Law and Sacrifice in Kafka and His Readers

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Abstract

Victims of an uncanny legal system pervade Kafka's writings. Whether the representation of the law in these works implies a sacrificial logic depends significantly on the meaning assigned to Kafka's idea of the law. Despite the innumerable interpretations of Kafka's law-related texts it remains uncertain whether the law in his works is to be understood primarily in juridical, social, and political terms or in metaphysical, theological, and religious ones. This uncertainty, besides eliciting myriad, sometimes contradictory, interpretations, has inspired numerous views, themselves often disparate and conflicting, about the relationship between law and sacrifice in Kafka's works. The present article explores this relationship and how it has been regarded by some of his most important interpreters.

Keywords

law – sacrifice – Kafka – Benjamin – Agamben

Justice is action in deferral [...] Acting in deferral saves from death.
GERSHOM SCHOLEM¹

¹ Scholem, Tagebücher 1917–1923, p. 534.
1 Introduction

References to the law as well as figures that can be – and have been – regarded as victims of the law pervade Kafka’s writings. Whether the representation of the law in these works therefore implies a sacrificial logic\(^2\) remains open to debate, however, and depends significantly on the meaning assigned to Kafka’s idea of the law. Despite the innumerable interpretations of Kafka’s law-related texts – especially the parable “Before the Law,” but also his novels *The Trial* (from which the parable originates) and, to a somewhat lesser extent, *The Castle*, as well as stories such as “In the Penal Colony,” “The New Advocate,” and “The Question of our Laws” – it remains uncertain whether the law in Kafka’s works is to be understood primarily in juridical, social, and political terms or in metaphysical, theological, and religious ones. This uncertainty, besides eliciting myriad, sometimes contradictory, interpretations, has inspired numerous views, themselves often disparate and conflicting, about the relationship between law and sacrifice.

Kafka’s world order is one that is permeated with confinements even as it muddles all borders and limits. In his novel *The Castle* the law is everywhere and nowhere: everyone belongs to the system of the rulers, yet everyone is terrorized by it. The magistrates receive their plaintiffs in bars and bedrooms, and the protagonist, K., becomes entangled in an inscrutable network spun by the rulers of this world; this network eventually exhausts him to death. Similarly, in *The Trial*, the law is inscrutable: the actual court cannot be found or is located in dark attics, the law books turn out to be pornographic booklets, and the judges and lawyers are invisible or fake, though the effect of their authority is lethal.

That the law is “out of joint” in the world of Kafka’s narratives is acutely self-evident. Yet the consequences of this state of affairs as well as its relation to sacrifice have been interpreted in different and often contradictory ways. In what follows I shall contrast two important interpretations of Kafka’s relation to law and sacrifice, one by the contemporary Italian philosopher Giorgio Agamben, in his dialogue with the French philosopher Jacques Derrida, the other by the German-Jewish thinker Walter Benjamin, in dialogue with his friend Gershom Scholem, the historian of Kabbalah. Both Agamben and Benjamin consider the law in Kafka’s writings in religious and secular terms,

\(^2\) In this context “sacrificial logic” suggests that, on the one hand, the law is conceived as inevitably requiring sacrifices and that it is thus an oppressive instance; on the other hand, it refers to the (essentially Pauline) idea that Christ, through his self-sacrifice, fulfilled the law of the Torah once and for all, liberating his followers from this “oppression”.

but they reach radically different conclusions concerning Judaism, Kafka, and the law. Whereas Agamben combines a political perspective with a theological one, Benjamin invokes instead the Jewish juridical tradition. Whereas Agamben equates state law and Jewish law, Benjamin distinguishes between them. These differences are particularly significant in the context of the topic of law and sacrifice.

2  Giorgio Agamben: Redemptive Sacrifice and the Fulfillment of the Law

Giorgio Agamben ranks among the most radical critics of the legal and political state of our times. He proclaims, more forcefully than any other thinker today, that sovereign tyranny holds the world in thrall to all-pervasive domination. In his concepts such as the “homo sacer” (the individual who can be killed but not sacrificed and who is exposed to arbitrary exertions of power) and “naked life” (life subjected to bio-political violence) as well as in his elaboration of an oppressive “state of exception” that “has become the rule,” Agamben configures a diagnosis of today’s world that could hardly be bleaker. He lets the wretchedness of the present swell before the reader’s eyes, to the point where only an all-redeeming interruption of the course of events might rescue our planet. Attempting to thwart the perpetuation of the dismal state of the world, Agamben invokes Benjamin’s messianism and, in this context, his readings of Kafka. Yet there are major differences between Agamben’s and Benjamin’s respective interpretations of Kafka’s approach to sacrifice and its relation to the law.

In a letter to Gershom Scholem dated 15 September 1934, Benjamin calls his writings about Kafka “the crossroad of the roads of my thinking” (den Kreuzweg der Wege meines Denkens). The same applies to Kafka’s place in Agamben’s work, though in his case “crossroad” would signify not only the point where roads leading in opposite directions intersect, but also, literally, the last road taken by the Christian redeemer on his way to the cross. In his interpretations of Kafka’s stories Agamben sets himself apart from – and often explicitly counters – the readings offered by several of his precursors, foremost among them Derrida; likewise, he claims to adopt Benjamin’s exegeses of the Prague author’s work. In the process, however, Agamben shifts Benjamin’s stance in a

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3 Benjamin, Gesammelte Briefe, p. 497.
Christian direction, thereby converting both Benjamin and Kafka into devotees of the apostle Paul.

In *State of Exception* Agamben delineates two aspects of Kafka's work that he deems of critical importance: on the one hand, a critical diagnosis of the state of the world, in which an oppressive law has become ubiquitous; on the other hand, a revelation of hidden possibilities that lead to a reversal of these conditions. Agamben finds in Kafka's work “the most precise account of life” subjected to an all-encompassing ban. Simultaneously, he derives the significance of Kafka's figures from their respective strategies of “deactivating the spectral forms the law takes” in what, quoting Benjamin, he terms the negative “state of exception.”

This state arises when a powerful sovereign suspends existing laws, arbitrarily imposing his own rule and thereby extending his own power and dominion to every aspect of the lives of his subjects. This is precisely the banning which Agamben describes in terms of a logic of potentiated sacrifice: such action not only excludes or “simply sets outside” or “makes indifferent to it,” but leaves one “exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable.” In his interpretation of “Before the Law” but also in his reading of “In the Penal Colony” and in numerous other references to Kafka’s stories, Agamben illustrates his idea of the oppressive “state of exception” and the messianic reversal of this state. Whereas the state of exception proclaimed by the sovereign penetrates into every domain of life and subjugates the world under an arbitrary and oppressive law, the messianic reversal of this situation would abolish the law, along with its sacrificial logic, once and for all, and release life into a new freedom. Only when life has absorbed the law to the point of annihilating it – an absorption that corresponds to the law’s final fulfillment – instead of letting the law rule over life, will humanity be redeemed.

Agamben’s anarchist and antinomian reading recognizes an idiosyncrasy in the endings of Kafka’s parables, which, as he maintains in *State of Exception*, “contain the possibility of a transformation that produces an about-face inverting the sense of the whole.” Agamben’s readings focus on these disturbing endings, for it is here, he contends, that the suspension of the Law succeeds in undoing the power of the ban. For Agamben, again quoting Benjamin, the state of exception is paradigmatically exemplified in “the kind of life lived

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in the village at the foot of the hill” described in The Castle. Redemption, in short, is the reversal of this situation as it fulfills and thereby definitively dissolves the laws of the invisible rulers. The most compelling examples of such a reversal, in which the force of the law is abolished, occur in Agamben’s readings of “Before the Law” and “In the Penal Colony”.

Agamben perceives in Kafka’s parable “Before the Law” a perfect representation of the structure of the sovereign action of an oppressive, omnipresent law. The situation of the man from the country, who is blocked by a doorkeeper from passing through the gate of the law, embodies for Agamben the purest form of the law’s sacrificial logic. No decree forbids this man’s admittance to the law, but he is literally held in a ban, which simultaneously includes and excludes him: it accords him no access to the law, yet he cannot turn away from it. Unlike traditional interpretations, which deem the situation of the man from the country as one of failure (for he waits in vain before the door of the law until the doorkeeper pronounces “Now I will go and close it”), Agamben sees the closing of the door as a positive event; he understands the countryman’s “entire behavior” as nothing other than a “complicated and patient strategy to have the door closed in order to interrupt the law’s being in force”.

With this surprising reading of Kafka’s parable, Agamben explicitly counters Derrida’s interpretation, which considers the parable an endless yet positive waiting and an ongoing negotiation with the representatives of the law. Agamben rejects this vision, which he considers to be inspired by the Jewish tradition of a “life lived in deferral and delay.” For Derrida, the man from the country, in waiting before the entrance to the law, “decides to put off deciding.” In the constitutive inability to reach closure, which stands at the core of Derrida’s reading, Agamben recognizes a stance that partakes of our prevailing condition “of a petrified or paralyzed messianism.” Derrida’s stance contrasts with the provocation of Agamben’s man from the country that leads to the definitive and redemptive closing of the door: For Agamben, Kafka’s man from the country is a Christ figure who, as related in the gospels, fulfills the law in pleroma (fullness) and thereby ends the law’s oppressive effects, thereby bringing about the inversion of the negative state of exception into a state of freedom. In a lecture from 2009, Agamben elaborates his view of the death of

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7 Agamben, State of Exception, p. 63.
8 Agamben, Potentialities, p. 174.
9 Agamben, Potentialities, p. 166.
10 Derrida, Before the Law, p. 195.
11 Agamben, Potentialities, p. 171.
Christ as ultimate sacrifice meant to obliterate the law and its sacrificial logic.\textsuperscript{12} Opposing both intentions, Agamben calls for a decisive and conclusive “halt” as the only means of salvation. A similar logic is afoot in his interpretation of Kafka’s “In the Penal Colony.”

This story features an elaborate instrument of execution; operated by an officer, it inscribes on the backs of the condemned the sentence of the law they have transgressed. The murderous effect of the law is thereby linked to language, in particular to the written word. Kafka’s story ends with the officer surrendering himself to the machine, which self-destroys as it works upon him. Agamben interprets the destruction of the writing-torture machine in the context of his idea of a simultaneous redemption from both (written) language and law, or, more succinctly, from written law. Thus, the redeeming moment in Kafka’s story occurs in the decomposition of the machine: instead of punishing, the machine now also kills: at the point at which the law is abrogated, as the distinction between punishment and execution disappears, the murderous essence of the law is revealed. However, far from rendering justice impossible in the absence of a specific law, the law – all laws – now reveals its murderous nature: redemption lies in the revelation of the sacrificial essence of the law.

Agamben’s messianic dissolution of the written word corresponds to Paul’s abrogation of Jewish law, which Agamben describes in \textit{The Time that Remains}. The Pauline message, Agamben writes, “cannot be something like a written text containing new and diverse precepts. […] In other words, it is not a text, but the very life of the messianic community, not a \textit{writing}, but a \textit{form of life}.\textsuperscript{13}” Agamben’s interpretation mentions yet supersedes others, according to which the officer, in his capacity as judge, pays for his previous injustice, while the machine grinds to its demise as his partner in crime. Agamben’s reading hones in on the redemption that results from destroying the machine. Thus, he emphasizes that the precept “be just” which the machine inscribes onto the officer’s skin does not refer to the decree the officer has broken, but rather must be read as instructions, from the officer himself, to shatter the machine. Justice demands the revocation and destruction of the written law. Much as the man from the country who stands before the law has strategically provoked the door’s final closing, so has the officer inserted “the instruction into the

\textsuperscript{12} See Agamben, \textit{The Sacrifice in Liturgy}. In this lecture, Agamben takes to task both the traditional Jewish centrality of the law as well as the Christian Church for failing to acknowledge this double consequence of the “Christ event”: “While traditional Judaism perpetuates an oppressive law, the Church – be it symbolically – perpetuates the call to sacrifice.”

\textsuperscript{13} Agamben, \textit{The Time that Remains}, p. 122.
machine in the intention of destroying it.”\(^{14}\) The officer who willingly sacrifices himself thereby takes upon himself the punishment of all the sinners and condemned of this world. He is thus, in Agamben’s reading, a Christ figure, and his death a redemptive self-sacrifice that liberates from the law and sacrifice alike. In turning Kafka’s narrative into a modern gospel, Agamben conflates state law with Jewish law and Paul’s proclamation of the demise of the Jewish Law with his own antinomian therapeutic concept for our planet. As we shall see, Benjamin had in mind a starkly different idea about Kafka’s relation to the law.

3 Walter Benjamin: Halachah and Haggadah

Agamben introduces his reading of Kafka’s “Before the Law” with a claim that he is interpreting the parable “from the perspective of Walter Benjamin’s conception of messianic law.”\(^{15}\) Benjamin eschews elaborate interpretation of the parable; instead, he speaks merely of “the cloudy spot” (\emph{wolkige Stelle}) at its core that lends itself to infinite reflections.\(^{16}\) In his notes for a letter to Gershom Scholem, Benjamin even calls the law the “blind spot” (\emph{toter Punkt}) in Kafka’s oeuvre.\(^{17}\) However, Benjamin’s elaborations on Kafka in his important essay “Franz Kafka: On the Tenth Anniversary of His Death” and in his exchange with Scholem about the Prague author, deal extensively with questions of the law. In these writings, Benjamin’s views on Kafka, Judaism, and the Law differ significantly from Agamben’s Pauline reading. Naturally, there are similarities between Agamben and Benjamin’s respective positions on the secular legal system. Like Agamben, Benjamin considers state laws to be inherently instruments of abusive sovereignty. In his “Critique of Violence” Benjamin notes the mythical nature of state laws; in his writings on Kafka he shows how the legal system exerts its violent power wantonly and everywhere, infiltrating itself into the most personal and intimate realms of existence, to the point of making itself “indistinguishable from life itself.” Like Agamben, Benjamin sees Kafka’s \emph{The Trial} and even more so \emph{The Castle} as poignant illustrations of a world where obscure legal instances inflict arbitrary, opaque, and repressive regulations on individuals who remain ignorant of the laws they are subjected to. For Benjamin the dismal world of Kafka’s novels is one of unregulated, “global promiscuity,” the lowest stage of human existence. Benjamin

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14 Agamben, \emph{Idea of Prose}, p. 117.
15 Agamben, \emph{Potentialities}, p. 172.
16 Benjamin, \emph{Benjamin üer Kafka}, p. 20.
17 Benjamin, \emph{Benjamin üer Kafka}, p. 154 et seq.
labels this world a pre-historic swamp world (*Sumpfwelt*), where everyone is guilty yet also a victim of the law; this swamp world is, above all, “a world that renders impossible any discriminating between right and wrong.”\(^{18}\)

This lawlessness, Benjamin writes, is a process of historical development. He elaborates on this development most explicitly in his outline for an essay (subsequently never written) entitled “Versuch eines Schemas zu Kafka.” This one-page text sketches a miniature theory of history and civilization. It describes the world in Kafka’s novels as the pre-historical swamp world, which, Benjamin writes,

Kafka, in his books, confronts with the lawful one of Judaism. [...] Its purity and dietary laws display the defense mechanisms against this [swamp] world [...] In other words, only the Halachah still [ex negativo] contains traces of this [pre-historic] mode of existence of mankind that is long past.\(^{19}\)

“Kafka’s books,” Benjamin continues, “contain the missing Haggadah [the narrative component of the Talmud] to this Halachah [its legal aspect] [...] Intertwined with this Haggadic text is the prophetic dimension in his books.”\(^{20}\)

The world as it presents itself in *The Trial* and in *The Castle*, this world without distinctions and divisions, without boundaries and order, is thus both a pre-historical *Vorwelt* and prophetically announces the return of this oppressive lawlessness in the present. The lawless world of pre-history depicted by Kafka is, for Benjamin, also the index of his own present: Writing as a Jew in the 1930s, Benjamin describes the legal system of his time by way of his characterization of Kafka’s swamp world, in which the laws, far from ordering life, not only intrude into the whole of everyday life but become identical with the ultimate lawlessness that reigns in an oppressive “state of exception.” So far, this description of the workings of state law seems not especially dissimilar to Agamben’s view; the major difference is that, for Benjamin, this pre-historic – as well as present – state, in which the law is “bastardized” with lawlessness and in which all boundaries are undone, is contrasted to – rather than, as in Agamben, identified with – Jewish law. For Benjamin, revealed law institutes

\(^{18}\) As Rodolphe Gasché notes: “More precisely, it is a law that inhibits the possibility of discriminating between right and wrong. It is constituted by the very impossibility of a clear decision – an impossibility by which this law perpetuates the order of the wrong (*Unrecht*), thus also excluding the very possibility of justice (*Gerechtigkeit*)” (Gasché, *The Stelliferous Fold*, p. 278 et seq.).

\(^{19}\) Benjamin, *Benjamin über Kafka*, p. 16.

\(^{20}\) Benjamin, *Benjamin über Kafka*, p. 16.
the possibility of justice. And it is only “justice that serves as the point of departure for [Kafka’s] critique of myth.”21 The defense against a world without boundaries, separations, or distinctions would thus, for Benjamin, be Jewish law itself: not only is it distinguished from an oppressive state law that is ruled by sheer power; it is – or, rather, would be – its antidote. In a letter to Scholem, from 11 August 1934, Benjamin writes: “Indeed, if we follow Kafka’s presentation, the work of the Torah has been thwarted” (Das Werk der Thora nämlich ist – wenn wir uns an Kafkas Darstellung halten – vereitelt worden).22 In his preparatory notes for this letter, Benjamin added: “And everything that Moses once accomplished, would have to be made up for in our epoch of the world” (Und alles, was einst von Moses geleistet wurde, wäre in unserm Weltzeitalter nachzuholen).23 In this surprising defense of Jewish law Benjamin differs from Agamben in opposing the mythical lawless world of both pre-history and modernity depicted by Kafka to the Halachic Jewish world. Yet Benjamin is also careful to distinguish his reflections on Kafka’s Halachic dimension from Jewish theological readings.

Between 1925 and 1938 Benjamin and Scholem exchanged a stream of correspondence about Kafka’s work that counts among its most profound interpretations.24 In the course of their exchange, important dissonances between the two friends come to the fore.25 These differences concern the role of theology in interpreting Kafka, the importance and nature of the law in Kafka’s work, and the understanding of Halachah and Haggadah in this context. Encompassing these differences is a dissimilarity in their respective outlooks on justice and the Jewish tradition. Surprisingly, Scholem, who is generally considered the more “Jewish” thinker of the two, is further removed than Benjamin from certain core aspects of the Jewish tradition. Less surprisingly, of particular interest to Benjamin, more so than for Scholem, are aspects of this tradition – notably, Jewish law – that relate to the human, more precisely the political, rather than to the divine realm.

Benjamin and Scholem disagree on the justification of a theological reading of Kafka. In his reply to Benjamin’s account of Kafka’s world as a swamp world with its counterpart in the Torah, Scholem writes: “The existence of the

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21 Benjamin, Franz Kafka, p. 815.
22 Benjamin, Gesammelte Briefe, Band IV, p. 478.
23 Benjamin, Benjamin über Kafka, p. 78.
24 It was Scholem who initially encouraged Benjamin to include discussion of the “Halachic and Talmudic reflections as they so pressingly appear in ‘Before the Law’“ into his essay on Kafka, mainly to please the publisher Schocken, whom Scholem had persuaded to invite Benjamin to submit the essay. Cf. Benjamin, Benjamin über Kafka, p. 19.
25 Benjamin, Benjamin über Kafka, p. 79.
secret [Kabbalistic rather than Halachic] law destroys your interpretation: in the pre-historical world there hardly is this chimerical muddle, and certainly not one of the kind that announces its [persistent] existence. *There you went much too far with the elimination of theology and threw the baby out with the bathwater.*"\(^{26}\) Scholem indeed regards the “possibility of divine judgment” (*die Möglichkeit des Gottesurteils*) as the sole concern of Kafka's writings (*den einzigen Gegenstand der Kafkaschen Produktion*). Kafka's work, in particular "Before the Law," is for Scholem the perfect illustration of the “inverted trace of a disappeared transcendence.” He invokes Kafka as the ultimate witness of a negative theology, in which, in Stéphane Moses's words, “all we can assert of God is the very fact of his absence.”\(^{27}\) Kafka, in Scholem's view, still represents “an instance – borderline to be sure – in the history of revelation”\(^{28}\). It is – and here Kafka, for Scholem, rejoins the heretic Kabbalists – “the nothingness of revelation” (*das Nichts der Offenbarung*).\(^{29}\) Whereas Scholem thinks in theological categories of Kafka's references to the law, Benjamin, though acknowledging a certain “shadowy” (*beschattet*)\(^{30}\) theological dimension in his own writings, is less interested in *Gott* and more concerned with how the Jewish Talmudic tradition, in particular the interaction between Halachah and Haggadah, provides insights – and a possible alternative – to the swamplike world in Kafka's fiction. Rather than seeing a Kabbalistic “nothingness of revelation” Benjamin instead regards the “distortion of existence” (*Entstellung des Daseins*) of the “upcoming [political] legal system”\(^{31}\) as Kafka’s “fixation” and “one and only

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\(^{26}\) Benjamin, *Benjamin über Kafka*, p. 72.

\(^{27}\) Mosès, *The Angel of History*, p. 145.


\(^{29}\) Letter of 7 July 1934, in Benjamin, *Benjamin über Kafka*, p. 82. Stéphane Mosès writes that for Scholem, the Law, in *The Trial* appears “as a parody of itself:” there are courts seated “in dark attics, penal codes that hide pornographic pamphlets, judges who don't judge, lawyers who no longer believe in the Law, policemen and executioners who look like pathetic provincial actors. This arcane and unfathomable justice” is, Mosès concludes, “the reverse image of divine justice and the perfect representation of Scholem's negative theology” (Mosès, *The Angel of History*, p. 155).

\(^{30}\) Benjamin, *Benjamin über Kafka*, p. 76.

\(^{31}\) Benjamin speaks here of the prophetic aspect of Kafka's “Haggadic” writing: “The precisely registered oddities that abound in the life it deals with must be regarded by the reader as no more than the little signs, portents, and symptoms of the displacements that the writer feels approaching in every aspect of life without being able to adjust to the new situation.” That which most explicitly refers to Kafka's vision of the situation that will become a reality in Benjamin's time is his insistence on “the almost incomprehensible distortions of existence that betray the emergence of these new laws” (Benjamin, *Selected Writings*, p. 496).
concern.” Benjamin nevertheless reintroduces the Jewish dimension, which he deems necessary for reading Kafka, by defining this distortion precisely in terms of “a world in which the Torah has been thwarted.”

Scholem and Benjamin present different understandings of the Halachah. Unlike Benjamin, who sees Halachah as an antidote to the chaotic medley of the pre-historic – and present – swamp world, Scholem is skeptical of it, not least in light of his view that Kafka was a heretical, antinomian Kabbalist in the tradition of Shabbtai Zevi, the seventeenth-century leader of an antinomian messianic sect. Scholem writes to Benjamin: “Not, dear Walter, the absence (of the revealed law) in a pre-animistic world is the problem, but instead its impossibility to be fulfilled” (Nicht, lieber Walter, ihre Abwesenheit in einer präanimistischen Welt [sondern] ihre Unvollziehbarkeit ist das Problem; Scholem’s emphasis).

Scholem comes close to the Pauline view forwarded by Agamben in his regarding the Halachah as the “absolutely concrete, which is the unfulfillable as such” (das absolut Konkrete als das Unvollziehbare schlechthin).

This relates to Scholem’s view of Kafka, who, he believes, “ceaselessly compares the concrete reality of human existence with the ideal of absolute justice, an ideal that the Jewish tradition, for its part, symbolizes in the image of divine judgment.” In Judaism, however, the ideal of absolute justice, is, like the fulfilment of the law, not of this world. In presupposing the possibility of the law’s fulfilment, Scholem echoes, however faintly, the Pauline argument, developed in his “Epistle to the Romans,” that Jewish law must be abrogated because it can never be fully lived up to. For Paul – and, for that matter, Agamben – Jewish
law is indeed the very source of sinfulness; Christ’s death on the cross fulfilled the law once and for all, and the “works” – meaning the mitzvot, the observance of the commandments – must therefore be suspended and replaced by the interiority of divine grace and love. However, Scholem’s antinomianism does not go that far. In his interpretation of Kafka, in his exchange with Benjamin, and in other writings, Scholem’s anarchist impulses remain within the boundaries of Jewish antinomian Kabbalah, and Kafka remains for him a late representative of this tradition.

Benjamin and Scholem also disagree on the meaning and function of the Haggadah. Initially, this seems not to be the case in the most precise parallel – and distinction – Benjamin draws between the Haggadah and Kafka’s stories: “Kafka’s writings,” he writes in a letter to Scholem – a passage cited by Agamben – “do not modestly lie at the feet of the doctrine, as the Haggadah lies at the feet of the Halachah. Though apparently reduced to submission, they unexpectedly raise a mighty paw against it.” Scholem regards this passage as confirmation of his view of Kafka’s antinomian attitude. Benjamin’s image could indeed be read this way, but Scholem’s interpretation misses the nuances of the gesture that Benjamin describes. Scholem has a point when he objects to Benjamin that “the antinomian nature of the Haggadic that you mention, is not a characteristic of Kafka’s Haggadah alone, it is inherent in the nature of the Haggadic as such.” He is, however, only partly right: as I will show, not only is Benjamin’s image of the raised paw not truly antinomian, but neither do all Haggadot relate to the Halachah in this way. Moshe Halbertal distinguishes three different paradigms for the relationship between Haggadah and Halachah: “The first and simplest,” he writes, “is when the

39 See, for example, Romans, 7:7: “What shall we say, then? Is the law sin? Certainly not! Indeed I would not have known what sin was except through the law.”

40 In some respects, Scholem’s view is clearly distinct from Agamben’s – and Paul’s: while considering the revealed law to be unfulfillable, he obviously rejects the notion that Christ did in fact fulfil the law. In his letter of 1 August 1931, he compares Kafka’s writings to “the moral reflections of a Halachist who tried putting into language a paraphrase of divine judgment” (die moralische Reflexion eines Halachisten [...] der die sprachliche Paraphrase eines Gottesurteils versuchen wollte). But he adds: ‘Here, for once, a world is put into words, in which redemption cannot be assumed. Go and explain this to the Gentiles!’ (Hier ist einmal die Welt zur Sprache gebracht, in der Erlösung nicht vorweggenommen werden kann – geh hin und mache das den Gojim klar!) (Benjamin, Benjamin über Kafka, p. 65). For Scholem the impossibility of fulfilling the Halachah is part of his negative theology.

41 Letter of 12 June 1938, in Benjamin, Benjamin über Kafka, p. 87.

42 Benjamin, Benjamin über Kafka, p. 87.

43 Benjamin, Benjamin über Kafka, p. 89.
narrative provides a basis for the law,” the second “emphasizes the way in which the story permits a transition to a different sort of legal knowledge” and “allows us to see how the law must be followed [as] we move from ‘knowing that’ to ‘knowing how.’” It is only the third paradigm, which Halbertal calls “the most delicate,” that corresponds to Benjamin’s description of the relation between Haggadah and Halachah. In this paradigm, Halbertal explains, “the story actually has a subversive role, pointing out the law’s substantive limitations.”

This third paradigm is certainly the one to which Benjamin’s saying about Kafka’s Haggadic dimension applies; nevertheless, it is crucial to distinguish this idea of subversion from an antinomian approach to the Halachah.

A closer look at the distinction Benjamin makes between Kafka’s stories and the Haggadah reveals that it is far from antinomian. What is implied in Benjamin’s strange image of the “mighty paw” raised against the Halachah? It evokes the manifestation of a creaturely presence, a gesture of threat, and a motion of halting off. In order to better understand the implications of this image one must return to Benjamin’s essay “Franz Kafka: Building the Wall of China,” where he elaborates on the analogy between Kafka’s writings and the Haggadah. Immediately after diagnosing “Kafka’s fixation on the sole topic of his work – namely the distortion of existence” (Die Fixierung Kafkas an diesen seinen einen und einzigen Gegenstand, die Entstellung des Daseins) – Benjamin explains that Kafka’s prose resembles the Haggadah in what may “appear to the reader like obsessiveness” (kann beim Leser den Eindruck der Verstocktheit hervorrufen), a mode of writing that exceeds any morality to be drawn from it. Of Kafka, Benjamin writes:

> We may remind ourselves here of the form of the Haggadah, the name Jews have given to the rabbinical stories and anecdotes that serve to explicate and confirm the teachings – the Halachah. Like the Haggadic, the narrative parts of the Talmud, [Kafka’s] books too, are stories; they are a Haggadah that constantly pauses, luxuriating in the most detailed descriptions, in the simultaneous hope and fear that it might encounter the Halachic order, the doctrine itself, en route.45

Benjamin calls this hesitation, this ambivalence between hope and fear of encountering the law, “deferral” or “postponement” (Verzögerung), a term that, with a slight shift, could perfectly apply to the waiting of the man at the door of the law. As in these Haggadot, Benjamin continues, Kafka’s parables

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44 Halbertal, *At the Threshold of Forgiveness*, p. 34.
45 Benjamin, *Selected Writings*, p. 496 (emphasis mine).
“show the true workings of grace” (das eigentliche Walten der Gnade) in that [in them] “the law never finds expression as such – this and nothing else is the gracious dispensation of the fragment.” The Haggadah avoids becoming a Halachah, much as do Kafka’s parables – or rather anti-parables – that yield neither doctrine nor moral. Just as the mighty paw raised against the Halachah, the Haggadah is like Kafka’s writings in the sense that it both stops short of encountering the law and also limits the law by keeping it from exceeding its boundaries, which are set by creaturely, lived life itself. But it is crucial in Benjamin’s image that this paw does not crush the Halachah: its gesture is not to be confounded with antinomian transgression or abolishment of the law; it corresponds instead to the structure of dynamic interaction between Halachah and Haggadah, between narrative and the law inherent in the Jewish idea of justice.

Walter Benjamin’s implicit interpretation of Kafka’s understanding and approach to the law resists a Pauline characterization of the Jewish legal system as oppressive and calling for its suspension. In his magisterial essays on Kafka written in conjunction with his correspondence with Gershom Scholem, Benjamin offers another explanation for both the infinite recurrence in Kafka’s writings and the non-closure that characterizes so many of his texts. Benjamin distinguishes his understanding of this postponement from Max Brod’s interpretation of Kafka’s “strange, and so often strikingly meticulous attentiveness to detail” as “a search for perfection” and “the right path.” Indeed, he considers this form of writing to be simultaneously a redeeming gesture of hope and an expression of Kafka’s “fear of the end.” Whether this end implies death, a verdict, or (as is most likely) conflation of the two is never made explicit. This final possibility is the most plausible: The Trial ends with Josef K. being brutally executed by two anonymous men who, as the novel’s penultimate sentence notes, observe “die Entscheidung,” the decision: their watching the man they have just killed implies that the decision refers to death. Deferring the end entails postponement of the execution, both in the literal sense suggested in this scene and in a more general sense of a verdict, the implementation of

46 Benjamin, Selected Writings, p. 497.
48 “But what Kafka enjoys about these interminable reflections is the very fear that they might come to an end” (Benjamin, Franz Kafka: Beim Bau der Chinesischen Mauer, p. 496 et seq.). However, Benjamin in fact wrote: “Was sich aber bei Kafka in dieser Endlosigkeit gefällt ist eben doch die Angst vor dem Ende” (But what Kafka enjoys about these interminable reflections is after all the fear of the end) (Benjamin, Benjamin über Kafka, p. 42; translation and emphasis mine).
a judgment, the completion of a procedure, or, in an even wider sense, the arrival at a conclusive message or meaning.

4 Kafka's Deferral of Sacrifice

The aptness of Benjamin's insight into Kafka's relation to sacrifice and the law as divine commandment can be illustrated with another of his short texts. Addressing and rewriting one of the primal scenes involving human sacrifice in the Judeo-Christian imagination, Kafka recasts the so-called “Binding of Isaac” into a fable in which the sacrificial logic of the law is thwarted through an infinite deferral correlated with Kafka's own writing.

“I can imagine another Abraham.”49 This first sentence of a text that was included in a letter Kafka wrote to Robert Klopstock in June 1921 is an implicit response to Kafka's reading of Kierkegaard's reflections, in Fear and Trembling, on Abraham and the binding of Isaac. Kierkegaard praises Abraham's obedience to God's call, deeming it an “infinite resignation that is the last stage before faith.”50

Kafka imagines another Abraham, however, one who engages in an ongoing conversation with God and his commandments, but who would not depart for Mount Moriah to sacrifice his beloved son. This “other Abraham,” Kafka writes, “to be sure, would not make it all the way to patriarch, not even to old-clothes dealer.”51 Like the biblical patriarch, Kafka's Abraham is a pious man and would be ready to execute the order for his son's sacrifice “with the promptness of a waiter,”52 contrary to the biblical Abraham, however, Kafka's Abraham “would still never be able to perform the sacrifice.”53 Kafka then describes two distinct scenes that enact different reasons for preventing Abraham from fulfilling the divine order. In the first, Abraham argues, in an imaginary reply to God, that “he cannot get away from home, he is indispensable; the household needs him, there is always something that must be attended to, the house isn't finished.”54 Later, Kafka continues this phantasmagoria and elaborates on Abraham's excuses for procrastinating to obey God's order. His “other Abraham” now stands in the plural, for he has become a type, or even more so, an existential attitude. The “other Abrahams: They stand on their building sites and suddenly

50 Kierkegaard, Fear and Trembling, p. 46.
had to go up on Mount Moriah.” These Abrahams, as imagined by Kafka, are called by God whilst they are attending to their lives: the divine injunction reaches them when they are in the midst of their homes, their houses, their world-building they are thereupon ordered to abandon all of this, in order to serve God. As much as Kafka’s “other Abrahams” would have been willing to oblige, they are now too immersed in the tending of their “building site” ("Bauplatz") and so will not heed this call of God.

Two years after this letter Kafka penned “Der Bau,” the ultimate “infinite” narrative. This story consists of a long monologue from a mole-like animal obsessively attending to his burrow. The animal constantly makes observations and decisions and confirms facts, only to instantly dismiss them with a “but” or a “however”; he then offers various alternatives, which quickly experience the same fate. The incessant reflections and calculations give expression to both an excessive attention to detail and a continuous frustration about never grasping the whole, all of which suggest an endless task. The burrow, which can be neither definitively repaired nor completed, neither abandoned nor truly inhabited, is the perfect image and embodiment of Kafka’s writing: each statement continuously cancels itself and, in the process, becomes an infinite process beyond any purpose or result. In the story’s final pages, the animal, fearing yet also hoping for an interruption, hears a noise and imagines that “someone may be calling [it] to itself” with an “invitation [it] will not be able to resist.” The creature continues to go about its business, however, and the story, after sixteen closely written manuscript pages and yet another “but,” breaks off in mid-sentence, a suggestion that it otherwise could continue forever.

The final sentence of Kafka’s first scene in his imagining of an “other Abraham” provides an explanation for this endlessness, a discursive infinity that prefigures Benjamin’s idea of procrastination precisely in the face of the possible call from a unique and ominous “someone.” Referring to his “other Abrahams,” who, because they must attend to their houses, resist the invitation of the call to sacrifice, Kafka speculates: “All we can do is suspect that these men are deliberately not finishing their houses [...] so as not to have to lift their eyes and see the mountain that stands in the distance”. The mountain is Mount Moriah, where Abraham’s sacrifice of his son was to transpire; yet it could also be Mount Sinai, where the voice of God called out and the Law was revealed. Since there is always something, one more thing, “that must be

attended to,”59 since the infinite details of any situation cannot be exhausted, any final judgment would amount to injustice; in short, the attention and care of the world requires the relinquishing of any claim to finality. Yet Kafka does not conclude the story here.

“But take another Abraham.”60 These first words of Kafka’s second Abraham scene – a school class, with a teacher who punishes and rewards – introduce yet another argument for Abraham to refuse – or resist – the divine call. This Abraham, too, is a pious man,

who certainly wants to carry out the sacrifice properly and in general correctly senses what the whole thing is about, but cannot imagine that he was the one meant […] He does not lack the true faith, for he has this faith; he wants to sacrifice in the proper manner if only he could believe he was the one meant.61

This Abraham, uncertain that he is the one who has been called, fears making himself ridiculous; he envisages “that the world would laugh itself sick over him […] An Abraham who comes unsummoned!”62 In the final lines of this Abraham text, a commenting narrator, perhaps Kafka himself, focuses on the teacher who distributes the rewards and punishments. The narrator’s words raise the possibility that Abraham is not mistaken, that “he has not heard wrong, for his name was actually spoken, because it is the teacher’s intention that the reward of the best is to be accompanied by the punishment for the worst.”63 This possibility brings even Kafka’s ongoing ruminations to a chilling halt: he offers only one, final comment about this authority, a God who envisages – and has his best pupil, possibly Christ himself, enact the sacrifice by which the punishment is taken from sinful humanity: “Terrible things – enough.”64

Biography

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63 Kafka, Letters, p. 286.
64 Kafka, Letters, p. 286.
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