyper-mirror⁴³ into which the monumental subject of culture looks in order to constitute her or his own identity. Thus the non-present we become aware of in the present reaches into a dimension which even transcends fiction, to the level behind fiction, i.e., into the *abyss of human existence*. Thereby, it ultimately reaches into a realm that is the chaotic foundation of human order. As a “rule-governed entity,” the literary word-image work of art thus enables the “experience of what transcends every order.”⁴⁴ From Legendre’s point of view, the structure of Reference can be experienced here, in the sense of that transcendence which Gérard Raulet describes as “enigmatic and chaotic”⁴⁵ and which nonetheless rests at the origins of the cultural order. As an unspeakable authority, the Reference guarantees the representational logic of language, as a chaotic one, it guarantees the order of culture.

This realm is the one where, in Legendre’s words, the “principle of non-contradiction” is not valid; namely “the unconscious stage of the subject”⁴⁶ and where the (dis)order of desire rules. It is there that the subject’s attachment to the image has its origins. Its inherent forces must be tamed or hedged in, both at the cultural level and in

the literary context, so that it does not endanger the existence of the (reading) subjects of culture as in the case of Narcissus – who fell for his own self-image, lacking the entity that could ensure and mediate the separation between himself and his specular representation. Thus from the safe protection of its written-ness – i.e. the normative structure of language as well as the institutionally and normatively posited structure of literary categories –,⁴⁷ the literary text formulates that entity which veils the abyss of culture in its word images. However, at the same time as a “window on the chaos,”⁴⁸ it points beyond the abyss, to its place of origin, that realm from whence there emerges the normative order, the principle of Reference which makes reason possible.

Literature is characterised by the normative use of its word-image-body structure in the service of fiction. It is the aesthetic medium which is capable of staging a dialectic between formlessness and form; this occurs not only structurally and internally within the text but also through the encounter with the reader. It has the ability to open the valves and thus release the power to feel the boundaries. As the key representative of alterity, it takes into account the realm where normativity and chaos melt into one another to constitute culture, the realm where that “which transcends every order” becomes the source of order.⁴⁹ Because it is structurally attached to the order it has itself co-created and because of its specific position, literature thus becomes the point at which a dialectic between the constitution of the Reference and its subjects occurs. The relation between the subject’s word, image, body, and the founding Reference’s word, image, body runs via the triangularity of the word, image, body of the literary text; the latter thus becomes the burning lens at the position of the mirror whose power may function in both directions. In this way, literature is on the one hand capable of assuring the subject of its embeddedness in the normative order of Reference; on the other hand, it is able to create a moment in which the reader can gain direct access to the logic of Reference. By giving a voice to the chaos, the literary text thereby provokes, within the reader, a glimpse of the emancipatory possibility to destabilize the Reference.

On the basis of the structures named above, I may as an initial conclusion propose the following thesis: literature is necessary in order to connect the subject to the dogmatically staged law of a culture. Where law, as mentioned above, guarantees the specular separation, and needs, for the purpose of its effectivity, to veil the fictionality of its fundament, literature embodies both the normative necessity *and* the aesthetic fictionality lying underneath. In its encounter with the reading subject, it attaches the latter

in her or his speech, specular reflection and desire, to the dimension it has staged and from which law originates. *Homo iuridicus* thus always implicitly proves to be a *homo literaricus*.

4_Structures of Testimony

If we now wish to investigate the emancipatory power of literature further, that is to say its ability to temporarily ‘undo’ law and its effectiveness in exposing its fictional foundations, it is necessary to examine what is, according to Legendre, the fundamental structure of the order of culture, of subjectivity, and of human existence in general, namely the triangularity whose validity, as has been shown, comes to bear equally on the relationship between literature and the subject and also between the subject and the Reference. In this context of the active, powerfully effective role of literature the concept of witness is particularly relevant. It applies not only to the legal and literary context but also to the logic of the mirror and thus to the fundamental paradigm of Legendre’s theory.

To get to the core of the concept of witness that I want to use in my analysis of literature’s role with regard to law, let me first turn to the traditional model of testimony in law. According to Sibylle Schmitt, testimony in law has traditionally been characterised by a “*dyadic structure*.”⁵⁰ Relationality is thereby revealed to be a fundamental structural element of testimony: in order for something that has been observed to be counted as true by a witness, another person is needed; this is a guarantor, who vouches for both the truth of the observation and the competence of the witness.

The complexity of the relationship between witness and guarantor is explored further by Schmitt, who explains that “there always remains an unbridgeable gap between the witness and the listener.”⁵¹ The validation of what has been attested to rests on the acceptance of something alien, an intangible, chaotic element that through the agreement of witness and guarantor is integrated into a structure of meaning. In the last resort this is a matter of whether the element becomes the object of the testimony or only comes into being as such. Thus the dyadic structure turns out to be a triangular constellation in the end. Any judgement on the competence and truthfulness of the witness has to be made in relation to the element that introduces something alien into the relationship between the witness and the guarantor.

In a very similar vein, literary studies assert a logic that reminds us of that between witness and guarantor to describe the relationship between the text and the reader or the author and the reader. As Walter Schmitz writes, “[t]he reader who vouches for the witness writing is himself called to the witness stand,”⁵² in other words, the written text only comes into being as literary – fictional or factual – text in the encounter with the reader who witnesses the – fictional or factual – testimony produced by the author.

Corresponding to this analogy, approaches that are developed with reference to fictional and autobiographical texts in the context of both legal studies⁵³ and literary studies reflect a logic similar to the one that Legendre describes as pertaining in the relationship between subjects and culture. Thus, with reference to the question of the fictionality or authenticity of texts dealt with in legal contexts, the respective judgment usually draws upon a “silent understanding” between the author and the reader “that the text is [or is not] suspended from the requirement of verifiability.”⁵⁴ Likewise, and with regard to literary theory, Wolfgang Iser speaks of a “contract between author and reader”⁵⁵ which, according to him, is only possible due to specific and “historically varying” signals within the text that “denote that [the literary text] is fictive.”⁵⁶ In both cases, i.e. in the case of legally authenticated testimony and in the case of fictional production, the decision for or against authenticity or fictionality depends on an interaction between author and reader, who, by their agreement, refer and attest to a specific framework of meaning.

This corresponds precisely to Legendre’s conception of the subject’s relation to itself and to its culture: the subject is always verified as true or attested to by the interposition of a third person as guarantor and thus ultimately by the Reference as guarantor of the whole cultural system. At the same time, the explosive potential of this process of guaranteeing and legitimizing becomes all the more clear when we recall that the authority that represents the system of reference in a culture and decides on the truth or fictionality of its legal and aesthetic elements must itself be conceived of as fictional, that is as an entity that is created by using mythological and aesthetic means. In view of this, that is in view of an understanding of culture as an aesthetic enactment of a normative order which is legitimated in the name of a fictional authority, it would ultimately be logical to distinguish between a fiction that is accounted as normative, i.e. as valid, given, or true, and a fiction that is aesthetic or is dismissed as delusional, instead of distinguishing between fiction and reality.

Bearing this in mind and taking into account the hypothesis that the foundation of law and subjectivity has to be imagined in aesthetic terms, the role of literature reveals itself to be correspondingly embedded in the logic of *testimony*. And yet, because of its function, on the one hand, to act as a witness, that is as a medium that both generates the Reference and attests to it, and on the other hand, to reflect on the relationship between subjects and culture, by offering culture-specific words and images through which the subject recognises itself and its position within culture, literature is under certain circumstances able to expose the precariousness of the underlying legitimizing structures of culture: by subverting its function as witness, by disrupting the normative literary structures, by laying bare the contingency of the habitual interplay of words and images, it is able to incite its readers to question the *mise en scène* that is offered to him, not only the literary one, but at the same time that of culture and its normativity.

5 Exemplification: E.T.A. Hoffmann's *The Sandman*

In order to illustrate this process, I shall now turn to an investigation of the story *The Sandman* by E.T.A. Hoffmann. First, the author of the story, E.T.A. Hoffmann, comes into focus, who proves to be an interpreter of a special kind from the perspective of dogmatic anthropology. He acted as “a universally gifted artist, musician, jurist and author, whose fantastic stories and Romantic literary fairy-tales had a decisive effect on world literature.”⁵⁷ In accordance with my earlier argument, he is therefore an interpreter in both the legal and the aesthetic senses of the term.

Secondly, the above mentioned “tension between openness and mystification”⁵⁸ renders this story specifically interesting for a dogmatic-anthropologically based analysis, in that it is, as fantastic story, part of the romantic era: taking a closer look, we find that Legendre’s dogmatic-anthropological approach exhibits a close proximity to romanticism and its essential assumption that “reality is only skin deep, and that underneath is a world that can be shaped by human desires”⁵⁹ – an idea we find in Legendre’s theory, too, yet with a more specific relevance to law in that it is this very world underneath that, according to him, shapes the visible reality, the law and thus the cultural system. And it is the idea of fantasy being “romanticism unleashed”⁶⁰ that shows why a fantastic story, such as *The Sandman*, is of specific interest to the claim that literature not only has a purely reflective, Reference strengthening, function but can achieve to disturb or question it in its fundamental structures. That this is here the case is suggested

merely by the fact that *The Sandman* has retained its significance and continues to provoke many contradictory interpretations:

No other story by Hoffmann – and no other Romantic story – has been so frequently interpreted in recent years as this night-piece that was little valued by Hoffmann himself or his contemporaries, from Jean Paul to Ludwig Tieck.⁶¹

To start with, I should like to give just a brief outline of the plot: E.T.A. Hoffmann's Romantic tale *The Sandman* was first published in 1816 in the collection "Night-pieces." It features the student Nathanael and his meeting with the sandman, or the latter's supposed doubles. In the context of the correspondence between Nathanael and his friends, the brother and sister Lothar and Clara, Nathanael gives a retrospective account of an episode in his childhood in which he became the victim of physical abuse by the lawyer Coppelius, whom he identifies as the sandman. This situation forms the background of the grown up Nathanael's experiences, during the course of which the sandman meets him again in other guises. When Clara, in her reply to Nathanael's first letter, challenges his view of things as a superstitious belief in ghosts and as the product of a pathological mental state, Nathanael insists on the reality of the events. Nathanael's subsequent development is described from a mainly (fictional) authorial point of view in a first-person narrative addressed to the reader. Ultimately it is the reader who is required to provide a judgement on the validity of Nathanael's claims. However, because of the absence of any unambiguous system of reference, a definite judgement proves impossible. The story ends with Nathanael leaping to his death from a tower.

Of central concern for the purposes of the investigation attempted here is the oscillation between authenticity (or reality) and fiction; this presents the reader with a decision that it is virtually impossible to make. Correspondingly, in the present context, what is of particular importance is the question of the relationship between the text and the reader – a relationship whose usual structure is subverted by the "disturbing authority"⁶² of the first-person narrator. By directly addressing the reader within the framework of the text, this narrator supposedly breaks open "the closedness of the text [...], for the reader is outside it. But by being addressed by the narrator, he is, in the fiction, taken inside it; the reader reading the text encounters himself in the text, he becomes, as it were, caught in the act of reading."⁶³ This impression is intensified by the demand that the reader should become the witness, or rather the guarantor to authenticate what has been seen.⁶⁴

Perhaps, dear reader, you will then believe that nothing is stranger and madder than actual life; which the poet can only catch in the form of a dull reflection in a dimly polished mirror.⁶⁵

As the reader observes her- or himself reading, the mirror relationship between the text and the reader explained is multiplied, as in a hall of mirrors.⁶⁶ The fictional-aesthetic canvas that the text sets up reflects the reader's reflection back to herself or himself; through the play of mirrors the reader observes herself or himself attempting to make the judgement about illusion and fiction and is thus drawn to a position somewhere between reality and fiction. In the encounter with the text, the reader is presented with her or his own position with regard to literature, something of which she or he is not generally aware: this is the position of the witness, in an order of normativity based on veiled fiction, through whose trust in the testimony of the (artistic and juristic) interpreter, the construction and the maintenance of the Reference is rendered possible in the first place. The mirror relationship is forced to the extreme by this multiplication of mirrors so that the 'as if' becomes unstable. The text that is supposed to encounter the reader as knowing, i.e. as witnessing, and at the same time to confirm her or his attachment to the Reference, refuses to be fixed to a framework of meaning. Instead it rather reflects back to the reader her or his precarious relationship to the text, and thus raises the awareness for the precariousness of cultural offers of meaning. In its fictional framework *The Sandman* thus negotiates the fictional basis of normatively posited reality and aesthetics. In the absence of an authority that acts as guarantor, the "opposition of madness and reason" is rendered absurd by the text. Instead, the story suggests that "with reference to the structure of judgement the delusions of the mind are in a relation of formal analogy to true judgements."⁶⁷

The intense wavering between realistic and fantastical elements thus reveals how closely entwined these two ways of comprehending the world are. Following the logic of testimony, the text thus makes tangible the fragility of structures of belief and thematizes the contingency of paradigms of truth that are dependent on nothing more than a narrative or a belief based pact "in the name of" something that is in fact absent – and that is made present through the agreement on a referential system such as, here, one of childhood memories or mental pathology.

In the context of its time, the story thus succeeded in pointing to forces which were attempting to make use of this structure, this absence: as member of the Immediate Commission for the investigation of political dissidence, Hoffmann experienced the

“political instrumentalisation of the law,” where those in charge of legality turned away from “liberty rights, separation of powers and constitutional state” to persecute students and liberals under the pretext of “demagogical machinations.”⁶⁸

At the same time, the text is in my opinion revealed to be a prime example of the power of literature which at the same time explains the text’s enduring significance. *The Sandman* enacts the structures of the *trompe l’œil* that constitutes the foundation of the normative order of culture. Literature takes part in setting up this illusion and is for this reason in a position to allow insights into the fundamental structures of the system of belief – and ultimately into their contingency. Through her or his own position with respect to the action in the text and the text itself, the reader gains insight into the contingency of truth and fiction, or rather into the contingency of the authority that guarantees that truth lies at the basis of culture.

In conclusion, literature forms part of those aesthetic media that establish and bear witness to the legitimate basis of culture and its subjects. This Reference is effective as a cultural foundation that is existentially dependent on these testimonies. Only when it is attested to through either legal or literary texts, or through laws and aesthetic products that speak in its name and are received as such, does the Reference achieve the form in whose name the judgement about fictionality or reality can be made, and in whose name the truth of the cultural system can be spoken. Yet, it is at this point where the precariousness inherent in all cultural systems is rendered visible: the very entity that serves as guarantor for the legitimacy and truth of the law of culture is erected by virtue of those aesthetic and legal means, the fictionality or authenticity of which it itself is supposed to guarantee for. And ultimately, the validity of what is accounted to be true or fictional, what is attested as authentic or is generated as fiction is thus based on the same logic. And it is literature, as has been shown, because of its possibility to stage a dialectic between formlessness and form, which is in a position to reveal the logical analogy between fiction and truth.

This pattern was illustrated by using the example of the story *The Sandman*. Its uncanny effect on the reader demonstrates the power of literature to undo the law, or at least to communicate a physically perceptible insight into the contingency of the normative positing of reality and fiction.

Allow me one brief final remark that goes beyond the plea for the significance of literature in general and of those literary “axes for the frozen sea”⁶⁹ in all of us. *The*

Sandman strikes me as having an especially acute significance for the present day because of its uncanny effect, and the resulting sense of the necessity of being attached to an order that provides meaning. In a time in which actors in fields traditionally called upon to embody truth and justice such as politics, law, and the arts act according to the principle of ‘post-truth’ and present ‘alternative facts,’ we can see the disastrous effects of what Sennett called the transformation of witnesses into spectators in the wake of the “fall of public man” all the more clearly⁷⁰: the loss of power of judgement, of perceiving oneself as an active force in society, which Sennett imputes to the decline of public life, leading to a mere passive acceptance of what is being said, written, and staged as true, factual, and normative.

An attachment to the fundamental values of the western cultural order appears currently obsolete. The staging of a new, or rather frighteningly reactionary order of values, of discourse, and even of truth, is often accepted passively. In such a time there is all the greater need for “axes” such as E.T.A. Hoffmann’s text. *The Sandman* should be read as an appeal to each of us to reflect on our roles as witnesses, our ability to bear witness and confirm, or else to question and raise awareness for the dimension of law undone.

This bearing witness occurs in the context of thinking back on what distinguishes us as readers, observers, and actors in our culture, and specifically on the way in which we are attached to a particular order of values and its aesthetically and juridically moulded foundations.

Endnotes

- ¹ Pierre Legendre, *Le désir politique de Dieu. Étude sur les montages de l’État et du Droit*, Leçons VII (Paris: Fayard, 1988), 300 – [le fait premier du droit, c’est l’assujettissement humain à la représentation] (trans. DH).
- ² This article was translated into English by David Hill.
- ³ Pierre Legendre, “Valeur dogmatique de l’esthétique,” in *La loi et ses conséquences visuelles / Das Gesetz und seine visuellen Folgen*, ed. Ruedi Baur (Baden: Lars Müller Publishers, 2005), 322–41, here: 327.
- ⁴ Pierre Legendre, “Anthropologie Dogmatique. Définition d’un concept,” in *École Pratique des Hautes Études, Section des Sciences Religieuses* 109.105 (1996), 23–43.
- ⁵ Detlef Kremer, *E.T.A. Hoffmann. Leben – Werk – Wirkung* (Berlin/New York: de Gruyter, 2010), 16 – [Spannung zwischen Offenheit und Verrätselung] (transl. DH).
- ⁶ Jacques Lacan, “The Mirror Stage as formative of the I Function as Revealed in Psychoanalytic Experience,” in Lacan, *Écrits: a selection* (London: Norton & Company, 2004), 3–9, here: 4.

- 7 Lacan, “On my antecedents,” in Lacan, *Écrits* (cf. note 6), 51–57, here: 55f.
- 8 Legendre, *La Fabrique de L’Homme Occidental* (Paris: Fayard, 2000), 23 – [l’homme doit naître une seconde fois] (transl. DH).
- 9 Legendre, *Le Désir politique de Dieu* (cf. note 1), 76 – [l’abîme] (transl. KB).
- 10 Legendre, *Le Désir politique de Dieu* (cf. note 1), VII – [Ainsi peut être envisagé une réévaluation du terme “civilization,” en introduisant l’idée d’une *politogenèse* à laquelle est rapportable le *marquage civilisateur* de ce que nous appelons “société”: une structure d’élaboration d’images fondatrices et du rapport au pouvoir de ces images à échelle transindividuelle, par analogie avec les fondements du développement de l’individu, l’*ontogenèse* – autrement dit, une maniement, dans certaines conditions géohistoriques, du *matériau anthropologique*, pour le compte de l’entité sociale.] (transl. KB).
- 11 Cf. Legendre, *Le Désir politique de Dieu* (cf. note 1), 19, 47.
- 12 Cf. Legendre’s notion of the “Occidental culture” in *Le Désir politique de Dieu* (cf. note 1), VIff.
- 13 Legendre, “Valeur dogmatique de l’esthétique” (cf. note 3), 327 – [fabriquer le lien entre l’univers fantastique intérieur, rêves et fantasmes, et le monde de la matérialité des choses que chaque individu doit habiter] (transl. KB).
- 14 Pierre Legendre, *La passion d’être un autre. Étude pour la danse* (Paris: Éd. du Seuil, 1978 & 2000), 34 – [l’idée du droit la plus abstraite [...], c’est-à-dire l’idée même de la *représentation*. Un autre parle à ma place, me représente, et ce qui se dit c’est encore moi] (transl. DH).
- 15 Sabine Hackbarth, *Pierre Legendres “dogmatische Anthropologie”: Subjektconstitution im Medium des Blicks* (Wien/Berlin: Turia und Kant, 2014), 64 – [Bilder existieren nur, wenn sie sprachlich authentifiziert sind, Spiegel müssen sprechen, um glaubhaft reflektieren zu können] (transl. DH).
- 16 Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicolson, 1990), 29.
- 17 Goodrich, *Languages of Law* (cf. note 16), 263.
- 18 Peter Goodrich, “A Theory of the Nomogram,” in *Law, Text, Terror: Essays for Pierre Legendre*, eds. Peter Goodrich, Lior Barshack, Anton Schütz (London: Glass House Press, 2006), 13–33, here: 25.
- 19 Legendre, *Le désir politique de Dieu* (cf. note 1), 92 – [toute société met en œuvre, à travers ce que nous appelons son *art* [...] une contrainte structurale, celle de *laisser passer l’imparable*, autrement dit de miser sur l’atout poétique pour que la vie ait lieu.] (transl. DH).
- 20 Legendre, *Le désir politique de Dieu* (cf. note 1), 394 – [les célébrations poétiques de la Référence] (transl. DH).
- 21 Legendre, *Le désir politique de Dieu* (cf. note 1), 153 – [indexer la structure subjective sur la mise en scène sociale des fondements de l’image et de la parole] (transl. DH).
- 22 Legendre, “Valeur dogmatique de l’esthétique” (cf. note 3), 336 – [la démarche esthétique, qui consiste à se mettre *de l’autre côté du monde* pour fictivement le recomposer, de l’autre côté du miroir présentant à l’homme son image] (transl. DH).
- 23 Legendre, “Valeur dogmatique de l’esthétique” (cf. note 3), 329 – [l’esthétique est le rempart, le support premier de tout système de pensée, rendant possible la construction du face à face avec le monde.] (transl. DH).
- 24 Cf. for more details, Goodrich, *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance* (New York: Cambridge University Press 2014).

- 25 Pierre Legendre, *De la Société comme Texte. Linéaments d'une Anthropologie dogmatique* (Paris: Fayard, 2001), 132 – [La fonction emblématique consiste ainsi à indiquer, à désigner cette place [vide]] (transl. DH).
- 26 Goodrich, *Theory of the Nomogram* (cf. note 18), 23.
- 27 Legendre, *De la Société comme Texte* (cf. note 34), 132 – [le scénario d'une représentation causale en exposant l'image qui s'empare du regard, sur le même mode dogmatique que l'apparition de sa propre image dans le miroir] (transl. DH).
- 28 Cf. Georg Mein, *Choreografien des Selbst: Studien zur institutionellen Dimension von Literalität* (Wien/Berlin: Turia + Kant, 2011), 69 – [spiegelbildliche Verhältnis von Lettern und Papier [...] als Analogon für das spiegelbildliche Verhältnis von Text und Leser interpretiert] (transl. DH).
- 29 Legendre, "Valeur dogmatique de l'esthétique" (cf. note 3), 330 – [Lire la page imprimée, c'est lire un montage d'image, *comme si* le texte venait à la place d'une image, plus exactement de l'autre que je suis dans un miroir.] (transl. DH).
- 30 Legendre, "Valeur dogmatique de l'esthétique" (cf. note 3), 330 – [toutes les sortes d'art].
- 31 Legendre, "Valeur dogmatique de l'esthétique" (cf. note 3), 334 – [civiliser un univers intérieur, un chaos qui ignore le principe de non-contradiction nécessaire à l'entrée de l'animal parlant dans la réalité] (transl. DH).
- 32 Legendre, *La Fabrique de L'Homme Occidental* (cf. note 8), 23 – [loi qui le dépasse] (transl. KB).
- 33 Legendre, *Le désir politique de Dieu* (cf. note 1), 327.
- 34 Legendre, *Le désir politique de Dieu* (cf. note 1), 124 – [nos attaches imparables, ces ficelles de fiction [...] par lesquelles les institutions tiennent debout] (transl. KB).
- 35 Legendre, *Le désir politique de Dieu* (cf. note 1), 339 – [La toute-puissance esthétique, nous la vivons sans la remarquer: elle repose sur la foi aux images. Encore et toujours, l'inouï du dogme spéculaire. Qui fait œuvre esthétique, participe à la manœuvre du miroir dans la société, c'est-à-dire à la manœuvre de l'identité sur la scène de la civilisation. L'art est une offre identificatoire, non un raisonnement théorique. Depuis une scène qui comme le miroir sépare, il s'adresse à Narcisse en chacun de nous, sur le mode symbolique.] (transl. DH).
- 36 James Mellard, *Using Lacan, Reading Fiction* (Urbana: University of Illinois Press, 1991), 46.
- 37 Jean Burgos, *Pour une Poétique de l'Imaginaire*, Pierres Vives (Paris: Éd. du Seuil, 1982), 141. – [reproduction servile du code] (transl. DH).
- 38 Burgos, *Pour une Poétique de l'Imaginaire* (cf. note 46), 141 – [réalité supplémentaire] (transl. DH).
- 39 Legendre, *Le Désir Politique de Dieu* (cf. note 1), 132 – [l'une des parties se trouvant rabattue contre l'autre, d'après la marque imposée par le pli. [...] s'agissant de *ce qui doit demeurer caché*, qui n'est montrable que d'une façon autre que juridique et néanmoins donne sa solidité, sa valeur, sa couleur d'humanité à ce qu'au premier regard nous voyons.] (transl. DH).
- 40 Legendre, "Valeur dogmatique de l'esthétique" (cf. note 3), 338. – [derrière le visible] (transl. DH).
- 41 Monika Schmitz-Emans, *Die Literatur, die Bilder und das Unsichtbare: Spielformen literarischer Bildinterpretation vom 18. bis 20. Jahrhundert*. Saarbrücker Beiträge zur vergleichenden Literatur- und Kulturwissenschaft 7 (Würzburg: Königshausen & Neumann, 1999), 52 – [Vergegenwärtigung von Nichtgegenwärtigem] (transl. DH).
- 42 Schmitz-Emans, *Die Literatur, die Bilder und das Unsichtbare*, 52 – [halluzinatorisch-evokativ[]] (transl. DH).

- 43 Cf. Pierre Legendre, *Dieu au miroir. Étude sur l'institution des images*, Leçons III (Paris: Fayard, 1994), 148 – [hyper-Miroir] (transl. DH).
- 44 Gérard Raullet, “Der opake Punkt des Politischen. Kleists ‘Penthesilea’ als Gründungsmythos,” in *Penthesileas Versprechen: Exemplarische Studien über die literarische Referenz*, ed. Rüdiger Campe (Freiburg (Breisgau): Rombach, 2008), 343–74, here: 368 – [Erfahrung des alle Ordnung Übersteigenden] (transl. DH).
- 45 Raullet, “Der opake Punkt des Politischen,” (cf. note 44), 365 – [rätselhaft und chaotisch] (transl. DH).
- 46 Legendre, *Dieu au Miroir* (cf. note 57), 10. – [*la scène inconsciente du sujet*] (transl. DH)
- 47 Cf. Friederike Worthmann, *Literarische Wertungen: Vorschläge für ein deskriptives Modell* (Wiesbaden: Deutscher Universitäts-Verlag, 2004), 32.
- 48 Cf. the idea of art as a window on the chaos, as developed in Cornelius Castoriadis, *Fenêtre sur le chaos* (Paris: Édition du Seuil, 2007).
- 49 Raullet, “Der opake Punkt des Politischen” (cf. note 58), 368.
- 50 Sibylle Schmidt, *Zeugenschaft – ethische und politische Dimensionen*, Europäische Hochschulschriften / 20, vol. 732 (Frankfurt (Main) et al.: Lang, 2009), 34 – [*dyadische Struktur*] (transl. DH).
- 51 Schmidt, *Zeugenschaft* (cf. note 50), 39 – [zwischen Zeuge und Zuhörer [bleibt] stets eine unüberbrückbare Differenz bestehen] (transl. DH).
- 52 Walter Schmitz, *Erinnerte Shoah: die Literatur der Überlebenden* (Dresden: Thelem bei w.e.b., 2003), 311 – [Der Leser bezeugt den schreibenden Zeugen und wird so selbst auch in den Zeugenstand gerufen] (transl. DH).
- 53 Cf. the case of the novel “*Esra*” which was decided before the German Federal Constitutional Court, and the related discussions concerning conflicts between artistic freedom and right of personality in e.g. Karl-Heinz Ladeur/Tobias Gostomzyk, “Ein Roman ist ein Roman ist ein Roman?” in *Zeitschrift für Urheber- und Medienrecht (ZUM)* 48 (2004), 426–436; Uwe Wittstock, *Der Fall Esra. Ein Roman vor Gericht. Über die neuen Grenzen der Literaturfreiheit* (Köln: Kiepenheuer & Witsch, 2011); Mareike Riedel, *Vermutung des Künstlerischen: der Esra-Beschluss des Bundesverfassungsgerichts – eine rechts- und literaturwissenschaftliche Untersuchung* (Tübingen: Mohr Siebeck, 2011).
- 54 Ladeur and Gostomzyk, “Ein Roman ist ein Roman ist ein Roman?” (cf. note 68), 432 – [stillschweigende Übereinkunft [], dass ein fiktionaler Text vom Anspruch auf Verifizierbarkeit suspendiert ist] (transl. DH).
- 55 Wolfgang Iser, *The Fictive and the Imaginary. Charting Literary Anthropology* (Baltimore/London: Johns Hopkins University Press, 1993), 11.
- 56 Iser, *The Fictive and the Imaginary* (cf. note 55), 11.
- 57 Kremer (cf. note 5) – [universal begabter Künstler, Musiker und Autor, dessen phantastische Erzählungen und romantische Kunstmärchen von maßgeblichem Einfluss auf die Weltliteratur waren] (transl. DH).
- 58 Kremer (cf. note 5), 16. – [Spannung zwischen Offenheit und Verrätselung] (transl. DH)
- 59 James Gunn, *Paratexts: Introduction to Science Fiction and Fantasy* (Plymouth: Scarecrow Press, 2013), 152.
- 60 Gunn, *Paratexts* (cf. note 58), 152.

- ⁶¹ Michael Rohrwasser, *Coppélius, Cagliostro und Napoleon: der verborgene politische Blick E.T.A. Hoffmanns* (Basel: Stroemfeld/Roter Stern, 1991), 15. – [Keine andere Erzählung Hoffmanns – und keine andere der Romantik – ist in den letzten Jahren so häufig interpretiert worden wie das von Hoffmann selbst und seinen Zeitgenossen, von Jean Paul bis Ludwig Tieck, wenig geschätzte Nachtstück] (transl. DH).
- ⁶² Rohrwasser, *Coppélius, Cagliostro und Napoleon* (cf. Note 61), 100. – [irritierende Instanz] (transl. DH).
- ⁶³ Nikolai Vogel, *E.T.A. Hoffmanns Erzählung Der Sandmann als Interpretation der Interpretation*, Münchener Studien zur literarischen Kultur in Deutschland, vol. 28 (Frankfurt am Main/New York: Lang, 1998), 34 – [Durch die Leseranrede wird die Geschlossenheit des Textes vermeintlich gesprengt, denn der Leser ist außerhalb. Durch die Anrede durch den Erzähler wird er aber fiktiv hineingenommen, der Leser, der den Text liest, stößt in diesem auf sich selbst, er wird gleichsam beim Lesen erwischt] (transl. DH).
- ⁶⁴ Cf. Ulrich Hohoff, *E. T. A. Hoffmann, der Sandmann: Textkritik, Edition, Kommentar* (Berlin et al.: de Gruyter, 1988), 287.
- ⁶⁵ E.T.A. Hoffmann, *Tales from Hoffmann*, ed. J. M. Cohen (New York: Coward-McCann, 1951), 124.
- ⁶⁶ Cf. Vogel, *E.T.A. Hoffmanns Erzählung Der Sandmann als Interpretation der Interpretation* (cf. note 50), 117.
- ⁶⁷ Christian Wehr, *Imaginierte Wirklichkeiten: Untersuchungen zum "récit fantastique" von Nodier bis Maupassant*, Romanica Monacensia 52 (Tübingen: Narr, 1997), 46 – [Hinsichtlich der Urteilsstruktur stehen die ‚Trugbilder des Gemüts‘ in einem Verhältnis der ‚formalen Analogie‘ zu den ‚wahren Urteilen‘] (transl. DH).
- ⁶⁸ Herbert Rosendorfer, „Leben und Wirken von drei Dichter-Juristen – Hoffmann, Eichendorff und Kafka,“ in *Dichter als Juristen: Recht, Literatur und Kunst in der Neuen Juristischen Wochenschrift* (6), ed. Hermann Weber, (Juristische Zeitgeschichte Abteilung 6, Recht in der Kunst – Kunst im Recht 18, Berlin: BWV Berliner Wissenschafts-Verlag, 2004), 69–85, here: 74.
- ⁶⁹ Cf. Franz Kafka, Brief an Oskar Pollak, 27.1.1904, in *Franz Kafka: Gesammelte Werke. Briefe 1902-1924*, ed. Max Brod, (New York: Lizenzausgabe für Europa von Schocken Book, 1958), 27.
- ⁷⁰ Cf. Richard Sennett, *The Fall of Public Man* (Cambridge: University Press, 1977), 261.