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Three talmudic Readings of Benjamin's Kafka

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In Search of Another Law

Three talmudic Readings of Benjamin's *Kafka*

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In Search of Another Law

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Three talmudic Readings of Benjamin's *Kafka*

Bat Chen Laila Seri

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Abstract

The project offers a study of German-Jewish thought by examining Walter Benjamin's notion of law through the interpretive framework of the Talmud. The widely recognised locus of Benjamin's discussion of law is his essay *Toward the Critique of Violence*. In his later essays on Kafka, however, Benjamin develops an alternative to the familiar negative notion of law found in the *Critique*, a development that has often been overlooked. The originality of the project lies in articulating "talmudic reading" as a methodology grounded in the hermeneutical resources of rabbinic thought. A close reading of Benjamin's Kafka essays—paying special attention to the dynamics of the rabbinic textual categories halakhah and haggadah—uncovers a notion of law oriented toward the practice of study and interpretation. The project aims to contribute to contemporary debates in political philosophy, literary studies, and philosophy of religion, situating itself particularly within the expanding discourse on Talmud and philosophy.

Key words Walter Benjamin, Franz Kafka, German-Jewish thought, Talmud and philosophy, law and literature, rabbinic hermeneutics, halakhah and haggadah

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Introduction

Kafka and *the Kafka*

> [B]efore the law stands a doorkeeper. To this doorkeeper there comes a man from the country and prays for admittance to the law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and then asks if he will be allowed in later. "It is possible," says the doorkeeper, "but not at the moment."[1]

These lines open Franz Kafka's famous parable "Before the Law" (*Vor dem Gesetz*). Spanning the countryman's lifetime, the parable narrates his repeated, failed attempts to enter the law, until, at the end of the man's life, the door-keeper tells him that the door was intended for him alone, and is now about to be shut.

It is quite likely that this parable—giving rise to numerous readings and interpretations in the little over a hundred years since it was first published in 1915—was the first Kafka piece Walter Benjamin encountered. In a 1925 letter, his first documented sign of interest in Kafka's work, Benjamin wrote to his close friend and correspondent Gershom Scholem: "Just as I did ten years ago, I still consider [Kafka's] short story 'Before the Law' to be one of the best German short stories."[2]

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[1] Franz Kafka, *The Complete Short Stories* (Vintage, 2018), 3.

"Vor dem Gesetz steht ein Türhüter. Zu diesem Türhüter kommt ein Mann vom Lande und bittet um Eintritt in das Gesetz. Aber der Türhüter sagt, daß er ihm jetzt den Eintritt nicht gewähren könne. Der Mann überlegt und fragt dann, ob er also später werde eintreten dürfen. 'Es ist möglich', sagt der Türhüter, 'jetzt aber nicht.'" Franz Kafka, *Gesammelte Werke: Taschenbuchausgabe in 7 Bänden*, ed. Max Brod (Fischer, 1976), 120.

[2] Walter Benjamin, *The Correspondence of Walter Benjamin, 1910–1940* (University of Chicago Press, 1994), 279. Henceforth, I reference this book as CB.

Kafka's work became a central touchstone for Benjamin and a topic of lengthy, lively exchanges between Scholem and himself. His lifelong fascination with Kafka consolidated into three essays: a 1931 radio talk titled "Franz Kafka: *Beim Bau der Chinesischen Mauer*" focusing on a collection of short stories by the same name,[3] the major 1934 study "Franz Kafka: On the Tenth Anniversary of his Death",[4] and a letter to Scholem dated 12 June 1938 containing an unfavourable review of Max Brod's biography of Kafka and some of Benjamin's own reflections, delivered in his unmistakable style.[5] I denote these three texts—which constitute the core of this study's subject matter—together with Benjamin's plentiful notes on Kafka, by the collective term "Benjamin's *Kafka*" (or simply, "*the Kafka*").[6] The decision to call it *the Kafka* (instead of, say, "Benjamin's Kafka essays") has a double function: first, it serves to treat the various pieces as one interconnected text, and second, it anticipates a departure of the text from both its author Benjamin and its subject Kafka.

The present project is a study of Benjamin's *Kafka* with two foci: one conceptual and one stylistic. On the conceptual level, I identify the notion of law as a central problem addressed in *the Kafka*. I argue that through *the Kafka*, Benjamin advances a notion of law that diverges from the one put forward in his earlier essay, "Toward the Critique of Violence", the *locus classicus* of Benjamin's thinking on law. In terms of style, I maintain that Benjamin's unique mode of writing is closely related to the notion of law advanced in the text. In other words, the mode of expression is essential for addressing the conceptual question. For this reason, Benjamin's style in

---

"Seine kurze Geschichte 'Vor dem Gesetz' gilt mir heute wie vor zehn Jahren für eine der besten, die es im Deutschen gibt." Walter Benjamin, *Briefe*, ed. Theodor W. Adorno and Gershom Scholem (Suhrkamp, 1978), 397. Henceforth, I reference this book as BR.

[3] Walter Benjamin, *Gesammelte Schriften,* Vol. 2, Part 2, ed. Rolf Tiedemann et al. (Suhrkamp, 1972–1989), 676–83. Henceforth, I reference this book series as GS.

English translation: Walter Benjamin, *Selected Writings*, Vol. 2, Part 2, ed Michael W. Jennings et al. (Harvard Univ. Press, 1996–2003), 494–500. Henceforth, I reference this book series as SW.

[4] GS 2:2, 409–38. English translation: SW 2:2, 794–818.

[5] BR, 756–64. English translation: CB, 560–66.

[6] I borrow (and broaden) this formulation from Benjamin, who in his correspondence with Scholem often refers to his 1934 Kafka essay—his most extensive study of Kafka—as "my Kafka".

the Kafka merits close attention in its own right. As I argue throughout this thesis, *the Kafka* is not just one text among others in Benjamin's oeuvre. In discussing its subject—Kafka's work (and, to a lesser extent, Kafka himself)—Benjamin carries out an experiment in writing and meaning-making. As such, *the Kafka* offers hermeneutic keys to Benjamin's writing across his oeuvre.

Benjamin's writing style not only challenges the reader who wishes to engage with it, but also defies classification, as Hannah Arendt lucidly observed:

> To describe adequately his work and him as an author within our usual framework of reference, one would have to make a great many negative statements, such as: he was greatly attracted [...] by theology and the theological type of interpretation for which the text itself is sacred, but he was no theologian and he was not particularly interested in the Bible; he was a born writer, but his greatest ambition was to produce a work consisting entirely of quotations; [...] he reviewed books and wrote a number of essays on living and dead writers, but he was no literary critic; [...] he thought poetically, but he was neither a poet nor a philosopher.[7]

Neither a poet nor a philosopher, Benjamin left behind a body of work whose influence and interest have only grown with time. His unconventional style and flair for quotation evoke a sense of astonishment, as captured by Theodor Adorno:

> His capacity for continually bringing out new aspects, not by exploding conventions through criticism, but rather by organising himself so as to be able to relate to his subject-matter in a way that seemed beyond all convention—this capacity can hardly be adequately described by the concept of "originality". [...] The impression he left was not of someone who created truth or who attained it through conceptual power; rather, in citing it, he seemed to have transformed himself into a supreme instrument of knowledge on which the latter had left its mark. He had nothing of the philosopher in the traditional sense.[8]

In *the Kafka*, Benjamin offers readers several hermeneutic keys to his unusual way of writing. Its significance, then, reaches beyond Benjamin's own work, opening a

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[7] Hannah Arendt, "Walter Benjamin: 1892–1940", in *Men in Dark Times* (Harcourt, Brace & World Inc., 1968), 155–56.

[8] Theodor W. Adorno, "A Portrait of Walter Benjamin", in *Prisms*, trans. Shierry W. Nicholson and Samuel Weber (MIT Press, 1983), 229.

path for thinking and seeking truth outside the bounds of philosophical thought. As is briefly discussed in this introduction and explored further throughout the thesis, *the Kafka* is marked by the repeated use of terms and allusions drawn from the Talmud and broader rabbinic literature. My project is based on the claim that Benjamin's *Kafka* can be read as an exercise in meaning-making inspired by rabbinic thought. Seen in this light, it becomes a reflection on the nature of interpretation itself, one that seeks to expand the conceptual boundaries of philosophy by drawing on the intellectual resources of the Talmud. I address the conceptual question of law in Benjamin's *Kafka* by proposing a new method for engaging with Benjamin's distinctive style. This method—which I term *talmudic reading*[9]—is grounded in rabbinic hermeneutics. The inquiry into law through Benjamin's narrative style draws on the relationship between the two rabbinic categories—*halakhah* and *haggadah*—as explored in this introduction and further throughout the thesis.

Scholars have long recognised the centrality of law in *the Kafka*,[10] some noting its close connection to Benjamin's earlier essay "Toward the Critique of Violence".[11] Some have explored Benjamin's extensive use of narrative as a mode of meaning-making.[12] A number of studies have brought these two strands together, reading *the*

[9] I elaborate on the term "talmudic reading" in the following chapter, where I also explain my decision to retain the lowercase "t" in *talmudic*, in contrast to the more common capitalisation of *Talmud* and *Talmudic*.

[10] E.g., Werner Hamacher, "The Gesture in the Name: On Benjamin and Kafka", in *Premises: Essays on Philosophy and Literature from Kant to Celan* (Harvard University Press, 1996); Rodolphe Gasché, "Kafka's Law: In the Field of Forces between Judaism and Hellenism", MLN 117, no. 5 (Dec 2002): 971–1002. https://dx.doi.org/10.1353/mln.2003.0008; Vivian Liska, "Law and Sacrifice in Kafka and His Readers", *Interdisciplinary Journal for Religion and Transformation in Contemporary Society* 8, no. 2 (2022): 256–274. https://doi.org/10.30965/23642807-bja10052; Eli Schonfeld, *The Remnant: Franz Kafka's Letter: A Study on the Margins of Judaism* (De Gruyter, 2024).

[11] E.g., Beatrice Hanssen, *Walter Benjamin's Other History* (University of California Press, 1998); Michael Mack, "Between Kant and Kafka: Benjamin's Notion of Law", *Neophilologus* 85 (2001): 257–272. https://doi.org/10.1023/A:1004899131187.

[12] E.g., Henry Sussman, "The Herald: A Reading of Walter Benjamin's Kafka Study", *Diacritics* 7, no. 1 (1977): 42–54. https://doi.org/10.2307/464873; Brendan Moran, "Philosophy and Ambiguity in Benjamin's Kafka", in *Kafka and the Universal*, eds. Arthur Cools and Vivian Liska (De Gruyter, 2016); Freddie Rokem, "Two Sabbath Stories in Walter Benjamin's Kafka

Kafka through the categories halakhah and haggadah, in response to the evident presence of rabbinic thought in the text.[13] Drawing on the insights of existing scholarship, this study takes a different approach, foregrounding Benjamin's mode of writing as a key element in articulating an alternative notion of law.

My aim in this study unfolds on three interconnected levels: within *the Kafka*, it seeks to address the question of law—that is, to understand what kind of law Benjamin discovers in and through Kafka's work; within the wider framework of Benjamin's thought, it provides a foundation for interpreting his other writings; and, ultimately, it contributes to a larger project of thinking beyond philosophy by proposing new modes of meaning-making. In the remainder of this introduction, I outline the specific problems posed by *the Kafka* and the method through which I propose to address them.

The Enigma of Kafka's Law

Many of Kafka's famous works revolve around the theme of law. "Before the Law", the parable mentioned above and likely Kafka's most commented-on text, is one example, alongside the unsettling novel *The Trial* and the gruesome short story "In the Penal Colony". It is not surprising, therefore, that the notion of law holds a central place in Benjamin's *Kafka* as well, as evidenced by the recurring mention of the term, quotes on law from other sources, and references to Kafka's stories where law is a central theme. Nevertheless, on multiple occasions in his notes and letters, Benjamin appears to understate the significance of law in Kafka's work. At one place, he makes the following remark:

> I consider Kafka's constant insistence on the law [...] as the blind spot of his work [...]. It is precisely with this concept that I do not wish to engage. If it has yet some

Essay: Wishing on a Constellation of Three Stars", *Itinera* 23 (2021): 200–213. https://doi.org/10.54103/2039-9251/18557.

[13] E.g., Liska, "Law and Sacrifice"; Schonfeld, *The Remnant*.

> function in Kafka's work—which remains to be seen—then an interpretation born out of images, like my own, will also lead to it.[14]

Calling the question of law in Kafka's work its "blind spot", Benjamin nevertheless acknowledges its centrality, namely, "Kafka's constant insistence" on it. Given the prominent place law occupies in *the Kafka*, it is unlikely that Benjamin suggests—as may appear at first glance—neglecting the question of law in Kafka's work altogether. Instead, the purpose of this statement is to call into question attempts to address it directly. In his own reading of Kafka, Benjamin circumvents the problem. If anything worthwhile can be found regarding Kafka's law, Benjamin trusts that his method of interpretation, "born out of images", will eventually lead to it. Put differently, Benjamin contends that the law in Kafka is presented as an enigma and should be treated as such.

Scholars have pointed out the centrality of the law in Benjamin's *Kafka*—a notion whose character nevertheless remains opaque—and its interconnectedness with the process of meaning-making. In an article on the notion of law in Benjamin's reading of Kafka, Rodolphe Gasché associated the enigma of Kafka's law with a remark from Benjamin's 1934 essay where he refers to the "cloudy spot" (*wolkige Stelle*)[15] at the centre of the parable "Before the Law".[16] It is the same cloudy spot to which Werner Hamacher repeatedly returns in his essay on Benjamin's *Kafka*. In Hamacher's reading, the cloudy spot that Benjamin mentions not only conceals meaning but also draws attention to itself. It stresses the dissolution of the allegorical function of the parable, namely, the absence of universal significance in the particular figure of the narrative.[17] In a recent book on Kafka, Eli Schonfeld described a similar process on the plane of the parable's meaning. According to

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[14] GS 2:3, 1245 (my translation).

"Ich halte Kafkas stetes Drängen auf das Gesetz […] für den toten Punkt seines Werkes […]. Gerade mit diesem Begriff will ich mich nicht einlassen. Sollte er in Kafkas Werk dennoch eine Funktion haben—was ich dahingestellt sein lasse—so wird auch eine Interpretation die von Bildern ausgeht—wie die meinige—auf sie führen."

[15] SW 2:2: 802. / GS 2:2, 420.

[16] Gasché, "Kafka's Law".

[17] Hamacher, "The Gesture in the Name", 299.

Schonfeld, who reads "Before the Law" both with and beyond Benjamin, the parable conveys a moral about the nature of law: rejecting the law as universal and objective, it presents law as a singular teaching directed at the individual.[18]

The cloudy spot, accordingly, could refer to different layers of the text: the cloudiness *in* the parable and the cloudiness *of* the parable. The cloudiness *in* the parable pertains to the opacity of the law, which is depicted as inaccessible and even dubious in the narrative. The cloudiness *of* the parable refers to the collapse of the function of the parable as a meaning-making device. This double cloudiness of the parable "Before the Law", in turn, corresponds to the double enigma *in* and *of* Benjamin's *Kafka*. The enigma *in* Benjamin's text is the enigma of Kafka's law; it is the problem around which Benjamin's text implicitly revolves, its centre of gravity. But there is another enigma, the enigma *of* Benjamin's *Kafka*, that is, the question of meaning-making in Benjamin's own text.

The Enigma of Benjamin's *Kafka*

The style of Benjamin's text, the intricate manner in which it addresses the enigma of Kafka's law, is quite unusual. In Benjamin's own words, it is "an interpretation born out of images",[19] by which Benjamin likely meant that his way of presenting Kafka for the reader worked through the accumulation of images—and narratives—drawn from both within and beyond Kafka's world. Freddie Rokem, alluding to the gatekeeper in the parable "Before the Law", provides an incisive description. "[Through stories,] anecdotes and allusions", writes Rokem, "Benjamin positions himself in the essay as a benevolent 'gatekeeper', inviting the reader to enter the supposedly impenetrable and inaccessible enigmas of/in Kafka's writing."[20] Benevolent as he may be, Benjamin's guidance can easily appear more perplexing than useful. The text of Benjamin's *Kafka* is indeed rich in images and narratives—stories, anecdotes, quotes, many of which are not by

[18] Schonfeld, *The Remnant*, 12–34. Schonfeld's reading of the parable is discussed in the Gate chapter.

[19] GS 2:3, 1245.

[20] Rokem, "Two Sabbath Stories", 202.

Kafka—which more often than not have no direct bearing on the topic at hand. In particular, the text does not address the question of law as a philosophical question or problem at all. When reading *the Kafka* with the question of law in mind, we are, therefore, confronted with a challenge. Rather than taking us along a philosophical, logical path, *the Kafka* proceeds in an associative, literary manner: in place of arguments we find stories, in place of concepts—images.

This unique style of *the Kafka*, not uncharacteristic of Benjamin but here reaching new heights, is what I call the enigma of Benjamin's *Kafka*. Reading the text, one is compelled to wonder not only *what it says* but also, and more urgently, *how it says it*, that is, how the process of meaning-making works. In a text focused on this latter question, Henry Sussman reads Benjamin's 1934 Kafka essay as a reflection on the nature of interpretation. Through this lens, Sussman unpacks "Benjamin's technique of inlaying seemingly unrelated allusions and anecdotes",[21] analysing some of the major narratives and key motifs in Benjamin's essay. Similar to Sussman, I maintain that Benjamin planted hints throughout *the Kafka* on how to read both Kafka's writings and his own text.[22] One such hint is Benjamin's recurring reference to the two rabbinic categories of halakhah and haggadah to characterise Kafka's work.

Law, Lehre, Halakhah and Haggadah

Halakhah and haggadah are two rabbinic categories often conceptualised as a binary pair.[23] The complexity of rabbinic thought, along with its distinction from philosophical thought, makes any attempt to clearly define the two somewhat reductive. However, in simple terms, halakhah refers to the legal parts or aspects of rabbinic literature, while haggadah refers to the non-legal parts, often given in

[21] Sussman, "The Herald", 48.

[22] Sussman, "The Herald", 44.

[23] As these terms originate in Hebrew and are transliterated into Latin script, you may encounter variant spellings in the quotations—for example: halachah, halakah, haggada, and aggada. These variants, which may also appear capitalised, refer to the same underlying concepts.

a narrative form.[24] In each of the three essays mentioned above—the 1931 radio essay, the major essay of 1934, and the 1938 letter essay—Benjamin describes Kafka's work with reference to this duo of halakhah and haggadah, each time with a slightly different formulation. On one such occasion, he claims that Kafka's writings have "a relationship to religious teachings [Lehre] similar to the one Haggadah has to Halachah".[25]

In this quote, Benjamin draws an analogy between the haggadah-halakhah relationship and the relationship of Kafka's writings to Lehre. Where Kafka's writings are compared to haggadah—rabbinic narrative—the Kafkan counterpart of halakhah—rabbinic law—is Lehre. On several occasions, Benjamin further asserts that the Lehre that corresponds to Kafka's writings is hidden or even missing.[26] In one of his letters, Benjamin juxtaposed the notion of Lehre with the notion of law in Kafka, claiming the latter "has a predominantly illusory character and is actually a sham [*eine Attrappe*]".[27] In the enigma that is Kafka's law, we may conjecture, law is the "sham" whose secret reference is the missing Lehre. At this point, we may formulate the enigma of Kafka's law as follows: What is this Lehre to which Kafka's writings secretly refer?

In his repeated recourse to the rabbinic duo, Benjamin offers us an unmistakable hint: whatever this Lehre may be, its relation to Kafka's works is analogous to the halakhah's relation to haggadah. Within the study of rabbinic literature, the two rabbinic categories and their relationship are extensively discussed. The simple identification of halakhah as law and haggadah as narrative,

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[24] In the Mighty Paw chapter, I discuss these two categories in detail.

[25] SW 2:2, 803.

"[S]eine Stücke [… stehen] zur Lehre ähnlich wie die Haggadah zur Halacha." GS 2:2, 420.

[26] E.g., GS 2:2, 420 / SW 2:2, 803; GS 6, 433 / SW 2:2, 478.

Lehre is a term often translated as teaching or doctrine. Since it is a key term later in the discussion of Kafka's law, and as these translations do not fully capture its meaning, I retain the original German word.

[27] CB, 463 (A letter from Benjamin to Werner Kraft dated 12 November 1934).

"Ich werde—in einem späteren Zeitpunkt—den Versuch machen, aufzuzeigen, wieso—im Gegensatz zum Begriff der 'Lehre'—der Begriff der 'Gesetze' bei Kafka einen überwiegend scheinhaften Charakter hat und eigentlich eine Attrappe ist." BR, 629.

as presented above, can and should be problematised. One way to refine this distinction is to view the two categories as two textual modes which together partake in shaping rabbinic legal thought.[28] In other words, it can be argued that the haggadic mode of presentation is innate to the halakhic notion of law. Based on this model, I suggest a new way to read Benjamin's *Kafka*: namely, with a view to exploring how the text partakes in forming a notion of law. The nature of this practice might appear opaque at this stage, but becomes clearer as we engage with reading *the Kafka* throughout the thesis.

Like the relationship of haggadah to halakhah, the text of *the Kafka*—and in particular its narratives and images—not only conveys a notion of law but actively shapes it. The formation of the notion of law takes place through the act of reading and interpretation; accordingly, the text is not taken primarily as a conveyor of meaning but as an exercise in reading. In other words, to address the enigma *in* Benjamin's *Kafka*—that is, the question of Kafka's law—one needs to engage with the enigma *of* Benjamin's *Kafka*—its unusual way of meaning-making.

Three talmudic Readings

In 1931, in a letter to the editor of the *Neue Schweizer Rundschau*, Benjamin wrote the following about his own thinking:

> If I might express it in brief: I have never been able to do research and think in any sense other than, if you will, a theological one, namely, in accord with the Talmudic teaching about the forty-nine levels of meaning in every passage of Torah.[29]

As Susan Handelman pointed out, this comment could be—and likely was—meant ironically.[30] Nevertheless, the irony in Benjamin's hyperbole does not

[28] Thus, for example, is Ishay Rosen-Zvi's view, further discussed in the Mighty Paw chapter. *See* ישי רוזן-צבי, *בין משנה למדרש: קריאה בספרות התנאית* (למדא, 2020) פרק 6.ב.

[29] CB, 372 (A letter from Benjamin to Max Rychner dated 7 March 1931).

[30] Susan A. Handelman, *Fragments of Redemption: Jewish Thought and Literary Theory in Benjamin, Scholem, and Levinas* (Indiana University Press, 1991), 22.

undermine the kernel of truth it contains. As we noted above, Benjamin's thought often entertains multiple positions, experimenting with ideas through a style that resembles commentary and is marked by an exceptional love of quotations. His work has been likened—by Benjamin himself and others—to the style of rabbinic interpretation.[31] This tendency is most evident in *the Kafka*, where Benjamin not only explicitly refers to the rabbinic categories halakhah and haggadah, but also plays with ideas and narratives rooted in rabbinic tradition.[32]

Although relatively few in number, several notable readings have drawn attention to Benjamin's *Kafka* in light of its affinity with rabbinic literary forms. Among these readings, focusing in particular on the rabbinic categories halakhah and haggadah, are those by Vivian Liska and Eli Schonfeld. Liska, paying special attention to the centrality of halakhah and haggadah in *the Kafka*, claims the rabbinic duo serves as a model for the relationship between literature and law in Benjamin's text.[33] Schonfeld, as part of his reading of Kafka's parable "Before the Law", proposes that Benjamin uses the rabbinic duo to make a claim about the nature of law in Kafka's work.[34] While both Liska and Schonfeld pay careful attention to rabbinic thought in their reading of Benjamin, neither focuses on the question of genre; concentrating on key concepts in Benjamin's text and interpreting them through a rabbinic lens, they generally set aside the question of style.

Other readers of Benjamin have focused on his unique style in *the Kafka*, in particular his use of narratives to reflect on the nature of meaning-making, but

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[31] E.g., Arendt, "Walter Benjamin", 156; Handelman, *Fragments*, 22–23; George Steiner, introduction to *The Origin of German Tragic Drama*, by Walter Benjamin (Verso, 2003), 21; Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Indiana University Press, 1990), 37. Naturally, Benjamin's extensive use of quotation may also reflect modernist influences, notably the Dadaist and Surrealist practices of montage.

[32] Thus, for example, we find in *the Kafka* a (pseudo) talmudic legend (GS 2:2, 424 / SW 2:2, 805), an invocation to the traditional study of Torah (GS 2:2, 437 / SW 2:2, 815), and a characterisation of Kafka's universe with reference to the "legal world of Judaism" ("die gesetzliche [Welt] des Judentums") (GS 2:3, 1192).

[33] Liska, "Law and Sacrifice". Liska's work is discussed in the Mighty Paw chapter and the Gate chapter.

[34] Schonfeld, *The Remnant*, 19–24. Schonfeld's work is discussed in the Mighty Paw chapter and the Gate chapter.

without relating it to his characterisation of Kafka's work through halakhah and haggadah. Thus, Werner Hamacher reads Kafka's work, in and through Benjamin's *Kafka*, as a reflection on the gesture of language and literature.[35] Hamacher's reading, although not addressing the text from a rabbinic perspective, recognises it as essentially an exercise in meaning-making. Henry Sussman reads Benjamin's 1934 Kafka essay—focusing on narratives and paying attention to the minutest details—as a reflection on the nature of interpretation.[36] Fredie Rokem traces and analyses several narratives in Benjamin's *Kafka*, recognising them as a key to his essays.[37]

This study of Benjamin's Kafka combines close attention to style and modes of meaning-making with a conceptual inquiry into the question of law—an approach modelled on the framework of halakhah and haggadah. In my reading, I use models of relationships between halakhah and haggadah and methods of rabbinic hermeneutics to unpack Benjamin's text. I call this method of reading talmudic reading.[38] This conceptualisation diverges from the common understanding of the term—meaning a reading of the Talmudic text—to mean reading talmudically, even though the text addressed is produced outside of a traditional rabbinic framework. Without directly addressing the question of law—following Benjamin's instruction mentioned above[39]—the practice of reading talmudically will give birth to a particular notion of law that breaks from the earlier notion depicted in Benjamin's *Critique*.

The structure of the thesis is as follows: in the next chapter, I contextualise the project within the discourse of Talmud and philosophy, discuss some key methods

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35 Hamacher, "The Gesture in the Name".

36 Sussman, "The Herald".

37 Rokem, "Two Sabbath Stories"; Freddie Rokem, "'Let me tell you a story': Walter Benjamin and the History of the Future", in *German-Jewish Thought Between Religion and Politics*, ed. Christian Wiese and Martina Urban (De Gruyter, 2012).

38 I use the term *talmudic* to refer to a broader scope of rabbinic literature, as discussed in the following chapter.

39 In the section titled "The Enigma of Kafka's Law", we saw how Benjamin disapproved of attempts to address the question of law in Kafka's work directly.

in rabbinic hermeneutics, and propose a working definition of talmudic reading. I then provide a background for exploring Benjamin's notion of law by discussing an earlier text—"Toward the Critique of Violence"—which contains Benjamin's most elaborate intervention on the question of law. After these two preparatory chapters, I proceed to the three core chapters of the thesis, each containing one talmudic reading of Benjamin's *Kafka*. Each chapter engages with both the enigma of Benjamin's *Kafka*—that is, the problem of meaning-making in Benjamin's texts—and the enigma of Kafka's law—that is, the question of law in Kafka as understood by Benjamin. Yet the nature of these two intertwined enigmas—in particular, the dependence of the latter on the former—determines a gradual shift of weight. The first core chapter leans more toward the enigma of Benjamin's *Kafka*, the second pays more or less equal attention to both, and the third core chapter is mainly focused on the question of Kafka's law.

In the first core chapter—the Wunderblume chapter—we take initial steps into the task at hand and engage with Benjamin's cryptic writing style. The second core chapter—the Mighty Paw chapter—explores the categories of halakhah and haggadah, first in rabbinic literature, and then as they are used in *the Kafka*. The third core chapter—the Gate chapter—cuts to the chase and addresses the question of law and justice in Benjamin's *Kafka*. Finally, the closing chapter presents the concluding reflections of the study.

Talmud & Philosophy

Talmud and Philosophy as Two Traditions of Thought

The present research project is a contribution to an ongoing discussion exploring the intersection between Talmud and philosophy as two independent and mutually influential intellectual traditions. In a recent edited volume titled *Talmud /and/ Philosophy*, Sergey Dolgopolski and James Adam Redfield define philosophy and Talmud as two traditions of thought, each with its own history and rationality. Each of the two is understood as a "tradition of tradition", that is, as containing a set of historically established conventions—occasionally questioned and modified—of what that tradition is.[40]

While the "and" in "Talmud and philosophy" rightly reflects the bidirectional relationship between the two, it conceals their asymmetrical roles within the discourse on Talmud and philosophy. Both the edited volume and the present project, as well as the majority of works discussed here, are written within the walls of academia and partake in the tradition of the Western philosophy they seek to destabilise. The intellectual tradition of Talmud is addressed from a standpoint within the intellectual tradition of philosophy for the sake of problematising and thereby expanding the latter, namely, for the sake of thinking beyond philosophy.

To think *beyond* philosophy means to overstep some historically established boundaries and destabilise some commonly accepted aspects of philosophy's self-understanding. "Philosophy" is by no means a stable category. According to

[40] Sergey Dolgopolski and James Adam Redfield, introduction to *Talmud /and/ Philosophy: Conjunctions, Disjunctions, Continuities*, eds. Sergey Dolgopolski and James Adam Redfield (Indiana University Press, 2024), 1–20.

Jacques Derrida, it is the nature of philosophy—at least as understood by thinkers like Plato and Heidegger—to return, time and again, to its most basic questions, and in particular the question of what philosophy is.[41] Although the question of the nature or essence of philosophy is repeatedly revisited and never considered resolved, Derrida observes that one aspect that characterises philosophy is its "search for objective or absolute criteria".[42] Similarly, within the discursive context of Dolgopolski and Redfield's project, philosophy is largely identified with ontology and philosophical thinking with universal logos.[43]

To think beyond philosophy, accordingly, is to question and disturb the prioritisation of ontology and logos in philosophical thinking. Derrida, whose notion of deconstruction is one of the most notable examples of such questioning, framed his project as an attempt "to find a non-site, or a non-philosophical site, from which to question philosophy".[44] Such a project, however, as Derrida points out, presents a fundamental problem:

> But the search for a non-philosophical site does not bespeak an anti-philosophical attitude. My central question is: from what site or non-site (*non-lieu*) can philosophy as such appear to itself as other than itself, so that it can interrogate and reflect upon itself in an original manner? Such a non-site or alterity would be radically irreducible to philosophy. But the problem is that such a non-site cannot be defined or situated by means of philosophical language.[45]

The use of non-philosophical texts to question, challenge, or expand philosophical thought is not without precedent. Plato is known for his extensive engagement with the Homeric epics, even as he relegated poetry to the status of mimesis, arguably generating a productive tension between poetic tradition and his own

[41] Jacques Derrida, "Dialogue with Jacques Derrida", in *Dialogues with Contemporary Continental Thinkers: The Phenomenological Heritage*, ed. Richard Kearney, (Manchester Univ. Press, 1984), 114.

[42] Derrida, "Dialogue", 119.

[43] E.g.,: Dolgopolski and Redfield, *Talmud /and/ Philosophy*, 12; Elad Lapidot, *Talmud as Decolonization: Levinas's Political Hermeneutics* (forthcoming), 15–16.

[44] Derrida, "Dialogue", 108.

[45] Derrida, "Dialogue", 108.

philosophy. Heidegger turned to Hölderlin's poetry as a source of insights inaccessible through the language of philosophy. The Talmud—the major literary achievement of rabbinic thought—has more recently been approached in a comparable way, most notably by Emmanuel Levinas, whose *Talmudic Readings* introduced the Talmud to an audience largely unfamiliar with rabbinic tradition.

The present project borrows the term talmudic reading from Levinas, only to use it in a distinct sense. To clarify what I mean by talmudic reading, it is helpful to consider one of the key distinctions made in Dolgopolski and Redfield's *Talmud /and/ Philosophy*. Considering the nature of Talmud, it separates three different levels of meaning, each designated by a slightly nuanced term: "the Talmud" (capitalised, with the definite article) refers to the book, the literary product written and redacted in the early centuries of the common era; "Talmud" (capitalised, without the definite article) refers to the intellectual tradition developed in and around "the Talmud", namely the traditional practices of reading, discussing, and interpreting the biblical and Talmudic texts; and "talmud" (with lowercase t) refers to the mode of thinking at work within the intellectual tradition of "Talmud".[46] This threefold distinction allows us not only to speak of different aspects of rabbinic culture but also to decouple talmudic methods of reading from the Talmudic text. This project explores precisely this latter possibility. While Levinas' *Talmudic Readings* contain readings of the Talmudic text, my talmudic readings offer a hermeneutic method to be applied to non-Talmudic texts (in the case of the present project, Benjamin's *Kafka*).

For the purpose of this project, I take "talmud" (lowercase t, i.e., as a mode of thought) as an inclusive term not limited to the mode at work in the tradition reflected in the Talmud (i.e., the book) but in rabbinic literature and thought at large.[47] In discussing the mode of talmud, I pay special attention to the rabbinic

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[46] The distinction between "the Talmud" and "Talmud" is made by Dolgopolski and Redfield in the introduction to *Talmud /and/ Philosophy*, 1–2. Lapidot, in the same volume, introduces the third variant of "talmud" in "Talmudic and Jewish Logo-Politics", *Talmud /and/ Philosophy*, 52.

[47] There are substantial varieties between and within different rabbinic texts. For the purpose of the present project, however, these varieties are clustered under the mode called talmud for the broad gesture of complicating philosophical thinking.

interpretive genre known as *midrash*. Somewhat similar to the case of "talmud", we can also speak of several levels of meaning of the term "midrash". It can refer to a certain literary genre, a specific text written in that genre, or a compilation of such texts. I use the term midrash both as a genre and a text written in that genre.

This chapter proceeds as follows: the next section, titled "Jewish Heretic Hermeneutics", introduces the notion of identifying "talmud" outside "the Talmud" through the pioneering works of Susan Handelman and Daniel Boyarin, and with reference to the revolutionary projects of Derrida and Levinas. The following section outlines key features of talmudic hermeneutics, with a view to developing a reading method that will be applied to Benjamin's *Kafka*. The subsequent section, "Reading Benjamin's *Kafka*", examines the challenges posed by Benjamin's style in *the Kafka* and highlights affinities with rabbinic writing. Finally, in the last section, I offer a characterisation of talmudic reading as a reading method that is practiced in the three core chapters of the thesis.

Jewish Heretic Hermeneutics

Without explicitly making this distinction, Susan Handelman, in her 1982 book *The Slayers of Moses: The Emergence of Rabbinic Interpretation in Modern Literary Theory*, put into practice the decoupling of "talmud" from "the Talmud". Handleman recognised significant structural affinities between rabbinic hermeneutics and the thought of modern intellectuals who revolutionised Western notions of reading and interpretation. What distinguishes the modern thinkers Handelman examines[48] is their preoccupation with interpretation and textuality,

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For an overview of the different components of rabbinic literature (Mishnah, Tosefta, Palestinian Talmud, Babylonian Talmud, midrashic compilations and other texts), *see*, for example: Jacob Neusner, *Rabbinic Literature: An Essential Guide* (Abingdon Press, 2005); Günther Stemberger, *Introduction to the Talmud and Midrash*, trans. and ed. Markus Bockmuehl, 2nd ed. (T&T Clark, 1996).

[48] In her book, Handelman focuses in particular on four thinkers: Freud, Lacan, Derrida, and Harold Bloom. But then again, she writes: "Had I but time, I […] could tell a story which would include many others—Kafka, Wittgenstein, Marx, Walter Benjamin, Durkheim, Levi-Strauss, Levinas, Barthes, and Borges, to name a few." Susan A. Handelman, *The Slayers of*

leading to the creation of texts that achieve canonical status. In Handelman's work, the rabbinic mode of thinking is displaced from its traditional sites to be found in works of secular thought, a displacement she labels "Jewish heretic hermeneutics". To illustrate her point, Handelman recounts an aphorism by Kafka:

> Leopards break into the temple and drink the sacrificial chalices dry; this occurs repeatedly, again and again: finally it can be reckoned on beforehand and becomes part of the ceremony.[49]

In Kafka's parable Handelman finds

> an uncanny description of Freud, Derrida, Bloom, and the Jewish heretic hermeneutic. […] The leopards become part of the ritual. In the school of heretic hermeneutics, holy and profane intermingle; there is something sacred about writing, commentary, and texts, yet these notions are displaced into the profane fields of literature, philosophy, and psychoanalysis.[50]

Handelman's thinkers are heretics within the Jewish tradition, as they shift sacredness—traditionally reserved exclusively for religious texts—into the realm of the profane. Yet they are also heretics of another lineage: the "Greco-Christian" tradition descending from Plato, Aristotle, and Augustine. Handelman marks the antagonism between Greek or Western thought and rabbinic thought as the split between two views on language. While the old view does not clearly distinguish language from reality and discourse from truth, Greek philosophy revolutionised thought by severing the two, introducing the idea of language as a system of conventional signs. The rabbinic worldview, although much younger than Greek thought, generally preserved the old identification of language with reality. The

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Moses: The Emergence of Rabbinic Interpretation in Modern Literary Theory (State University of New York Press, 1982), xvii.

[49] Kafka, Zürau aphorism no. 20, quoted in Handelman, *Slayers*, 223.

"Leoparden brechen in den Tempel ein und saufen die Opferkrüge leer; das wiederholt sich immer wieder; schließlich kann man es vorausberechnen, und es wird ein Teil der Ceremonie." Franz Kafka, *Die Zürauer Aphorismen* (Suhrkamp, 2006), 30.

[50] Handelman, *Slayers*, 223.

difference between Greek and rabbinic thought is reflected in the respective languages: in Greek, "word" is *onoma*, which also means "name"; in Hebrew, "word" is *davar*, which also means "thing".[51] Greek philosophy, mainly represented by Plato and Aristotle, seeks truth beyond the text.[52] By contrast, rabbinic thought moves not out of the text but within it.[53] In other words, rabbinic thought seeks truth *in* language, not *through* and *beyond* it. "[I]n the Rabbinic view", writes Handelman, "the Torah is not an artifact of nature, a product of the universe; the universe, on the contrary, is the product of the Torah."[54]

Among the thinkers she studies, Derrida is the "most openly polemical"[55] against the Western philosophical tradition. According to Handelman, Derrida's critique of the logocentrism of Western philosophy through the practice of deconstruction and the notion of *writing* (*écriture*) bears close affinities to rabbinic thought.[56] As she puts it, Derrida's deconstructive work, with its attention to the minutest details and its focus on the shape of words and letters, is "a species of midrashic play".[57]

Handelman reads Derrida in light of rabbinic thought. From the other end, Daniel Boyarin reads rabbinic thought in light of Derrida. In the introduction to his 1990 book *Intertextuality and the Reading of Midrash*, where he develops a literary theory of the genre of rabbinic interpretation known as midrash, Boyarin writes the following:

> Roughly—very roughly—speaking, the theoretical context in which this essay is undertaken is the philosophical project of Jacques Derrida. Among other contributions, Derrida has demonstrated that the conception of univocity and

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[51] Handelman, *Slayers*, 3–4.

[52] Handelman, *Slayers*, 7.

[53] Handelman, *Slayers*, 21, 31.

[54] Handelman, *Slayers*, 37. There are several rabbinic depictions of the Torah as the blueprint for the creation of the world. E.g., Bereshit Rabbah 1:1.

[55] Handelman, *Slayers*, xiv.

[56] Handelman (*Slayers*, 164) suggests that *écriture* be translated as "scripture".

[57] Handelman, *Slayers*, 170. I say a few words on the term "midrash"—here understood as a genre of rabbinic interpretation—in the following section of this chapter titled "Key Features of Talmudic Hermeneutics".

> transparency of meaning is none other than a philosophical possibility—indeed, a quite problematic possibility, not a logical necessity. I would say that this questioning of the Platonic-Aristotelian (ultimately Enlightenment) understanding of language makes possible a space for a more sympathetic reading of midrash as an interpretive act, because it puts into question all interpretive acts.[58]

The "philosophical project of Jacques Derrida" consists of contesting the idea that there is one correct interpretation. And the bidirectionality (talmud via Derrida, Derrida via talmud) is not insignificant; before midrash or talmud as modes of thought can be employed to challenge Western thought, as Boyarin points out, one has to find "a way of reading midrash [or talmud] which will make sense for [...] a member of a Western culture".[59] Levinas' project, it appears, was motivated by a similar vision. In the introduction to his *Four Talmudic Readings*, Levinas famously described his task as the "translation 'into Greek' of the wisdom of the Talmud", that is, rendering the Talmudic teachings in a "modern formulation".[60] In the same introduction, he further wrote that the readings "will allow us to confront Talmudic wisdom with the other sources of wisdom that the Western Jew recognizes".[61] And it is precisely this confrontation of different sources (and, we may add, forms) of wisdom that is the heart of the discourse on Talmud and philosophy.

In a forthcoming book, Elad Lapidot advances a joint reading of Levinas' Jewish writings and *Talmudic Readings* together with his philosophical writings. Challenging the tendency to engage with each separately, Lapidot claims the different components of Levinas' thought should be understood as parts of one overarching project, motivated by the "epistemic difference" between talmud and philosophy.[62] In Lapidot's words, Levinas' thought presents "talmud as counter-episteme to hegemonic Western thought".[63]

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[58] Boyarin, *Intertextuality*, x.

[59] Boyarin, *Intertextuality*, ix.

[60] Emmanuel Levinas, *Nine Talmudic Readings* (Indiana University Press, 1990), 10.

[61] Levinas, *Nine Talmudic Readings*, 3.

[62] Lapidot, *Talmud as Decolonization*, 3.

[63] Lapidot, *Talmud as Decolonization*, 13.

The opposition between the two epistemes is reflected in one of Levinas' key distinctions—denoted by Lapidot as the logo-hermeneutical distinction—namely, between *said* and *saying*. *Said* is thought consolidated into a concept, a logos. "Thinking in the realm of the said", accordingly, "moves from one concept to the other."[64] *Saying*, on the other hand, is thought in the making. "Thinking in the realm of saying", therefore, "does not move from concept to concept, but from nonsense to sense."[65] The resistance, within philosophy, to the hegemony of logos is termed *unsaying* by Levinas, and is comparable to Derrida's deconstruction.[66] Western philosophy prioritises *logos*, that is, it effaces differences in the name of unity. The Talmud, says Lapidot, has been ignored by philosophy because it does not follow the rules of philosophical discourse as logos. For this reason, philosophy cannot recognise talmud as a different system of thinking; it cannot even recognise it as a flawed system of thinking. From a philosophical standpoint, talmud operates entirely outside the sphere of what is recognised as thought. Introducing a new way of thinking such as the talmudic one is, therefore, not an act of logics but of hermeneutics, which transforms non-sense into sense, non-thought into thought.[67] In sum, Levinas' logo-hermeneutical distinction posits philosophical thought as logics against talmudic thought as hermeneutics.

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To recapitulate, the talmudic mode of thought (that is, the mode of thought at work in the rabbinic interpretive tradition) can be posited as an alternative to the logically oriented thought of Western philosophy. It has been used for this purpose directly (e.g., by Levinas) and indirectly (e.g., by Derrida), and the possibilities and implications of such a project are still being explored, particularly within the growing discourse on Talmud and philosophy. I recognise two main

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[64] Lapidot, *Talmud as Decolonization*, 15.

[65] Lapidot, *Talmud as Decolonization*, 15.

[66] Lapidot, *Talmud as Decolonization*, 16. *See also* Handelman, *Slayers*, 171. Sergey Dolgopolski, *What Is Talmud? The Art of Disagreement* (Fordham University Press, 2009), 25.

[67] Lapidot, *Talmud as Decolonization*, 15–20.

aspects that distinguish talmudic thinking from philosophical thinking. First, while philosophy aims for unification and universalisation of meaning, talmud works through polemical thinking and multiplication of meaning. Sergey Dolgopolski expressed this idea succinctly when he characterised Talmud as "the art of disagreement".[68] Second, while philosophy seeks truth *beyond* the text, talmud seeks truth *within* the text. In Levinas' terminology, the talmudic motion back to the text can be termed a motion from *said* to *saying*; in Derrida's, it can be called a return to *writing*.

While these two aspects are not exclusive to, and by no means comprehensive of, the talmudic way of thinking, they seem to capture the key sources of value for intervening in and critiquing philosophical thought. Daniel Boyarin, speaking of the significance of midrash, adds a focus on tradition:

> Midrash seems to have great appeal to many people in our culture. To some, midrash is perceived as a liberating force from the tyranny of the "correct interpretation." An alternative tradition to that of Europe's metaphysics, midrash seems to provide support for the project of deconstructing that metaphysics and its "logocentric" interpretation of texts. Our study of midrash suggests that another reason that it may appeal to the postmodern sensibility is not so much for the way it liberates from cultural exemplars (that work really needs no buttressing in our culture!), but for the way that it preserves contact and context with the tradition while it is liberating.[69]

The power of midrash is that it undermines the logocentric search for truth without dismissing the quest for truth altogether. Instead, it seeks truth through the multiplication of meanings under the guidance of tradition. In a similar vein, Dolgopolski notes:

> As opposed to a Sophist, who was professionally disinterested in any truth, a Talmudic sage has the same desire for truth as a philosopher would have. The sage also shares with the philosopher the same ironic reservations about any truth that a student's mind or opinion can deliver. From the perspective of the Talmud,

[68] A characterisation which appears in the subtitle of Dolgopolski's book: *What is Talmud? The Art of Disagreement.*

[69] Boyarin, *Intertextuality*, 37.

> however, what the philosopher misses, or wrongly dismisses, is the necessity—the authority— of tradition.[70]

Gershom Scholem makes a closely related observation: Truth resides in God's revelation, but meaning-making is an ongoing task, a project of human interpretation, namely tradition.[71] In the rabbinic practice of meaning-making, its never-ending quality is not an indication of the failure of interpretation but, on the contrary, a mark of its success. To reach a final verdict means to put an end to the practice, to the "game of interpretation",[72] and hence is heretical even when affirmed by the divine.

This last notion is illustrated by a famous Talmudic story, known as the oven of Akhnai. The story opens with the rabbis arguing over a quite marginal matter, namely, whether a clay oven dismantled into pieces and rejoined is considered a complete oven and hence susceptible to impurity or rather a broken one not susceptible to impurity. The disputed sort of oven is named by the Talmud "the oven of Akhnai".[73] Rabbi Eliezer, holding a minority opinion according to which the Akhnai oven is considered broken and not susceptible to impurity, tries in vain to convince the other rabbis that his opinion is the correct halakhah. We read:

> The Sages taught: On that day, when they discussed this matter, Rabbi Eliezer answered all possible answers in the world to support his opinion, but the Rabbis did not accept his explanations from him. After failing to convince the Rabbis logically, Rabbi Eliezer said to them: If the halakha is in accordance with my

[70] Dolgopolsky, *What is Talmud?*, 24.

[71] Gershom Scholem, "Revelation and Tradition as Religious Categories in Judaism", in *The Messianic Idea in Judaism, and Other Essays on Jewish Spirituality* (Schocken, 1995), 285-88.

[72] Agata Bielik-Robson, "To Refute God Himself: Talmud as Meta-Philosophy", in *Talmud /and/ Philosophy*, 30.

[73] *Akhnai* refers to a type of snake, and the Talmud's explanation for this choice of name is rather curious: "The Gemara asks: What is the relevance of akhnai, a snake, in this context? Rav Yehuda said that Shmuel said: It is characterised in that manner due to the fact that the Rabbis surrounded it with their statements like this snake, which often forms a coil when at rest, and deemed it impure." Bavli Bava Metzia 59b. Unless specified otherwise, all Mishnah and Talmud translations are from *The William Davidson Digital Edition of the Koren Noé Talmud* (Koren Publishers, 2020). Digital edition. https://www.sefaria.org.

> opinion, this carob tree will prove it. The carob tree was uprooted from its place one hundred cubits, and some say four hundred cubits. The Rabbis said to him: One does not cite halakhic proof from the carob tree. Rabbi Eliezer then said to them: If the halakha is in accordance with my opinion, the stream will prove it. The water in the stream turned backward and began flowing in the opposite direction. They said to him: One does not cite halakhic proof from a stream. [. . .] Rabbi Eliezer then said to them: If the halakha is in accordance with my opinion, Heaven will prove it. A Divine Voice emerged from Heaven and said: Why are you differing with Rabbi Eliezer, as the halakha is in accordance with his opinion in every place that he expresses an opinion? Rabbi Yehoshua stood on his feet and said: It is written: "It is not in heaven" (Deuteronomy 30:12). The Gemara asks: What is the relevance of the phrase "It is not in heaven" in this context? Rabbi Yirmeya says: Since the Torah was already given at Mount Sinai, we do not regard a Divine Voice, as You already wrote at Mount Sinai, in the Torah: "After a majority to incline" (Exodus 23:2). Since the majority of Rabbis disagreed with Rabbi Eliezer's opinion, the halakha is not ruled in accordance with his opinion.[74]

This striking story depicts Rabbi Eliezer as a spokesperson of the divine, whose opinion is dismissed for the sake of the rule of the majority. The rabbis, it should be stressed, do not deny the authenticity of the divine voice, claiming that Rabbi Eliezer is playing tricks on them, but instead reject divine authority. This story, which pertains to the question of halakhah—that is, rabbinic lawmaking—anticipates our discussion of the problem of law. Here, however, I would like to focus on the question of interpretation and meaning-making. In his discussion of the Akhnai story, Boyarin points out the sophisticated use of quotation that embodies the story's message. In its original context in Deuteronomy, the text quoted by Rabbi Yehoshua—"It is not in heaven"—refers to the feasibility of keeping the law:

> For this command which I charge you today is not too wondrous for you nor is it distant. It is not in heaven, to say, "Who will go up for us to the heavens and take it for us and let us hear it, that we may do it?". And it is not beyond the sea, to say, "Who will cross over for us beyond the sea and take it for us and let us hear it, that

[74] Bavli Bava Metzia 59b.

> we may do it?". But the word is very close to you, in your mouth and in your heart, to do it.[75]

The rabbis in the story, however, make use of it to convey an altogether different meaning. When Rabbi Yehoshua says, "It is not in heaven", he means that the halakhic authority is no longer in the hands of the divine but now belongs to humans. In this creative interpretation of the biblical text, the Talmud practices precisely what it preaches, namely, claiming hermeneutic authority. Boyarin warns the reader, however, against misreading the text and concluding that the Talmud promotes hermeneutic anarchy, as if anything goes and is equally valid. Instead, he stresses how the text offers another source of authority, one that is "surprisingly modern: […] correctness of interpretation is a function of the ideology of the interpretive community".[76] The radical message of the story—which ends, in an episode not quoted above, by the ex-communication of Rabbi Eliezer—suggests the urgency of the matter at issue. This matter, Boyarin conjectures, is the preservation of the Torah precisely by way of its renewal.[77]

As the story of the oven of Akhnai illustrates, the talmudic project is, at its core, a project of human interpretation. Earlier, we identified two main characteristics of this mode of thought that distinguish it from philosophy as logos: the multiplication of meaning and a motion back to the text. These characteristics manifest in several features of talmudic hermeneutics which, for the purposes of this project, I have grouped under four headings: intertextuality, metonymic relations, imagery concepts, and textuality. The next section examines each of these features in some detail. In the final section of this chapter, I draw on them to articulate my method of talmudic reading.

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[75] Deut. 30:11–14. Unless specified otherwise, all Bible citations are from: Robert Alter, ed., *The Hebrew Bible: A Translation with Commentary* (W. W. Norton & Company, 2018).

[76] Boyarin, *Intertextuality*, 35–36.

[77] Boyarin, *Intertextuality*, 34–37.

Key Features of Talmudic Hermeneutics

Intertextuality

The rabbinic preoccupation with the text results in the text becoming not only a tool but also an object of study in its own right. As part of this process, the text is treated as an interconnected whole, and a central task of the hermeneutic work involves detecting subtle links woven into the fabric of the text. In rabbinic interpretation, writes Handelman, "not only is contextual reading an exegetical principle, but all units are so closely interwoven and simultaneously present that none can be considered in separation from any other at any given moment; it is a world of 'intertextuality'."[78] Boyarin, who famously regarded the notion of intertextuality as the key characteristic of midrashic interpretation, tentatively defined midrash as a "radical intertextual reading of the canon, in which potentially every part refers to and is interpretable by every other part".[79]

According to Boyarin, the intertextuality of midrash has two centres. First, midrashic interpretation is premised on the intertextuality of its canon, namely the biblical text. The biblical text is understood as gapped and interrelational, and the role of midrash is to expose its interrelations (often, midrash works by explicating a verse from the Five Books of Moses through a verse from the Prophets or Writings). Second, midrashic interpretation works within the intertextual code of rabbinic culture, namely, the plot structures available within this culture which convey its ideology.[80]

The intertextual nature of midrash is by no means unique; nevertheless, as argued by Boyarin, midrash occupies a special place at the intersection of two genres: literary texts and critical texts. As a rule, literary texts conceal their indebtedness to other texts through the voice of the author, while critical texts often conceal their authorial voice by presenting themselves as subservient to a

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[78] Handelman, *Slayers*, 78.

[79] Boyarin, *Intertextuality*, 16.

[80] Boyarin, *Intertextuality*, 16–17.

preceding text.[81] What is distinctive about midrash is that it exercises literary freedom while claiming to be faithful to the original text. In this, Boyarin asserts, midrash "undermines the distinction that we habitually make between literary creation and hermeneutic work, by showing that all literary creation is hermeneutic and all hermeneutic is creation".[82]

The story presented above—the oven of Akhnai—offers a lucid example. As already noted, a verse fragment from Deuteronomy—"it is not in heaven"—is taken out of its original context to support a halakhic principle according to which human interpretation takes precedence over divine authority. The second verse fragment—"after a majority to incline"—originally appears as a warning against following a majority of evildoers. Each verse fragment is treated as an independent unit, yet is also interlinked, both with the other fragment and with the legal issue at hand. The authors of the talmudic text present this practice as a form of submission to the authority of the biblical text, while in fact it entails a radical reinterpretation of it, undertaken precisely in order to subvert the authorial voice traditionally attributed to the Bible's author—namely, God.

Metonymic Relations

Midrash follows certain hermeneutical principles, one prominent among them being known as *kal va-chomer*.[83] *Kal va-chomer* (lit.: light and severe) is an argument *a fortiori*—a "how much more so" argument, the prototype of which is found in the biblical text.[84] The *kal va-chomer* principle has a central place in Susan Handelman's discussion of the rabbinic interpretive system in her book *The*

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[81] Boyarin, *Intertextuality*, 23–24.

[82] Boyarin, *Intertextuality*, 25.

[83] Adin Steinsaltz, *The Essential Talmud* (HarperCollins, 1984), 222.

[84] Thus, in Deuteronomy 31:26–27, Moses addresses the Levites saying "Take this book of teaching and place it alongside the Ark of the Covenant of the LORD your God, and it shall be there as witness against you. For I myself have known your rebelliousness and your stiff neck. Look, while I am still alive with you today you have rebelled against the LORD, and how much more after my death!"

Slayers of Moses. To illustrate the application of this principle within legal discourse, Handelman presents an example from rabbinic civil law.

The Mishnah in tractate Nezikin (lit.: damages) states that "one who injures another is liable to pay compensation for that injury."[85] This mishnaic rule—according to which physical injury entails monetary compensation—is elsewhere challenged by the rabbis through verses from Exodus 21:23–25: "And if there is a mishap, you shall pay a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, a bruise for a bruise." Thus, we read:

> *Eye for Eye*. This means, monetary compensation for an eye. You interpret it to mean money for an eye. Perhaps this is not so, but it means an eye literally? […] R. Isaac says: Behold it says: "If there be laid on him a ransom," etc. [Exodus 21:30]. Now then, by using the method of *kal vahomer*, you reason thus: If even in a case where the penalty of death is imposed only a monetary compensation is exacted, it is but logical that in this case, where no death penalty is imposed, surely no more than a monetary compensation should be exacted.[86]

The text begins with a reference to the verse fragment "an eye for an eye" (Exod. 21:24), questioning the mishnaic interpretation of the verse as requiring monetary compensation rather than reading it literally as mandating physical retaliation. R. Isaac's argument in support of the mishnaic view draws on a biblical rule from Exodus 21:30, which presents the case of a person killed by the goring of an ox and the possibility of monetary compensation ("ransom") in lieu of the death penalty for the ox's owner. R. Isaac then applies a *kal va-chomer* argument: if, in a case involving liability for capital punishment (as with the ox owner), monetary compensation is acceptable, then all the more so in the case of a non-fatal injury.[87]

Due to its logical simplicity, Handelman maintains, the principle of *kal va-chomer* is often confused with Aristotelian syllogism. In contrast, she points to the

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[85] Mishanh Bava Kamma 8:1.

[86] Mekhilta DeRabbi Yishmael, tractate Nezikin 8. Translation from: Jacob Z. Lauterbach, *Mekilta De-Rabbi Ishmael: A Critical Edition* (The Jewish Publication Society, 2004), 401–2.

[87] Handelman, *Slayers*, 53.

dissimilarity of these two logical principles, which reflects the rift between the Aristotelian and rabbinic mindsets. Classic syllogism works through subsuming a particular under a class (*Socrates is a man*) and making some general claim about this class (*all men are mortal*), thereby deriving a claim about the particular belonging to that class (*therefore, Socrates is mortal*). In contrast, *kal va-chomer* makes no such subsumption and instead of using the copula *is*, which expresses the collapse of difference, works through resemblance that nevertheless retains difference.[88] In the example above, the goring ox's owner and the person who injures another have one important thing in common, namely, they are both liable for monetary compensation. But the comparison does not imply that the two categories collapse into one, or that one subsumes the other.

In an essay on the symbolic economy of midrash, Daniel Boyarin follows a distinction suggested by the linguist Roman Jakobson between metaphor and metonymy. According to Jakobson, while metaphor works through similarity (e.g., hut-den), metonymy works through contiguity (e.g., knife-fork); while the former substitutes, the latter complements.[89] Allegorical interpretation, says Boyarin, works like metaphor, substituting a narrative with its meaning. Midrash, on the contrary, works like metonymy, expanding a narrative by introducing another narrative to be placed alongside the former.[90]

This distinction between metaphor as substitution and metonymy as contiguity is taken up by Handelman as well, albeit in a slightly different context. We mentioned above the Hebrew term *davar* which means both *word* and *thing*. According to Handelman, the rabbinic view holds that words do not merely represent things but rather express their essential nature. She writes:

> Because there is no absolute division between word and thing, the general mode of Rabbinic thought ties the generalization to the particular, or rather "embeds" it within the particular. Perhaps it could be said that the *imagery concept* is to the *represented category* as the *word* is to the *thing* in the meaning of *davar*. To use the

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[88] Handelman, *Slayers*, 52–54.

[89] Roman Jakobson, *Language in Literature* (Belknap Press of Harvard University Press, 1987), 109–110.

[90] Daniel Boyarin, *Sparks of the Logos* (Brill, 2003), 115.

> linguist Jakobson's terms, the relation is not one of substitution (metaphor) but contiguity (metonymy).[91]

This takes us to the next feature of talmudic hermeneutics.

Imagery Concepts

The use of imagery concepts is another distinctive feature of rabbinic thought. The images introduced by the rabbis are not simply metaphors, that is, they cannot be replaced by abstract concepts without losing something of the unique mode of thinking they embody. Adin Steinzsalz, on whose work Handelman draws substantially in her discussion of imagery concepts, illustrates this feature through the rabbinic categories of civil law.[92] One classification of damages caused by a person indirectly contains the five following categories: *horn*, *tooth*, *foot*, *pit*, and *fire*. The category *horn* does not represent a real horn, but is modelled on the biblical image of a goring ox to refer to damages caused by an animal with injurious intentions. A dog biting a person or another dog, for example, falls under the category of *horn*. *Tooth* is modelled on a grazing animal to refer to damages caused by an animal through an act that gives it pleasure. Similarly, *foot*, *pit*, and *fire* are models for general categories whose representative cases depart from the original image. And yet the rabbis do not replace the models with abstract concepts, which sometimes result in quite peculiar images. Thus, since the category for obstacles in the public domain is *pit*, the rabbis designate a mobile obstacle by the formulation "a rolling pit".[93]

What is the point of using imagery concepts or models instead of abstract concepts? Why not, for example, replace the term "pit" with a formulation like

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[91] Handelman, *Slayers*, 62.

[92] Steinsaltz, *The Essential Talmud*, 228.

[93] Steinsaltz, *The Essential Talmud*, 147–48. It is not only the most general categories of damages that make use of imagery concepts. One can find ample examples in more specific legal terms: thus, "the blow of a hammer" (*ha-makeh ba-patish*) is the legal term for the completion of a work (*gmar melakhah*), and "a watchman of cucumbers" (*shomer kishuim*) refers to the minimum wage.

"an obstacle in the public sphere"? Steinsaltz suggests that this is a way to maintain contact with lived experience. The simple model allows experimentation without being lost in abstraction, which, as the term suggests, draws us away from the matter discussed.[94] This closely relates to another feature of the Talmud: it does not discuss law as a general socio-legal category, but always addresses concrete situations. Borrowing a term from David Stern (whose work on the rabbinic mashal is discussed in a later chapter), we may call it the ad hoc character of talmudic argumentation.[95] The experimental nature of the Talmud also explains, as Steinsaltz points out, why it does not shy away from discussing in detail irrelevant and even bizarre issues.[96]

One such case is the talmudic discussion concerning mice carrying bread into a house that has already been cleaned of *hametz* (i.e., leavened bread forbidden during the holiday of Passover).[97] The discussion unfolds like a strange thought experiment, presenting various scenarios with the question in mind: should the house be re-examined for the presence of *hametz*? The first scenario involves a mouse entering the cleaned house with a loaf of bread in its mouth, after which bread crumbs are discovered inside. The next scenario describes a mouse entering the house carrying a loaf, and later, a mouse exiting the house also carrying a loaf. The underlying question—left unresolved by the text—is whether one can assume it is the same mouse and the same loaf. The passage that follows further

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[94] Steinsaltz, *The Essential Talmud*, 229.

Steinsaltz compares the talmudic models to mathematical models. I believe what he has in mind is the method of taking one familiar mathematical object as representative of its equivalence class, and "thinking through" this object, i.e., experimenting with its properties instead of thinking on the abstract level of the whole equivalence class. Thus, for example, in group theory (Z, +) is a model of the infinite cyclic group.

[95] David Stern, "Rhetoric and Midrash: The Case of the Mashal." *Prooftexts* 1, no. 3 (September 1981): 265. https://www.jstor.org/stable/20689010.

[96] Steinsaltz, *The Essential Talmud*, 4. "The Jerusalem Talmud, for example, analyzes the case of a man with the head of a beast and a beast with a human head and suggests—partly as an intellectual exercise—the complications that might ensue from this type of 'split personality'." Steinsaltz, *The Essential Talmud*, 237. He probably refers to Yerushalmi Niddah 3:2.

[97] Steinsaltz, *The Essential Talmud*, 235.

complicates matters, stating that the mouse entering the house is white, while the mouse leaving is black.[98]

The cases discussed are not selected for their likelihood or typical character. Rather, they are artificially constructed thought experiments, crafted for the purpose of testing legal reasoning in its most minute details. Comparing the Talmud to modern science, Steinsaltz sees every argumentative exchange as a kind of scientific experiment, and every legal ruling as akin to an empirical finding. The Talmud, he concludes, investigates for the sake of truth.[99]

Textuality

Boyarin's essay, mentioned above, on the symbolic economy of midrash opens as follows:

> Midrash as commentary frequently focuses on the strictly phonetic or sonic aspect of a word; it seems to see meaning in "nothing," in such incidentals as variants of spelling or even the forms of and decorations on letters[.][100]

Another central feature of midrashic interpretation is therefore its focus on the letter—"letter" in its most literal sense—of the text. Steinsaltz writes:

> The halakhic *midrashim* employ a certain extremely precise exegetic method which derives from the assumption that every law or deed recorded in the Torah was formulated accurately and concisely, making each detail significant. Any word that appears superfluous—whether blatantly unnecessary or merely nonessential to the meaning—is a source of study, and superfluity is taken to imply emphasis. When two subjects are discussed in close proximity, it is possible to infer from one to the other to a certain extent, even if they do not deal with the same matter. Even superfluous letters have meaning; for example, if a sentence commences with the conjunctive letter *vav*, this may be regarded as a hint at some essential link with the preceding sentence.[101]

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[98] Bavli Pesachim 10b.

[99] Steinsaltz, *The Essential Talmud*, 230–233.

[100] Boyarin, *Sparks*, 114.

[101] Steinsaltz, *The Essential Talmud*, 225.

A striking example of this "extremely precise exegetic method" is found in the laws of *shabbat.* One of the biblical mentions of the shabbat appears at the beginning of Exodus 35:

> And Moses assembled all the community of Israelites and said to them, "These are the things that the LORD has charged to do: Six days shall tasks be done and on the seventh day there shall be holiness for you, an absolute sabbath for the LORD. Whosoever does a task on it shall be put to death."[102]

The Hebrew word here translated as "task" is *melakhah* (sometimes translated as "work"). It is the same word that appears in Genesis 2:2: "And God completed on the seventh day the task He had done, and He ceased on the seventh day from all the task He had done." A few examples of tasks prohibited on shabbat, such as lighting fires and gathering wood, are mentioned in the biblical text. Yet in answer to the question of what is included in the prohibition, the Mishnah lists thirty-nine primary categories of prohibited tasks, including sowing, grinding, stitching, and slaughtering.[103] How did the mishnaic authors arrive at this surprisingly extensive list? The Talmud (quite laconically) states that the thirty-nine tasks correspond to the tasks (*melakhot*) performed in the Tabernacle.[104] The link between the shabbat and the Tabernacle is found in the biblical text which, immediately after the shabbat verses cited above, turns to the work in the Tabernacle. The term "melakhah", vague in the context of shabbat, is then interpreted based on the detailed work of the Tabernacle, summed up as "the task [*melakhah*] of the holy work".[105] This is an example of how interpretation is grounded in textual features—in this case, the proximity of the two topics and the shared word *melakhah*.

We should note that the focus on the letter is nothing like plain literality. This "extremely precise exegetic method", which takes every letter as significant, often results in interpretations very far from the literal meaning of the text. This is nicely summarised in a famous joke on the halakhic prohibition of mixing meat and dairy.

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[102] Exod. 35: 1-2

[103] Mishnah Shabbat 7:2.

[104] Bavli Shabbat 49b.

[105] Exod. 36:1.

The prohibition of boiling a kid in its mother's milk is repeated three times in the biblical text, which, according to the principle of non-redundancy, is translated into three distinct prohibitions: cooking, eating, and benefiting (e.g., by selling) from such a mixture. Later, many extensions and additions came to be included in it. The joke, as it goes, provides a different explanation for the repetition:

> "Okay Moses," said God, "Here's another commandment: Don't boil a kid in its mother's milk."
>
> "You mean, don't eat meat and milk together?"
>
> "No. Don't boil a kid in its mother's milk."
>
> "You mean we should have separate dishes for meat and dairy?"
>
> "No. Don't boil a kid in its mother's milk."
>
> "You mean we should wait a few hours after eating meat before we eat dairy?"
>
> "Moses," said God, "do whatever the hell you want."[106]

Reading Benjamin's *Kafka*

After discussing the talmud as an alternative mode of thought and briefly reviewing some of the unique features of talmudic hermeneutics, it is time to go back to the text at the heart of the present project: Benjamin's *Kafka*. We may recall that the conceptual problem of law was bound up with the challenge of deciphering Benjamin's style in *the Kafka*. As this section aims to show, *the Kafka* calls for—or at least lends itself to—an alternative reading, one that will be outlined in the following section as talmudic reading.

In the introduction to their Benjamin biography, Howard Eiland and Michael Jennings describe his writing style as a "prevalence of certain subtle stylistic features at every phase of his career, such as a general avoidance of straightforward narrative, a proclivity for metaphor and parable as conceptual devices, and a tendency to think in images".[107] In *the Kafka*, Benjamin takes this tendency to think in images and use

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[106] Formulation taken from: http://metaphorager.net/my-favorite-jewish-joke/.

[107] Howard Eiland and Michael William Jennings, *Walter Benjamin: A Critical Life* (Harvard University Press, 2014), 7.

parables as conceptual devices to the next level. Let us take the case of his major 1934 Kafka study. It is divided into four sections, with titles—"Potemkin", "A Childhood Photograph", "The Little Hunchback", and "Sancho Panza"—naming, respectively, a short story opening the essay, a photograph of young Kafka, a figure from a children's German folk song, and a short piece by Kafka "which is his most perfect creation".[108] We have: a (non-Kafkan) narrative, an image, a narrative-image, and a (Kafkan) narrative. All four figures represent Kafka or images out of his world, as understood or envisioned by Benjamin. Are they consciously chosen and put in a certain order to illustrate some sort of development? It is possible, but no such arrangement presents itself from the outset.

We are nowhere expressly told that the enigmatic story of Potemkin opening the essay was written by Benjamin himself.[109] On the contrary, Benjamin gives it an air of authority when he says it is "like a herald of Kafka's work, storming two hundred years ahead of it".[110] This story is the first in a series of narratives and excerpts embedded throughout the essay which are, according to Benjamin, much Kafka-like. Thus, we have a passage from Metchnikoff's *La civilisation et les grands fleuves historiques* which "uses language that could be Kafka's";[111] a village from a pseudo-talmudic legend which "is right in Kafka's world";[112] a passage from Rosenzweig's *Der Stern der Erlösung* which, contrary to expectation, "refers not to Kafka, but to—China";[113] and a story taking place in a hasidic village that "takes us deep into the household that is Kafka's world".[114] This form of writing has the

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[108] SW 2:2, 815 / GS 2:2, 437.

[109] Based on a story by Alexander Pushkin (see Freddie Rokem, "Let me tell you a story", 341), it was published earlier in the same year in the daily newspaper *Prager Tagblatt*, where it appears under the title *Die Unterschrift* as one of four stories by author Walter Benjamin. *See* Walter Benjamin, "Vier Geschichten", *Prager Tagblatt*, 5 August 1934.

[110] SW 2:2, 795 / GS 2:2 , 410.

[111] SW 2:2, 803 / GS 2:2, 421.

[112] SW 2:2, 805–6 / GS 2:2, 424.

[113] SW 2:2, 810 / GS 2:2, 430.

[114] SW 2:2, 812 / GS 2:2, 433. This story is another of the four stories, titled *Der Wunsch*, in Benjamin, "Vier Geschichten".

effect that we readers, instead of entering a mode of analysis, are immersed in an imagery world of narratives. Myth and fairy tales, both mentioned in the essay, are not only literary categories taken for analysis, but also—and mostly—literary devices used to generate a certain interpretive mood.

Benjamin's use of narratives is one unique and fascinating aspect of *the Kafka*. Perhaps he was practicing his own recommended method of reading, namely "interpreting a writer from the center of his image world",[115] by supplementing this image world with narratives from elsewhere. Somewhere in *the Kafka*, Benjamin writes that "[t]here are two ways to miss the point of Kafka's works. One is to interpret them naturally; the other is to interpret them from a supernatural perspective."[116] Judging by the ensuing sentence in Benjamin's essay, it is likely that by "natural" and "supernatural" Benjamin was referring to psychoanalytic and theological interpretations of Kafka's work.[117] And yet, one cannot dismiss the possibility that by rejecting both natural and supernatural interpretations of Kafka's work (the conjunction of which contains *all* interpretations), Benjamin rejected any conceptual interpretation of Kafka as such. In place of such an interpretation, one could further argue, Benjamin provided a midrashic commentary on Kafka's work.

If we were not convinced by the last remark, Benjamin makes his point more openly, stating that Kafka "took all conceivable precautions against the interpretation of his writings. One has to find one's way in them circumspectly, cautiously, and warily. One must keep in mind Kafka's way of reading, as exemplified in the above-mentioned parable."[118] The above-mentioned parable is

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[115] SW 2:2, 495 / GS 2:2, 678.

[116] SW 2:2, 806/ GS 2:2, 425.

[117] "There are two ways to miss the point of Kafka's works. One is to interpret them naturally; the other is to interpret them from a supernatural perspective. Both the psychoanalytic and the theological interpretations miss the essential points." SW 2:2, 806.

"Zwei Wege gibt es, Kafkas Schriften grundsätzlich zu verfehlen. Die natürliche Auslegung ist der eine, die übernatürliche ist der andere; am Wesentlichen gehen beide—die psychoanalytische wie die theologische—in gleicher Weise vorbei." GS 2:2, 425.

[118] SW 2:2, 804.

Kafka's "Before the Law" (*Vor dem Gesetz*). By "Kafka's way of reading" the parable, Benjamin refers to Kafka's novel *The Trial* (*Der Prozess*), where the parable appears, followed by a series of complex and often contradictory interpretations in a manner Scholem described as "halakhic and talmudic reflection".[119]

In both its style and its statements, Benjamin's *Kafka* invites us to read differently. In terms of style, its most striking feature (which it shares with rabbinic writing) is that it often does not interpret by substituting meaning for narrative, but instead works through adding new stories and images to the narrative pool. Benjamin's statements caution the reader against misreading Kafka by reducing his narratives to overly simplistic theses, and it is difficult not to interpret Benjamin's remarks as referring not only to Kafka's writings but also—perhaps even more so—to his own text. The task at hand is, therefore, to make sense of Benjamin's *Kafka*, with its amplification of narrative and extensive imagery, finding our way in it "circumspectly, cautiously, and warily".[120] :

Characterisation of talmudic Reading

In the three core chapters of the thesis, I offer three talmudic readings of Benjamin's *Kafka*. Each talmudic reading centres on a brief quote from the text—a sentence or a short paragraph—which it takes as its starting point. The characterisation of the reading as talmudic draws on the four hermeneutic features presented above:

- *Intertextuality*: Focusing on the quote, the reading looks for cross-references and interrelations within and outside the text of *the Kafka*. Interrelated statements or narratives are interpreted one through the

"[Kafka hat] alle erdenklichen Vorkehrungen gegen die Auslegung seiner Texte getroffen. Mit Umsicht, mit Behutsamkeit, mit Mißtrauen muß man in ihrem Innern sich vorwärtstasten. Man muß sich Kafkas Eigenart zu lesen vor Augen halten, wie er sie in der Auslegung der genannten Parabel handhabt." GS 2:2, 422.

[119] A letter from Scholem to Benjamin dated 14 August 1934, in Walter Benjamin and Gershom Scholem, *The Correspondence of Walter Benjamin and Gershom Scholem, 1932–1940* (Schocken Books, 1989), 137.

[120] SW 2:2, 804 / GS 2:2, 422.

other, without identifying either as the *Urtext*. In particular, the hermeneutic text of Benjamin's *Kafka* is taken at the same time as a literary text in need of decipherment.

- *Imagery concepts*: The reading takes images as among the most important of keys. Beyond the propositional content, each reading focuses on a single image contained in the quote it addresses.
- *Textuality*: The reading pays close attention to specific textual choices. It often seeks meaning in "nothing", that is, it dwells on nuances and peculiarities and questions particular formulations.
- *Metonymic relations*: In its attempt to make sense of the text, particularly its images and narratives, the reading does not replace but complements the text with its interpretation. To borrow an apt formulation from Dolgopolski, it maintains a space between the text and its meaning "in which meaning is not merely a function of a text, and a text is not only an embodiment of a preexisting meaning".[121]

In the introduction, I presented two interconnected enigmas posed by the text—the enigma of Kafka's law and the enigma of Benjamin's *Kafka*—the former concerning a conceptual question, the latter a question of style. My aim in approaching Benjamin's *Kafka* through a talmudic reading is to access layers of the text that otherwise remain obscured, and are essential for the inquiry into the question of law in *the Kafka*. In other words, my practice is based on the premise that the unique notion of law in *the Kafka* necessitates this particular mode of reading. Ultimately, I arrive at a notion of law that places study and interpretation at its centre, and in doing so, retroactively affirm the relevance of reading talmudically.

Before we enter the core chapters of the thesis—the three talmudic readings—the next chapter provides the necessary background by exploring the notion of law in Benjamin's thought, in particular as presented in his essay "Toward the Critique of Violence".

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[121] Dolgopolski, *What is Talmud?*, 121.

On the Question of Law

The three core chapters of the thesis contain three talmudic readings of Benjamin's *Kafka*, centred around the question of law, or what I call the enigma of Kafka's law. Before delving into Benjamin's unusual and elusive notion of law in *the Kafka*, we begin by discussing Benjamin's notion of law in an earlier, more classical text in this respect, titled "Toward the Critique of Violence". I argue that in this earlier essay, Benjamin failed to arrive at a positive notion of law, a failure to which *the Kafka* offers a corrective.

"Toward the Critique of Violence" (*Zur Kritik der Gewalt*), written and published in 1921, is Benjamin's most direct intervention on law and, as such, it has received notable readings and responses. The essay, overloaded with terms and distinctions, opens by stating its aim to critique violence through "expounding its relation to law and justice".[122] Although neither "law" nor "justice" are clearly defined, Benjamin's essay gives rise to a strongly negative notion of law, expressing a fierce antagonism between law and justice. This will be shown through three influential readings of the *Critique*: by Judith Butler, Jacques Derrida, and Giorgio Agamben. Each of the three thinkers takes a different angle on the *Critique*, but all depict the law, in one way or another, as inimical to life and justice.

This chapter proceeds as follows: the first section is divided into three subsections corresponding to the three readers mentioned above. I begin with Judith Butler's reading of the *Critique*, which also serves as an introduction to Benjamin's essay, followed by Jacques Derrida's and Giorgio Agamben's readings. Although, as we shall see, not all three reject positive law altogether,

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[122] SW 1, 236.

"Die Aufgabe einer Kritik der Gewalt läßt sich als die Darstellung ihres Verhältnisses zu Recht und Gerechtigkeit umschreiben." GS 2:1, 179.

they all depict law, in their readings of Benjamin, as oppressive and inherently unjust. After presenting the three readings of the *Critique* and the negative notion of law they share, I propose a claim that forms the basis of my thesis: namely, that *the Kafka* contains a search for another, non-oppressive and just law. This is presented in the final section, titled "From the *Critique* to *the Kafka*". In particular, I argue that Benjamin's distinction between two forms of violence in the *Critique*—*mythic violence* and *divine violence*—anticipates a shift from the notion of unjust law (corresponding to mythic violence) to an alternative notion of just law (corresponding to divine violence). In the *Critique*, however, Benjamin was not successful in vouching for the possibility of the latter. In *the Kafka*—and this is the substantial point in the argument for this thesis project—Benjamin takes up a similar task, namely, searching for a just law, albeit with an altogether different approach.

Toward the Critique of Violence

Before delving into Benjamin's "notoriously difficult"[123] essay, we may say a few words about the title. Each component of the short German title—*Zur Kritik der Gewalt*—merits attention. Let us begin with the term *Gewalt*. In the English translation it is rendered as *violence*, but as Derrida rightly notes, this translation loses something of the original, which can also mean force or legitimate power (e.g., in *Staatsgewalt*).[124] As we shall presently see, this double meaning of *Gewalt* as both violence and legitimate power—to be precise, the tension between its two meanings—is where much of the drama of the essay takes place. The second component is the term *Kritik*. Here, the English translation as *critique* does not pose a particular challenge but, as also pointed out by Derrida, Benjamin's use

[123] Judith Butler, *Parting Ways: Jewishness and the Critique of Zionism* (Columbia University Press, 2012), 71.

[124] Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'", in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson (Routledge, 1992), 6.

of the term is not limited to a negative evaluation of violence.[125] Butler further stresses that Benjamin's *Critique* contains not only an inquiry into the conditions—the legitimate and illegitimate forms of violence—but also addresses the question of what violence must be for such an inquiry to be possible. In other words, an essential part of the critique of violence is a critique of the discourse on violence.[126] Finally, the component often neglected is the opening *zur* (a contracted form of *zu der*). In many translations,[127] the essay is titled simply "Critique of Violence", omitting the *zur* altogether. In a recent critical edition,[128] the *zur* in the title is translated into English as *toward the*, resulting in the title I use throughout the present work: "Toward the Critique of Violence". As noted by Sebastian Truskolaski, the editorial choice to render the *zur* into *toward the* (instead of, e.g., *on the*) has the advantage of highlighting the essay's programmatic character.[129]

Indeed, "Toward the Critique of Violence" opens with a programmatic statement: "The task of a critique of violence can be summarised as that of expounding its relation to law [*Recht*] and justice [*Gerechtigkeit*]."[130] Already at its opening sentence, therefore, we can identify three key terms in Benjamin's essay: violence, law, and justice. One of the critical insights in the *Critique* is Benjamin's distinction between different forms of violence, distinguished by the way each relates to law. The first reading of the *Critique* discussed here—that by Judith Butler—also serves to present Benjamin's essay, and in particular the different forms of violence it introduces.

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[125] Derrida, "Force of Law", 31.

[126] Butler, *Parting Ways*, 70.

[127] Including standard editions like Benjamin's *Selected Writings* used in this text.

[128] *See* Walter Benjamin, *Toward the Critique of Violence: A Critical Edition*, ed. Peter Fenves and Julia Ng (Stanford University Press, 2021).

[129] Sebastian Truskolaski, review of *Toward the Critique of Violence: A Critical Edition*, by Walter Benjamin, Peter Fenves (ed.) and Julia Ng (ed.), *Philosophy of Photography* 13, no. 2 (2022), 302-3. https://doi.org/10.1386/pop_00065_5.

[130] SW 1, 236 / GS 2:1, 179.

Butler: The Violent Constitution of Guilty Subjects

One chapter of Judith Butler's *Parting Ways: Jewishness and the Critique of Zionism* is dedicated to their interpretation of Benjamin's *Critique*. Central to Butler's reading is Benjamin's notion of the messianic, which they understand less as a doctrine and more as a counter-doctrinal force. In Butler's words:

> There is no single doctrine of the messianic for Benjamin, and we might start our consideration by affirming that the messianic is a counterdoctrinal effort to break with temporal regimes that produce guilt, obedience, extend legal violence, and cover over the history of the oppressed.[131]

As Butler notes, Benjamin's critique targets a specific kind of violence: legal violence, meaning violence sanctioned or legitimised by law. Accordingly, his essay addresses two interrelated questions: "What is law such that it requires violence […, and] what is violence such that it can assume this legal form?"[132]

Among the many distinctions the reader has to face and only briefly entertain before moving to a new one, one key distinction is between *lawmaking violence*[133] (*rechtsetzende Gewalt*) and *law-preserving violence* (*rechtserhaltende Gewalt*). Law-preserving violence refers to the continuous enforcement of existing laws on legal subjects, as carried out by institutions such as the judiciary or the police. Lawmaking violence introduces new law through an act of coercion that cannot be justified by pre-existing legal norms or rational principles. In other words, when Benjamin speaks of lawmaking violence, he is not referring to the creation of new laws within an established legal system, but to the imposition of a new legal order altogether—such as might occur through military conquest. The violence of this act, says Butler, inheres in the very claim that "this is now the law".[134]

The act of violently preserving law is not substantially different from the act of positing law; on the contrary, law-preserving violence works by reiterating the

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[131] Butler, *Parting Ways*, 70.

[132] Butler, *Parting Ways*, 70.

[133] Butler translates *rechtsetzend* as "law-instating", but I use "lawmaking" in line with the SW translation.

[134] Butler, *Parting Ways*, 71.

original assertion, namely "this is the law". Benjamin understands legal violence—either in its lawmaking or law-preserving form—through the notion of fate, which belongs to Hellenic myth. Accordingly, Benjamin identifies legal violence with what he dubs *mythic violence* (*mythische Gewalt*), namely, violence exercised by the mythical gods. Mythic violence acts as a manifestation of the gods' anger, and does not serve any purpose beyond this manifestation.[135] This violence posits the law of fate in a similar way to legal violence, namely, by asserting "this is (now) the law". Benjamin's paradigmatic narrative for mythic violence is the myth of Niobe, a mortal who claimed she was greater than the goddess Leto, an act of hubris that was avenged by the gods. As Butler notes, Benjamin emphasises that the calamity brought on Niobe by the gods—her fourteen children were slain and she was petrified in her grief—is not a punishment for the violation of an existing law. Instead, in their response to Niobe's hubristic claim, the gods established a new law. But Butler takes it a step further, pointing out that the gods' action constituted Niobe as a guilty subject, indeed petrified her as a guilty subject. As this is the paradigmatic case of mythic-legal violence, Butler concludes: "Law thus petrifies the subject, arresting life in the moment of guilt."[136] Niobe is not only constituted as a punished subject, as one who suffers her punishment, but as a *guilty* subject, as one responsible for her own suffering. This, says Butler, is the double violence of law when it constitutes its legal subjects.[137]

Against this mythic-legal violence, Benjamin introduces another kind of violence—*divine violence* (*göttliche Gewalt*)—that acts against the coercive force of the legal system. According to Butler, the way divine violence works is by breaking the bonds of accountability of subjects to the legal system of which they are part. In other words, if legal violence works through creating legal subjects as such, divine violence frees subjects of the binding relation to the legal framework.[138]

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[135] Butler, *Parting Ways*, 77–78.

[136] Butler, *Parting Ways*, 78.

[137] Butler, *Parting Ways*, 78–79.

[138] Butler, *Parting Ways*, 71–73.

At some point in his essay, Benjamin invokes George Sorel's distinction between two forms of strike: the "lawmaking" political strike and the anarchistic proletarian strike. The crucial difference between the two is that the former aims for the modification of labour conditions (i.e., the establishment of a new law) while the latter seeks to overthrow state power. For this reason, says Benjamin, the political strike is violent while the proletarian strike is nonviolent.[139] It is not entirely clear, however, whether Benjamin endorses anarchistic revolution at all costs.[140] In fact, there is some evidence to suggest otherwise: later in the essay, against the argument that anarchistic logic pushed to its limit will result in the legitimation of murder, Benjamin invokes the commandment "thou shall not kill".[141]

There are some evident parallels between a Sorelian general strike and divine violence: namely, both are destructive without being violent, that is, without being coercive. What further characterises both is that neither replaces the legal system it destroys with some new law. Summing up the difference between the two forms of violence, Benjamin makes the following cryptic statement: "Mythic violence is bloody power over mere life [*bloßes Leben*] for its own sake; divine violence is pure power over all life for the sake of the living."[142] Butler, identifying "mere life" with guilt, offers a striking interpretation of this statement:

> In a rather peculiar twist, Benjamin appears to be reading the commandment not to kill as a commandment not to murder the soul of the living and therefore a commandment to do violence against the positive law that is responsible for such murder.
>
> An example of the positive law's seizure of mere life is capital punishment. In opposing legal violence, Benjamin would now seem to oppose capital punishment

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[139] SW 1, 245-46. It is important to note that Benjamin's use of the terms "violent" and "nonviolent" aligns with his overall depiction of violence in the essay—as the founding and preserving force of law.

[140] Butler, *Parting Ways*, 73.

[141] SW 1, 250.

[142] SW 1, 250.

"Die mythische Gewalt ist Blutgewalt über das bloße Leben um ihrer selbst, die göttliche reine Gewalt über alles Leben um des Lebendigen willen." GS 2:1, 200.

as legally mandated violence that most fully articulates and exemplifies the violence of positive law.[143]

Divine violence, therefore, is not directed against the body but against guilt, and this is the sense in which "mere life" should be understood, according to Butler: as referring not to the biological but to the legal, guilty subject.[144]

As Butler points out, the *Critique* contains both political and theological thinking: it advocates a Sorelian general strike while endorsing the divine commandment "thou shall not kill" as a model for noncoercive moral instruction.[145] Whether the political is in service of the theological or vice versa, or perhaps neither is the case, is a question Butler leaves open. In contrast to the legal system whose laws are enforceable—that is, their violation makes one liable to punishment—the divine commandment "thou shall not kill", in Benjamin's interpretation, does not contain coercive force or entail punitive measures.

In Butler's reading, the commandment as Benjamin understands it poses a countermodel to law: the individual has to wrestle with the imperative contained in the commandment in solitude. This singular quality of the individual's ethical struggle, of her decision, is in stark contrast to the general, all-encompassing character of the law.[146] As Butler puts it, there is an "anarchistic moment in any effort to come to terms with the commandment […] that destroys the basis of positive law".[147] Significantly, Butler does not posit this anarchistic force as a substitute for positive law, but as a counterforce co-dependent on positive law, as it constitutes both its condition and limit. That is to say, positive law is conditioned and bound by the possibility of its own destruction, which Benjamin designates *divine*. Divine violence, divine destruction of the law, does not

[143] Butler, *Parting Ways*, 81–82.

[144] Butler, *Parting Ways*, 82.

[145] Butler, *Parting Ways*, 73.

[146] Butler, *Parting Ways*, 85.

[147] Butler, *Parting Ways*, 86.

introduce a new messianic epoch where positive law no longer prevails; instead, divine power already acts within the realm of law.[148]

Butler's reading of the *Critique* does not reject positive law altogether; rather, it views justice as a corrective measure that operates within the law. As we see shortly, Derrida does not reject the law either. However, in his interpretation, justice serves as a measure in a different sense: not as an internal correction, but as an external and unattainable standard—an unreachable horizon towards which law aspires.

Derrida: The Violent Calculability of the Law

Jacques Derrida's "Force of Law: The 'Mystical Foundation of Authority'", originally given as a lecture in 1989, is a reflection on the relationship between deconstruction and justice. While the first half of Derrida's essay does not explicitly engage with Benjamin, my focus will primarily be on his reading of Benjamin's *Critique*, which comprises the bulk of the second half. The subtitle of Derrida's text is taken from a quote by Michel de Montaigne: "And so laws keep up their good standing, not because they are just, but because they are laws: that is the mystical foundation of their authority, they have no other."[149] This brief quote touches upon much of the crux in Benjamin's *Critique*, namely, the divorce between law and justice and the self-positing (here denoted "mystical") act of founding authority. Derrida understands the term "mystical" as relating to an experience of aporia. Justice, he says, is an "experience that we are not able to experience, […] an experience of the impossible".[150] Justice is opposed to law in the following manner: law is calculable, it is the rule that can be applied to particular cases; justice is fundamentally incalculable.

In his discussion of Benjamin's *Critique*, Derrida points out that individual violence threatens not only specific laws but the very foundation of law itself, namely, law's monopoly over violence, which, he says, is *Gewalt* in the sense of

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[148] Butler, *Parting Ways*, 86–87.

[149] Montaigne, quoted in Derrida, "Force of Law", 12.

[150] Derrida, "Force of Law", 16.

legitimised authority. It is in this context that Derrida explains Benjamin's comment on the public's fascination over the figure of the "great criminal":[151] it is an admiration not for the specific crime committed but for the act of defying the law, which exposes the inherent violence of the legal system.[152] But the role of violence is double and contradictory: violence belongs to the order of law, yet it threatens the law from within. On the one hand, law claims an exclusive right over violence; on the other, violence, or coercion, often claims its right to become law.[153] This is the paradoxical (or "mystical") foundation of law: the legal order, whose primary claim is its monopoly on violence, is established when violence—that is, *lawmaking violence*—claims its right to become law. Even though it may appear that lawmaking violence is easier to criticise since "it cannot be justified by any pre-existing legality and so appears savage", in fact, Derrida argues, it is more difficult, indeed impossible, to criticise precisely because it recognises no pre-existing legality.[154]

The purest manifestation of the violence inherent in law, says Derrida, is the death penalty. The death penalty is not merely one form of punishment among others, but the ultimate assertion of authority through the absolute right over life and death.[155] As such, it is an indication, in Benjamin's words, that there is "something rotten in the law".[156] To oppose the death penalty, therefore, is to reject the foundational principle of law itself. The death penalty reveals the "rotten" core of the law; in denying the right to life, it "bears witness [...] to the fact that law is a violence contrary to nature".[157]

In Derrida's reading, the violence of the law is closely linked to its calculability—that is, to its subjection of all cases to a single yardstick. Justice sets

[151] SW 1, 239.

[152] Derrida, "Force of Law", 33.

[153] Derrida, "Force of Law", 34–35.

[154] Derrida, "Force of Law", 40.

[155] Derrida, "Force of Law", 42.

[156] Benjamin, quoted in Derrida, "Force of Law", 39.

[157] Derrida, "Force of Law", 42.

an impossible standard against which the law is always found wanting; this results neither in a rejection of law nor in its justification. Instead, Derrida stresses the necessity of ongoing critique to expose and resist the law's oppressive mechanisms.

Next, we turn to Agamben, for whom the violence of the law runs deeper, posing an essential threat to the life of its subjects.

Agamben: The Violent Creation of Bare Life

Giorgio Agamben's reading of Benjamin's *Critique* is closely related to another famous theory of law published around the same time: Carl Schmitt's philosophy of sovereignty. Agamben famously made the daring suggestion that Carl Schmitt's 1922 book *Political Theology* could be read as a response to Benjamin's *Critique*.[158] Schmitt's *Political Theology* opens with the following assertion: "Sovereign is he who decides on the exception."[159] That is, Schmitt defines sovereignty as the power to decide in cases of emergency, such as war or natural disasters, on a state of exception, where the law is (temporarily but indefinitely) suspended.

As Agamben points out, this definition contains a topological paradox: the state of exception, by definition, is a sphere outside the law; the law, however, contains within it the possibility of declaring a state of exception, thereby containing that which is outside of it. Simply put: the state of exception, as well as the sovereign who holds the power to decide on it, is at the same time inside and outside the law.[160] The exception maintains its relation to the rule and is, moreover, defined in relation to the rule, namely, as the rule's suspension. But the opposite holds true as well: the rule maintains its relation to the exception and, by means of this relation, it becomes the rule.[161] Drawing on Hegel, Agamben compares this in the sphere of

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[158] Giorgio Agamben, "The State of Exception", in *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer*, ed. Andrew Norris (Duke University Press Books, 2005), 289.

[159] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (MIT Press, 1985), 5.

[160] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 2010), 15.

[161] Agamben, *Homo Sacer*, 17–18.

Schmitt writes: "The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: it confirms not only the rule but also its existence, which derives

law to the sphere of language. The nonlinguistic, according to this view, is "nothing but a presupposition of language"; language draws its validity from its relation to the nonlinguistic, but precisely due to this relation it renders the nonlinguistic part of the structure of language such that "there is nothing outside language".[162]

The key concern in Benjamin's *Critique*, says Agamben, is the possibility of a violence outside of law, a violence that is neither lawmaking nor law-preserving. This form of violence is dubbed by Benjamin "pure violence": "divine violence" (in the godly sphere), or "revolutionary violence" (in the human sphere). According to Agamben, Schmitt's theory of the state of exception is a response to Benjamin's idea of pure violence, that is, violence outside the law. Against this notion, Schmitt puts forward the *state of exception*, thus subsuming so-called "pure violence" under the grip of law.[163] That is to say, for Schmitt there is no *outside* the law; Schmittian thought asserts a vacuum within the law, where pure violence exists.

In his book *Homo Sacer: Sovereign Power and Bare Life*, Agamben draws on both Schmitt and Benjamin to advance his critique of modern sovereignty. There, he offers a definition of sovereignty that amalgamates notions from the two thinkers, saying that "the sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence".[164] Agamben reads Benjamin's *Critique* through the Schmittian lens of the *state of exception*. From this perspective, the distinction between lawmaking violence and law-preserving violence can only be maintained as long as the separation between the state of exception and the rule remains intact. In contrast, divine violence breaks with this latter separation to the point that one cannot distinguish between rule and exception. Divine violence, says Agamben, acts by

only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition." Schmitt, *Political Theology*, 15.

[162] Agamben, *Homo Sacer*, 21.

[163] Agamben, "The State of Exception", 290.

Even though Benjamin does not use the term "state of exception" [*Ausnahmezustand*], Agamben points out that a term used synonymously by Schmitt—*Ernstfall*—appears in the essay, as well as another central Schmittian term, namely, *Entscheidung*.

[164] Agamben, *Homo Sacer*, 32.

revealing the link between law and violence as the only content of the law, thereby emptying the law of its alleged content and contesting its legitimacy.[165]

Invoking a term from the *Critique*, Agamben argues that the bearer of the link between law and violence is bare life.[166] Bare life refers, in Agamben's reading, to the life of the *homo sacer*, a person banned from the legal community, "a human victim who may be killed but not sacrificed".[167] According to Agamben, the political concurs with the creation of the category of *homo sacer*.[168] The production of subjects that fall into the category of "the production of bare life"—that is, life exposed to death, also called *sacred life*—"is the originary activity of sovereignty".[169] *Homo sacer*, the person whose killing is licit outside of a sacrificial framework, is the mirror image of the sovereign, who is allowed to kill without turning this killing into sacrifice. Agamben insinuates that Benjamin's rejection of the sacredness of bare life stems from a suspicion that the sacredness of life is a myth playing in the service of law, which exerts its power precisely over this sort of life (as opposed, for instance, to ethical life or spiritual life).[170] Agamben, therefore, portrays an antagonism between law and life: the essential act of the law is the creation of a category of life exposed to death.

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In their readings of Benjamin's *Critique*, Butler, Derrida, and Agamben all share a negative view of the law as oppressive and opposed to justice. Derrida's view of the law, which is the most lenient of the three, does not amount to a rejection of the law. Instead of focusing on the question of law, Derrida focuses on justice,

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[165] Agamben, *Homo Sacer*, 64–65.

[166] Agamben, *Homo Sacer*, 65. "Bare life" is the same concept translated in SW as "mere life", namely, *bloßes Leben*.

[167] Agamben, *Homo Sacer*, 83.

[168] Agamben, *Homo Sacer*, 85.

[169] Agamben, *Homo Sacer*, 83.

[170] Agamben, *Homo Sacer*, 66.

stressing the necessity for an ongoing critique of law from the incalculable, impossible position of justice. Butler does not reject the law either, rather pointing to its inherent violence, beginning with the creation of legal subjects as guilty. Butler recognises justice as an anarchistic force working within the law as a corrective (by being destructive) measure, namely, by liberating subjects from guilt and punishability. Agamben is the most radical among the three, and closest to an utter rejection of law, which in his reading is antagonistic to life. For both Butler and Agamben, the violence of the law inheres in the creation of a category of subjects, even prior to any concrete punishment. For Butler, the law creates legal subjects as punishable and guilty. For Agamben, the law creates subjects whose killing is permitted outside of a sacrificial framework. In both cases, it produces life as "bare life", exposed to physical violence and charges of guilt.

From the *Critique* to *the Kafka*

The three readings presented above express varying degrees of opposition to the law, but all recognise it as oppressive and unjust. Beyond this negative evaluation, however, there is little discussion—in either the *Critique* or its readings—about the *type* of law Benjamin discusses in his essay. He distinguishes between *mythic violence* and *divine violence*, and the way each relates to law: the former by creating and maintaining law, the latter by destroying it. But what Benjamin means by law in the *Critique* is vague: the notion is nowhere defined or even questioned or problematised. There is nothing in Benjamin's *Critique* to indicate that law is not a stable category, no discussion of different types of law or different views on the law.

A closer look reveals a lacuna—an imbalance, at least—in Benjamin's account. The law as he recognises it in modern legal systems is aligned with mythic law: the law of the Greek gods. For this reason, mythic violence is a particular manifestation of lawmaking violence; that is, when Benjamin says "law" he means in particular *mythic law*. Mythic violence, therefore, corresponds to mythic law (designated, as just mentioned, simply as "law"). But divine violence does not correspond to divine law; in fact, there is no divine law in Benjamin's *Critique*. Instead, divine violence relates to law only in the negative, in that it is defined as

destructive towards law, that is, towards mythic law. Why is there no notion of divine law, corresponding to divine violence, in the *Critique*?

The absence of divine law in the *Critique* may be explained as follows: for Benjamin, divine power is anarchistic power. Law—any type of law—is inimical to justice, hence divine power, which acts as a manifestation of justice, can only act *against* law as such. While this is a valid explanation, I argue for a different one. My claim is that Benjamin was looking for a just law, an alternative to oppressive, mythic law. Since he could not find a satisfactory notion of divine law, he avoided mentioning it in his essay altogether.

In this sense, Benjamin's *Critique* is an unfinished project; it is only a critique of one type of law, the one aligned with legal violence, and even as such, it is only a preparation "Toward the Critique of Violence". There are various hints that indicate Benjamin's dissatisfaction with the results of his inquiry. Some are mentioned later, when I refer to Julia Ng's "Afterword" to the critical edition of the *Critique*. Now, I would like to focus on the two narratives Benjamin chose to illustrate the two types of violence he identified, namely, mythic and divine. I argue that, compared to the story illustrating mythic violence, Benjamin's example of divine violence is weak and compromised, which reflects his inability to arrive at a notion of divine law.

Niobe and Korah

As the paradigmatic case of mythic violence, Benjamin mentions the myth of Niobe:

> Mythic violence in its archetypal form is a mere manifestation of the gods. Not a means to their ends, scarcely a manifestation of their will, but primarily a manifestation of their existence. The legend of Niobe contains an outstanding example of this. True, it might appear that the action of Apollo and Artemis is only a punishment. But their violence establishes a law far more than it punishes the infringement of a law that already exists. Niobe's arrogance calls down fate upon her not because her arrogance offends against the law but because it challenges fate—to a fight in which fate must triumph and can bring to light a law only in its triumph. […] Violence therefore bursts upon Niobe from the uncertain, ambiguous sphere of fate. It is not actually destructive. Although it brings a cruel

> death to Niobe's children, it stops short of claiming the life of their mother, whom it leaves behind, more guilty than before through the death of the children, both as an eternally mute bearer of guilt and as a boundary stone on the frontier between men and gods.[171]

Niobe was a mortal woman blessed with a noble bloodline, wealth, a happy marriage and no less than fourteen children—seven daughters and seven sons. Delirious with arrogance over her good fortune, Niobe claimed to be more powerful than the goddess Leto—based on her being a mother of fourteen, seven times as many as Leto's two children—and called the people of Thebes to worship her in place of the goddess. In response, Leto's children Apollo and Artemis killed all fourteen of Niobe's, who in her grief turned to stone.[172]

Benjamin does not fully relate the story but mentions the key elements: Niobe's arrogance, the punishment by Apollo and Artemis who killed her children, and her turning into stone. His explanation for why this is "an outstanding example" of mythic violence is quite lucid: the violence of the gods, like mythic violence, is a manifestation of their power, not a punishment for breaking an already established law. He further stresses the place of guilt and the hierarchy of power (humans versus gods).

This lucidity is not paralleled in the case of divine violence. As an example of the latter, Benjamin refers to the biblical story of Korah:

> The legend of Niobe may be contrasted with God's judgment on the company of Korah, as an example of such violence. God's judgment strikes privileged Levites, strikes them without warning, without threat, and does not stop short of annihilation. But in annihilating it also expiates, and a profound connection between the lack of bloodshed and the expiatory character of this violence is unmistakable. For blood is the symbol of mere life.[173]

Korah was a Levite, that is, a person who belongs to the privileged tribe of Israelites in charge of temple service. Unhappy with the organisation of hierarchy

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[171] SW 1, 248.

[172] Edith Hamilton, *Mythology* (Back Bay Books, 1998), 238–39.

[173] SW 1, 250.

within the Israelite priesthood, Korah, accompanied by 250 followers, rebelled against Moses and Aaron, questioning their legitimacy as leader and high priest, respectively. In consequence, God opened the mouth of the earth and Korah and his household were swallowed alive.[174]

In the quote above, Benjamin mentions very briefly the story of Korah and his company. His point appears to be as follows: the absence of warning or threat and the bloodless annihilation together amount to violence that does not follow a rule, and hence is not lawmaking but law-destroying. But this line of argument is not particularly strong, and Benjamin's neglecting to relate the story is perhaps not entirely inadvertent. The "privileged Levites"—that is, Korah and his company—were protesting against the hierarchy within the organisation of priesthood, and in particular against Moses and Aaron's own privileged positions, asking for its reorganisation according to divine decision.[175] Contrary to Benjamin's claims, there are both a warning[176] and a threat to future transgressors.[177] Most importantly, it is unclear which law is being destroyed in Korah’s annihilation—if anything, it appears to affirm the legal-political structure in the Israelite community.

Admittedly, Benjamin refers to bloodshed, which he later relates to guilt, as a point of distinction between the two kinds of violence. Whereas mythic violence, as illustrated by Niobe's story, implies guilt in its subject, divine violence, as in Korah's story, strikes its subjects without leaving a trace. Benjamin's example of Korah is not without value, but it is neither very convincing. I believe Benjamin was aware that this story—presumably the best example he could find—is far from flawless as an illustration of divine violence and as an alternative to mythic violence and mythic law. He focuses on one aspect in particular—the lack of bloodshed, blood being the symbol of guilt—and makes some contestable claims, because he had not yet found what he was looking for. In other words, the weakness of the example—the story of Korah—reflects the weakness of the category of divine violence, which cannot even give birth to divine law.

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[174] Num. 16:1–35

[175] Num. 16: 1–7

[176] Num. 16: 26, 28–30

[177] Num. 17: 3–5

Apart from this example of the story of Korah, there are other reasons to suspect Benjamin was not fully satisfied with his essay. As mentioned above, the opening sentence of the *Critique* lays out its programme: "The task of a critique of violence can be summarised as that of expounding its relation to law and justice."[178] Throughout the essay, violence was indeed discussed in relation to law; combining the two key distinctions in the essay, we find three kinds of violence: lawmaking, law-preserving, and law-destroying. But then, what about justice (*Gerechtigkeit*)? Benjamin throws occasional hints, such as: "it is never reason that decides on the justification of means and the justness [*Gerechtigkeit*] of ends: fate-imposed violence decides on the former, and God on the latter."[179]; or: "Justice is the principle of all divine endmaking, power the principle of all mythic lawmaking."[180] But overall, he neglects the theme of justice, as he himself indicates early on, saying that "[t]he realm of ends, and therefore also the question of a criterion of justness [*Gerechtigkeit*], are excluded for the time being from this study."[181]

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In the "Afterword" to the critical edition of Benjamin's "Toward the Critique of Violence", Julia Ng rightly points out that Benjamin's *Critique* leaves some weighty open questions: What could be a criterion for the justice of ends?[182] Which are the

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178 SW 1, 236.

179 SW 1, 247.

"Entscheidet doch über Berechtigung von Mitteln und Gerechtigkeit von Zwecken niemals die Vernunft, sondern schicksalhafte Gewalt über jene, über diese aber Gott." GS 2:1, 196.

180 SW 1, 248.

181 SW 1, 237.

"Das Bereich der Zwecke und damit auch die Frage nach einem Kriterium der Gerechtigkeit schaltet für diese Untersuchung zunächst aus." GS 2:1, 181.

182 SW 1, 237. As mentioned above, later in the essay Benjamin writes: "For it is never reason that decides on the justification of means and the justness of ends: fate-imposed violence decides on the former, and God on the latter." SW 1, 247.

"higher orders that threaten to overwhelm equally victor and vanquished?"[183] And what happens after the "ending" of the history of violence?[184,185] These open questions serve as avenues to a historical review of Benjamin's continued work towards another "Critique of Violence". The point of departure for Ng's survey is an undated bibliography titled "Literature for a More Fully Developed Critique of Violence and Philosophy of Law", which might suggest that Benjamin was still working toward this planned revision of the essay into the late 1920s.[186]

Benjamin never wrote another "fully developed" version of the *Critique*. Yet *the Kafka*, as I will argue, can be read as a response to the questions that still occupied Benjamin more than a decade after the publication of his *Critique*, questions about the possibility of justice and its relation to law. At first glance, the dense, systematic, politically philosophical text of the *Critique* and the playful, associative, and literary *Kafka* have little in common. But this variation in style reflects substantially different approaches to addressing a similar fundamental problem. Even when examined on the surface, there are several threads of continuity between the *Critique* and *the Kafka*. One is a quote from Hermann Cohen's *Ethic of Pure Will*, which refers to the unwritten laws of antiquity. The same formulation appears almost verbatim in the *Critique* and in *the Kafka*:

> In a side-glance at the idea of fate in Antiquity, Hermann Cohen came to a "conclusion that becomes inescapable": "The very rules [*Ordnungen*] of fate seem to be what causes and brings about the breaking away from them, the defection."[187]

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[183] SW 1, 245.

[184] SW 1, 251. The SW translates the original *Ausgang* as "development" instead of "ending", but the latter (as translated in the critical edition) appears more appropriate.

[185] Julia Ng, afterword to *Toward the Critique of Violence: A Critical Edition*, by Walter Benjamin, ed. Peter Fenves and Julia Ng (Stanford University Press, 2021), 113–14.

[186] Ng, afterword to *Toward the Critique of Violence*, 117–18, *see also* 313.

[187] SW 2:2, 797. This is the English translation of the quote from the Kafka essay. The original German is identical with the exception of one word ("*antiken*" in the *Kritik*, "*alten*" in *the Kafka*).

In *Zur Kritik der Gewalt*: "Schon Hermann Cohen hat es in einer flüchtigen Betrachtung der antiken Schicksalsvorstellung eine 'Einsicht, die unausweichlich wird,' genannt, daß es seine 'Ordnungen selbst sind, welche dieses Heraustreten, diesen Abfall zu veranlassen und herbeizuführen scheinen.'" GS 2:1, 199.

Another such thread of continuity, albeit slightly more elusive, is the reference to "higher orders". In the *Critique* we read:

> It is different when classes and nations are in conflict, since the higher orders [*höheren Ordnungen*] that threaten to overwhelm equally victor and vanquished are hidden from the feelings of most, and from the intelligence of almost all.[188]

And in *the Kafka*:

> Modern man dwells in his body as K. does in the village: as a stranger, an outcast who is ignorant of the laws that connect this body to higher and vaster orders [*höheren weiteren Ordnungen*].[189]

The *Ordnungen* which appear in the quote from Hermann Cohen might be the same "higher orders" (a connection lost in translation), but at this point we cannot be certain. What is presumably the most significant connection, however, between the *Critique* and *the Kafka* is the concern of both with the relationship between law (*Recht*) and justice (*Gerechtigkeit*). We may recall that the *Critique* opens with the programmatic statement—

> The task of a critique of violence can be summarised as that of expounding its relation to law and justice.[190]

In the 1934 Kafka essay: "Schon Hermann Cohen hat es in einer flüchtigen Betrachtung der alten Schicksalsvorstellung eine 'Einsicht, die unausweichlich wird,' genannt, daß es seine 'Ordnungen selbst sind, welche dieses Heraustreten, diesen Abfall zu veranlassen und herbeizuführen scheinen.'" GS 2:2, 412.

[188] SW 1, 245.

"Anders, wenn Klassen und Nationen im Streit liegen, wobei jene höheren Ordnungen, welche den Sieger und den Besiegten gleichermaßen zu überwältigen drohen, den meisten dem Gefühl und fast allen der Einsicht nach noch verborgen sind." GS 2:1, 193.

Elsewhere in the essay, Benjamin refers to the "higher order of freedom" (SW 1, 242) / "höhere Ordnung der Freiheit" (GS 2:1, 187).

[189] SW 2:2, 497.

"So wie der K. im Dorf am Schloßberg lebt der heutige Mensch in seinem Körper: ein Fremder, Ausgestoßener, der nichts von den Gesetzen weiß, die diesen Leib mit höheren weiteren Ordnungen verbinden." GS 2:2, 680.

[190] SW 1, 236 / GS 2:1, 179.

—and note that the major 1934 Kafka essay concludes with the following assertion:

> The law which is studied but no longer practiced is the gate to justice.[191]

My claim is that in *the Kafka* Benjamin continues a project he started with the *Critique*, namely, searching for an alternative to mythic law, a non-oppressive law that can be aligned with justice. The route he takes in *the Kafka* is significantly different from the one taken in the *Critique* and, consequently, the law he may find is not the same law he might have imagined when he wrote the earlier essay. Benjamin's inquiry in *the Kafka* comes closer to rabbinic modes of reading and interpretation; accordingly, my project consists of three talmudic readings of the text, with the purpose of uncovering this alternative notion of law. Before shifting to the three readings—the three core chapters of the thesis—we briefly reflect on what such a notion might be.

Mythic and Divine Law

As I have already emphasised, Benjamin does not discuss in the *Critique* different types of law or different views of what the law is. In the *Critique*, his idea of divine violence (although not divine law) draws on biblical examples. In *the Kafka*, as I argue, his search is inspired by, even modelled on, rabbinic modes of interpretation. To make sense of the aforementioned absence—the lack of divine law in the *Critique*—it may be helpful to consider what such a law might look like. In other words, it may be useful to have a typology of different kinds of law, particularly mythic and divine. For this purpose, we turn to Christine Hayes' categorisation of discourses of law. This helps us situate Benjamin's notion of law within the conceptual frameworks Hayes outlines. Furthermore, her discussion of divine law serves to shift from the biblical universe (which features in the *Critique*) to the rabbinic (which characterises *the Kafka*).

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[191] SW 2:2, 815.

"Das Recht, das nicht mehr praktiziert und nur studiert wird, das ist die Pforte der Gerechtigkeit." GS 2:2, 437.

Christine Hayes explores various discourses of law in biblical and Greco-Roman thought in her book *What is Divine about Divine Law?* In particular, she shows how the biblical notion of law destabilises the classical dichotomy of divine natural law and human positive law, as it does not fit neatly into either category. In her discussion of the biblical text, Hayes identifies three distinct discourses of divine law. The first understands divine law as an expression of divine will; the second as an expression of divine reason; and the third as grounded in historical narrative. According to the first discourse, divine law emanates from God's will and is particularistic, nonrational, and changing—addressing ideally obedient servants through coercion.[192] According to the second discourse, divine law expresses a universal moral order and is, thus, rational and unchanging—addressing rational moral agents through instruction.[193] According to the third discourse, divine law is grounded in memory, that is, in the nation's stories about itself.[194] History is the project of creating a holy community under the law.[195] The law addresses community members whose moral commitments are grounded in their covenantal relationship with God.[196] Following a close examination of the biblical texts, Hayes concludes that biblical divine law has affinities to each of the three theories of law but fully conforms to none.[197]

When Hayes discusses Greco-Roman discourses of law, she identifies two discourses of natural law and five discourses of human positive law. Here, I gloss over the divisions within each category, as they are too nuanced for our purpose. Natural law is thought to reflect the universal, rational order of nature and therefore corresponds to truth and justice.[198] An essential feature of natural law is

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192 Christine Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton University Press, 2015), 15.

193 Hayes, *Divine Law*, 24–25, 37.

194 Hayes, *Divine Law*, 41, 51.

195 Hayes, *Divine Law*, 44.

196 Hayes, *Divine Law*, 43.

197 Hayes, *Divine Law*, 51–52.

198 Hayes, *Divine Law*, 54–58.

its being unwritten, as opposed to positive human laws which are particular and subject to change.[199] The notion of natural law promotes cosmopolitanism; since it is universal, it unites the cosmos as one legal community, as a polis.[200] When measured against divine law, human positive law is often found limited and inadequate.[201] In some discourses, the rule of human law is taken as a necessity in a fallen world, far removed from the ideal rule of the gods in the golden age;[202] whereas in others, written law is the mark of the free, civilised man.[203] As a general rule, those who see nature as an ideal state often adopt an antinomian approach, while those who see nature as a violent and brutish state often prefer the rule of law, even as an inadequate measure.[204]

Overall, biblical law exhibits characteristics of both natural law and positive law: it aligns with natural law in being rational, eternal, and governing the sage, while also resembling positive law in being particular, written, and subject to change.[205] Insofar as it shares features of positive law, biblical law does not necessarily align itself with the ideals of truth and justice that define natural law. Shifting from biblical to rabbinic law, the antagonism of law and judgment to concepts like truth and justice becomes even more piercing. According to Hayes, the rabbis divorced the idea of divine law from "truth" (either formal, logical truth, ontological truth, or judicial truth), and yet maintained the law's authority and divinity.[206]

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[199] Hayes, *Divine Law*, 56.

[200] Hayes, *Divine Law*, 60.

[201] Hayes, *Divine Law*, 80.

[202] Hayes, *Divine Law*, 62.

[203] Hayes, *Divine Law*, 77.

[204] Hayes, *Divine Law*, 72–75.

[205] Hayes, *Divine Law*, 92.

The law can be both eternal and subject to change at the same time, as its validity derives from the eternal authority of God while its content adapts to changing circumstances.

[206] Hayes, *Divine Law*, 243–54.

In her discussion of this phenomenon, Hayes quotes the following midrashic[207] narrative:

> R. Shimeon said: When the holy one, blessed be he, came to create Adam, the ministering angels formed themselves into groups and parties, some of them saying, “Let him be created,” while others urged, “Let him not be created.” Thus it is written, “*Loving- kindness* and *Truth* met, *Righteousness* and *Peace* fought” (Ps 85:11). Loving-kindness said, “Let him be created, because he will perform acts of loving-kindness;” Truth said, “Let him not be created, because he is nothing but falsehood;” Righteousness said, “Let him be created because he will perform righteous deeds;” Peace said, “Let him not be created because he is nothing but strife.” What did the holy one, blessed be he, do? He took Truth and cast it to the ground. The ministering angels said to the holy one, blessed be he, "Sovereign of the Universe! Why do you despise your seal [i.e., Truth]? Let Truth arise from the earth!” Hence it is written, “Truth, spring up from the earth” (Ps 85:12). . . .
>
> R. Huna the Elder of Sepphoris said: While the ministering angels were arguing with each other and disputing with each other, the holy one, blessed be he, created him. He said to them, “What are you arguing for? Adam has already been made!”[208]

This astounding narrative depicts the creation of Adam as adverse to the integrity of peace and truth. As Hayes points out, the text implies that not only the creation of human beings but also their continuous existence requires compromises on the part of truth. That is, when God judges humans, he often does so while suppressing the verdict of truth and strict justice.[209]

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[207] As discussed in the previous chapter on Talmud & Philosophy, the term "midrash" refers to a particular genre of rabbinic interpretation or to a text written in that genre.

[208] Bereshit Rabbah 8:5, quoted in Hayes, *Divine Law*, 188.

[209] Hayes, *Divine Law*, 188–91.

This idea, namely the incompatibility of truth and strict justice with human existence, is expressed in various rabbinic sayings and narratives. To take just one example, one midrashic statement reads: "If it is a world you want, then strict justice is impossible. And if it is strict justice you want, then a world is impossible." Bereshit Rabbah 49:9, quoted in Vivian Liska, "'Before the Law stands a doorkeeper. To this doorkeeper comes a man…': Kafka, Narrative, and the Law", *Naharaim* 6, no. 2 (2012): 193. https://doi.org/10.1515/naha-2012-0011.

It should be noted that "strict justice" (in Hebrew: *din*, which can also be translated as "retributive justice") is different from "justice" as equity and moral rightness.

As demonstrated in the quote above, the shift to the rabbinic universe introduces a notion of law quite different from those we have seen so far. Rabbinic texts are unique not only for the notion of law they contain but also for their style, which is often rich in imagery and colourful narratives. The interplay between these two aspects—narrative and law, or in rabbinic terms, haggadah and halakhah—stands at the heart of this project. In the following three chapters, I present three talmudic readings that explore how Benjamin's style and narrative in *the Kafka* contribute to shaping an alternative notion of law.

Kafka's Parables and the Rabbinic Mashal: The Wunderblume

The Quote

> "Don't forget the best!" We are familiar with this remark "from a nebulous bunch of old stories, although it may not occur in any of them."[210]

This chapter—the first of the three core chapters—presents my first talmudic reading, which centres on the quote cited above. As you may recall, each of the three talmudic readings is structured around a short quote from *the Kafka*, and the engagement with Benjamin's style ultimately serves to address the enigma of law. As we shall see, the quotes that set the stage for the next two chapters explicitly relate to this enigma: one refers to halakhah and haggadah, the other to law and justice. The quote that introduces this chapter, however, is more opaque: it is neither clear how it connects to the theme of this project nor, more generally, what it seeks to convey. Its immediate context in the text from which it is taken—Benjamin's major 1934 essay—sheds little light on its possible meaning. It is precisely this cryptic quality, combined with its unusual structure in fusing two separate quotations, that makes it ideal for our purpose, that of grappling with Benjamin's enigmatic style.

The chapter is divided into two sections. The first focuses on a particular literary form, the rabbinic *mashal*, the second on the statement above. Before going into the manifold relationships of halakhah and haggadah in rabbinic

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[210] SW 2:2, 813.

"'Vergiß das Beste nicht!' lautete eine Bemerkung, 'die uns aus einer unklaren Fülle alter Erzählungen geläufig ist, trotzdem sie vielleicht in keiner vorkommt.'" GS 2:2, 434.

literature (a task taken up in the next chapter), I begin with the relatively simple and uniform mashal, which nevertheless reveals significant features of midrashic hermeneutics. In the first section of this chapter, I present two theories of mashal as a rhetorical device: one that stresses that its main function lies in justifying the project of interpretation, and another that focuses on the way mashal creates fiction as a tool for meaning-making. In the second section of the chapter, I shift to Benjamin's obscure statement and offer a reading that borrows midrashic tools, particularly those modelled on the rabbinic mashal as discussed in the first section. This method of reading reveals a latent image which serves as a key to addressing Benjamin's Kafka texts. The link between the two sections is twofold: at the outset, there is the connection of genre. As we shall see, the quote from Benjamin's *Kafka* being examined is closely related to Benjamin's characterisation of Kafka's stories as parables of a unique kind. The discussion of the rabbinic mashal, itself arguably a unique form of parable, provides a model for exploring the function of Kafka's parables. The second line of connection is discovered in the process of reading, which concludes by asserting that Benjamin's statement, much like the rabbinic mashal, serves as a reflection on the inner hermeneutics of the text within which it is embedded.

The Rabbinic Mashal

Among the many literary forms found in rabbinic literature, the mashal is a relatively simple and well-defined case. In Boyarin's words, the mashal is "a prototype—a privileged type—of all midrashic narrative interpretation".[211] The word "mashal" (pl. *meshalim*) derives from a root that is close in meaning to similarity or likeness. In the biblical text, it denotes various uses of language such as metaphor, simile, and proverb. In rabbinic literature, the term mashal retained its various biblical denotations but was also used to denote the special regularised form of rabbinic parable.[212] In the next two subsections, I examine two theories

[211] Boyarin, *Intertextuality*, 16.

[212] David Stern, *Parables in Midrash* (Harvard University Press, 1991), 9–10.

of mashal developed by scholars of rabbinic literature, each emphasising a different rhetorical function. These works, containing analyses of concrete examples, serve as a solid entry point into rabbinic literature from a literary perspective, and provide the foundation for the second section of this chapter, which contains the talmudic reading of the quote from Benajamin's *Kafka*.

Mashal as Apologetics

The first of the two theories of mashal examined here appears in David Stern's article "Rhetoric and Midrash: The Case of the Mashal". Through close analysis of a series of meshalim, Stern highlights several features of this rabbinic literary form to conclude that it serves as a rhetorical device whose function may be described as apologetics of interpretation.

In Stern's words, mashal is the rabbinic "generic name for those narratives, like parables and fables, that draw a connection between the fictional situations they recount and a concrete one at hand".[213] The first significant feature of the mashal is, then, that it links a concrete situation to a fictional one. Another closely related feature, paradigmatic of the general rhetoric character of midrash, is that it has two intersecting orders: exegesis and narrative. A final important feature of the mashal is that it requires the active engagement of the reader. In Stern's words, "the mashal is a narrative that actively elicits from its audience the solution of its meaning, or what we would call its interpretation".[214]

To demonstrate the way the mashal works as a rhetorical device within midrashic interpretation, Stern focuses on a certain mashal from Eikhah Rabbah (a midrashic compilation on Lamentations), which offers an interpretation of the verse from Lam. 4:11. The midrash goes as follows:

> And He hath kindled a fire in Zion, which hath devoured the foundations thereof? (Lam. 4:11). It is written, "A song of Asaph. O God, the heathen are come into Thine inheritance" (Ps. 79:1). Should not the verse have said, "A weeping of

[213] Stern, "Rhetoric and Midrash", 262.

[214] Stern, "Rhetoric and Midrash", 262.

> Asaph," or "a lament of Asaph," or "a dirge of Asaph"? What does "a song of Asaph" mean?
>
> But it is like [lit.: it is a mashal of] a king who made a bridal-chamber for his son, and plastered, cemented and decorated it. But the son turned to wickedness. Immediately the king went up to the bridal-chamber, and tore its curtains, and broke its supports. The pedagogue took his reed-flute, and began to sing. People said to him, "The king has destroyed the bridal-chamber of his son, and you sit and sing!" He said to them, "I sing because he has destroyed the bridal chamber of his son, and he has not poured out his anger upon his son."
>
> Similarly, they said to Asaph, "The Holy One, blessed be He, has destroyed His sanctuary and temple, and you sit and sing!" He said to them, "I sing because the Holy One, blessed be He, poured out his anger upon trees and stones, and did not pour out his anger upon Israel."
>
> This is what is written, "And He hath kindled a fire in Zion, which hath devoured the foundations thereof."[215]

The midrash begins with a verse from Lamentations, followed by a verse from Psalms referring to the same event, namely, the destruction of the city of Jerusalem and its temple. The midrashic author raises an objection to the choice of words in the Psalmic verse: how can such a solemn issue be framed as a song (i.e., expressing gratitude and praise)? Then it presents the mashal of the king, his son, and the pedagogue, and finally, the explanation or solution of the mashal, bringing us back to the original context. We follow Stern's analysis with the question in mind of the function the mashal plays in this midrashic interpretation. The rabbinic mashal, according to Stern, does not serve to prove an argument or to give concrete form to abstract concepts.[216] What does it do, then?

The word "mashal" is usually translated as parable, a norm whose origin is likely the Septaugint's translation of mashal as *parabolē*. In the synoptic gospels, similarly, we find Jesus' parables, originating in the Greek *parabolai*. Drawing on Greek rhetorical usage, Jesus' parables have been understood as extended similes or illustrative parallels: translations of abstract terms into concrete ones, not unlike

215 Stern, "Rhetoric and Midrash", 278.

216 Stern, "Rhetoric and Midrash", 265.

teaching arithmetic with bananas and apples. But some scholars have suggested that Jesus' parables are much more than that: they are extended metaphors whose very utterance creates a new reality.[217] In a short text titled "Listening to the Parables of Jesus", Paul Ricoeur points out the ordinary narratives in parables like *The Hidden Treasure* (Matt. 13:44), *The Mustard Seed* (Matt. 13:31–32), and *The Prodigal Son* (Luke 15:11–32), which are nevertheless likened to the Kingdom of Heaven. This, according to Ricoeur, causes an initial shock, namely, the paradox "that the *extraordinary* is *like* the *ordinary*".[218] Ricoeur continues:

> The Gospel says nothing about the Kingdom of Heaven, except that it is *like* … It does not say what it *is*, but what it *looks like*. This is hard to hear. Because all our scientific training tends to use images only as provisory devices and to replace *images* by *concepts*. We are invited here to proceed the other way. And to think according to a mode of thought which is not metaphoric for the sake of rhetoric, but for the sake of what it has to say.[219]

The literary role of the parable is unlike that of an Aesop's fable. The latter is used as a merely rhetorical device: once the point has been made, it can be discarded. Thus, to "cry wolf" is retained as English idiom even though the narrative from which it originates may be unfamiliar to some of its users. In Ricoeur's reading of Jesus' parables, in contrast, they are literary objects that cannot be replaced by a corresponding concept. Furthermore, he writes:

> [I]t is not enough to say that the Parables say nothing directly concerning the Kingdom of God. *We must say in more positive terms, that taken all together, they say more than any rational theology*. At the very moment that they call for theological clarification, they start shattering the theological simplifications which we attempt to put in their place.[220]

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[217] Stern, *Parables in Midrash*, 10.

[218] Paul Ricoeur, "Listening to the Parables of Jesus", in *The Philosophy of Paul Ricoeur: An Anthology of His Work*, eds. Charles E. Reagan and David Stewart (Beacon Press, 1978), 239 (emphasis in original).

[219] Ricoeur, "Listening to the Parables of Jesus", 242 (emphasis in original).

[220] Ricoeur, "Listening to the Parables of Jesus", 243 (emphasis in original).

Jesus' parables, therefore, do not merely illustrate some abstract reality. Their power is that they actively resist translation into conceptual language, and their very presence shatters any illusion of comprehension. According to Stern, the main feature of this line of thought is its fantasy of the parable as a type of privileged language, unmediated and revelatory, a language beyond the need for interpretive intervention.[221] On this account, the rabbinic mashal is far removed from Jesus' parables. In Ricoeur's analysis of Jesus' parables, the narrative cannot be discarded and replaced with its meaning (like one might claim about an Aesop's fable). In Stern's analysis of the rabbinic mashal, the narrative similarly cannot be discarded, but for a different reason. For Ricoeur, the narrative is essential for the unique content it contains, which cannot be adequately translated into conceptual language. According to Stern, each component of the rabbinic mashal can and should be translated into its concrete meaning, and yet the narrative is crucial for the *process* of meaning-making, as we shall presently see.

Through close analysis, Stern demonstrates how the rabbinic mashal developed a regularised form and shows that many meshalim share common motifs and elements. The application of each mashal and the referents of its elements are nevertheless context-dependent.[222] The mashal is allegorical or referential, says Stern, "only to the extent that it must allude to the ad hoc situation which gives it a concrete meaning".[223] Thus, for example, we find another mashal, similar to the one above yet applied in a wholly different context. It is found in Bereshit Rabbah (a midrashic compilation on Genesis), given as a commentary on Genesis 6:7: "And the Lord said, I will destroy man whom I have created from the face of the earth; both man, and beast, and the creeping thing, and the fowls of the air; for it repenteth me that I have made them."[224] The question informing the mashal is: why destroy the animals when only humans have sinned?

[221] Stern, *Parables in Midrash*, 12.

[222] Stern, "Rhetoric and Midrash", 266–69.

[223] Stern, "Rhetoric and Midrash", 265.

[224] Gen. 6:7 KJV.

> R. Pinhas said: It is like a king who married off his son and made him a bridal chamber, and plastered, cemented, and decorated it. The king becomes angry at his son, and killed him. He entered the bridal-chamber, and began to break it supports, to tear down its walls and to rip apart its curtains. He said, "My son is destroyed and these things still exist!"
>
> Therefore, "Both man and beast" (Gen. 6:7).[225]

In the two examples presented by Stern, the narratives are almost identical but what they symbolise is quite different. Whereas in the former mashal on Lamentations, the king represented God, the son represented the people of Israel, and the bridal-chamber represented the land of Zion—in the present mashal the king still represents God but the son represents the human race and the bridal-chamber represents the animal kingdom. Furthermore, the King's violent act stands in the first case for the destruction of Jerusalem and the temple, and in the second for the Flood.

Not only do the elements of each rabbinic mashal apply to an ad hoc situation, but Stern further claims that the relationship between the mashal and its solution is artificial because the interpretation of the verse logically precedes the fictional narrative of the mashal. Instead of supporting the solution, the mashal and its solution circularly justify each other. The solution is presented as if it follows the mashal; in turn, the reinterpreted verse provides a retroactive justification of the mashal or, in Stern's words, "give[s] it the authoritative stamp of Scripture".[226]

Let us go back to the first example, the midrash on Lam. 4:11. In this case, we may even say the mashal is redundant; to make the point, would it not be enough to state the solution? It seems the mashal adds nothing to our understanding of the solution to the problem as expressed in Asaph's reply: "For this reason I sing: because the Holy One, blessed be He, poured out His anger upon trees and stones, and not upon Israel." The mashal might indeed add nothing to the solution of the problem, but still it has an important function. In this sense, the mashal on Lam. 4:11 is unique because its content reflects this general function of rabbinic meshalim. Let us explain.

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[225] Stern, "Rhetoric and Midrash", 279.

[226] Stern, "Rhetoric and Midrash", 274.

The narrative of the mashal on Lam. 4:11 can be divided into two general motifs: the king's construction and destruction of the bridal-chamber, and the pedagogue's paradoxical behaviour.[227] The pedagogue's reaction to the king's violent act itself assumes an interpretation—and a surprising one at that—of the events. The content of the narrative, therefore, provides a model for interpretive activity. "Just as the pedagogue explains his paradoxical behaviour", Stern writes, "so the equally paradoxical logic of interpretation itself—first, of Asaph's singing in Ps. 79:1; then, of the exegesis of Lam. 4:11—is also explained and thereby justified."[228] According to Stern's reading, the interpretive act itself is in need of justification. The mashal as narrative serves to accommodate the apologetics of interpretation as such (as well as this particular interpretation). The rabbis acknowledge, albeit indirectly, the paradoxical nature of their activity and the astonishment it might provoke. More than that, the inherent joy of exegesis appears, when dealing with matters so solemn, like singing when one is expected to weep.

> [T]he joy out of which the pedagogue sings reveals the irrepressible urge with which the Rabbis used midrash [... and] the astonishment the mashal itself represents at the seemingly inappropriate behaviour of the pedagogue is directly commensurable to the astonished awe the audience of the mashal feels at the boldness of an exegetical strategy like R. Elazar's.[229]

The midrash on Lam. 4:11 is uniquely self-referential, but this feature reveals a general rule: beyond the rhetorical function of different meshalim, which can vary from apologetics through polemics to consolation, they also have a self-reflexive function, as they simultaneously draw attention to and justify the act of interpretation itself. The shift to the fictional narrative of the mashal serves as a signpost for the exegetical activity. According to Stern's analysis, the mashal is a rhetorical device within midrashic exegesis; its primary rhetorical function, however, does not relate to the interpreted content but instead to the exegetical act. First and foremost, the mashal is intended to persuade us of the legitimacy of interpretation as such.

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227 Stern, "Rhetoric and Midrash", 270.

228 Stern, "Rhetoric and Midrash", 275.

229 Stern, "Rhetoric and Midrash", 275–6.

Mashal as Meaning-Making

The second theory of mashal is found in Daniel Boyarin's essay "Take the Bible for Example: Midrash as Literary Theory".[230] Departing from a question about the nature of the biblical text, Boyarin reads several paradigmatic meshalim to illustrate his point that the function of the rabbinic mashal is meaning-making through fiction-making.

Boyarin's discussion of mashal takes as its point of departure a controversy concerning how the Bible should be read: as prose fiction or as historiography. He identifies two possible approaches to this question: one can either focus on reading practices—that is, the assumptions with which we, as readers, approach the text—or one can focus on the form of the written text, the semiotic structures of the narrative it contains. In the latter case, however, the distinction between historiography and fiction becomes blurred; based on the text alone, it is often impossible to determine which function it serves. A key assertion in Boyarin's analysis is that fictional narratives lay claim to a particular kind of truth. Both fiction literature and fictional elements in the plotting of historiographical narratives lay claim to a quality we might call, with Boyarin, *fictional truth* or *exemplarity*. It is this quality that makes them significant and worth reading, a point captured in a dictum Boyarin borrows from Michael Riffaterre: "All fiction is exemplary."[231]

Rather than asking how *we* should read the Bible, Boyarin turns the question around and asks: how did the Rabbis read it?[232] The approach he takes is premised on the idea that the Rabbis see the biblical text as a conveyor of truth. Accordingly, the key to determining whether they read it as prose fiction or as historiography is deciding—through analysing the semiotic structures of midrash and Talmud—which kind of truth it conveys: factual truth or fictional truth. For Boyarin, the paradigm of fictional narrative in rabbinic literature is the mashal, and it is around the nature and function of the rabbinic mashal that his inquiry ultimately turns.

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[230] Boyarin, *Sparks*, 89–113.

[231] Boyarin, *Sparks*, 90-91.

[232] By "the Rabbis" I mean the (actual or implied) authors of the body of literature called "rabbinic literature", which in Jewish tradition are called *chazal* (sometimes translated as "the Sages").

Earlier, we noted that the word mashal means something like similarity or likeness. In rabbinic literature, moreover, it is often the case that mashal and *dugma* (lit.: example) are interchangeable terms.[233] This linguistic duality reflects a substantial point: for the Rabbis, the way to illustrate a point, to give an example, works through the creation of a fictional parable. Boyarin shows this through a midrash that explains the nature of examples—dugma—by using fictional examples:

> And command you the Israelites that they will bring olive oil [Exodus 27:20].
>
> Your eyes are doves [Song of Songs 1:15]. Rabbi Yitzhaq said, God said to them, Your dugma is like that of a dove. One who wishes to buy wheat says to his associate, show me their dugma, you also your dugma is like that of a dove. How so? When Noah was in the ark what is written? And he sent the dove [Genesis 8:10], and the dove came to him in the evening [and behold, it was grasping an olive leaf in its mouth] [Genesis 8:11]. Said the Holy One to Israel, Just as the dove brought light into the world, also you who have been compared [*nimshaltem*] to a dove, bring olive oil and light before me, for it says, And command you the Israelites that they will bring olive oil.[234]

Before we delve into the text's analysis, let us say a word about its structure. It is taken from Midrash Tanhuma, a collection of haggadic midrashim on the Five Books of Moses. The opening verse from Exodus is the one taken up by the midrash for interpretation. The second verse, from Song of Songs, is the key to the interpretation of the Exodus verse. This is a common midrashic practice, for the later Holy Writings were often understood and subsequently used as a commentary on the Five Books of Moses. The text then cites a statement by Rabbi Yitzhaq explicating the Song of Songs verse, which is followed by verses from Genesis to further illuminate Rabbi Yitzhaq's point.

In its original context, the verse from Exodus 27:20—*"And command you the Israelites that they will bring olive oil for the light so that the lamps may be kept burning."*[235]—is pronounced by God to Moses as part of the commandments

[233] Boyarin, *Sparks*, 91-92.

[234] Boyarin, *Sparks*, 94.

[235] Exod. 27:20 (translation based on Boyarin's text).

regarding the temple service. The question taken up by the midrash touches on the purpose of this commandment, and in particular the reason for specifying this commandment for the whole community: "And command you the Israelites". The key to the solution, according to the Rabbis, is found in the verse from Song of Songs. This is the framework within which the verse from Song of Songs 1:15—*"O you are fair, my friend, O you are fair, your eyes are doves"*[236]—is interpreted. In the common traditional reading, it should be noted, the "friend" from the Song of Songs represents the people of Israel.

The Hebrew word for "eye" [*a'yin*] also means "colour", and is understood by midrashic writers as a metaphor for likeness in form or essence. "Your eyes are doves" is, therefore, understood as follows: you (the friend, hence the Israelites) are like doves, that is, "[y]our dugma is like that of a dove". Now Rabbi Yitzhaq goes on to explain what he means by "dugma", and he does that by giving examples. Dugma, we read, is like a sample of wheat presented to a potential customer before making a deal. Here, dugma means a sample, namely, a small portion of a larger mass which represents some characteristic of the mass.[237] But then, we are bound to ask with Boyarin, how does *dugma as sample* apply to the relation between dove and Israel? To provide an answer, Boyarin refers to the concept of "complex reference": the idea that in order to point at a certain feature, say, colour, one may refer to the corresponding number in a colour catalogue.[238] The number represents a certain colour; in the same way, the dove represents a certain characteristic. The catalogue, as pointed out by the text, is found in Genesis 8:10-11: *And he sent the dove, and the dove came to him in the evening, and behold, it was grasping an olive leaf in its mouth*. Namely, the dove represents the feature of light-bringing, symbolised by the olive leaf.

But the point Boyarin wishes to stress goes further. In this sense, the midrashic use of the wheat-dove example diverts from the colour catalogue analogy. While

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[236] Song 1:15.

[237] Boyarin, *Sparks,* 94–96. He points out the sophisticated analogy between the text and the meta-text: "It is a dugma of the class 'dugma' in exactly the same way that the dugma of the sample of wheat is a dugma of all of the wheat. Everything is equally concrete. The sample of wheat is as concrete as the silo full of wheat from which it was taken." Boyarin, *Sparks*, 97.

[238] Boyarin, *Sparks,* 98. The concept of "complex reference" is borrowed from Nelson Goodman.

the process of looking for a number in a catalogue is technical, and once the colour is found the number is redundant, in the midrashic way of exemplification the process itself is significant, as it "produces knowledge".[239] It is this midrashic production of knowledge, not so much the metaphorical depiction of the Israelites as light-bringers, which is of interest for our purpose.

So how does the midrash produce knowledge? And what kind of knowledge does it produce? In order to address these questions, Boyarin introduces another midrash, an untypical case where the real narrative and the mashal are not clearly distinguished but somewhat interwoven. It is here, says Boyarin, that we can see the semiotic undecidability which is concealed by later and more regularised forms of mashal.[240] What is meant here by "semiotic undecidability" will become clear from our discussion of the text. The text is taken from the halakhic midrash on Exodus, Mekilta De-rabbi Ishmael:

> And the angel of God, going before the Camp of Israel, moved and went behind them. And the Pillar of Cloud moved from before them and went behind them [Exodus 14:19].
>
> R. Yehuda said: This is a Scripture enriched from many places. He made of it a mashal; to what is the matter similar? To a king who was going on the way, and whose son had gone before him. Brigands came to kidnap him from in front. He took him from in front and placed him behind him. A wolf came behind him. He took him from behind and placed him in front. Brigands in front and the wolf in back, he took him and placed him in his arms, for it says, "I taught Ephraim to walk, taking them on My arms" [Hosea 11:3]. The son began to suffer; he took him on his shoulders, for it is said, "in the desert which you saw, where the Lord Your God carried you" [Deuteronomy 1:31]. The son began to suffer from the sun; he spread on him his cloak, for it is said, "He has spread a cloud as a curtain" [Psalms 105:39]. He became hungry; he fed him, for it is said, "Behold I send bread, like rain, from the sky" [Exodus 16:4]. He became thirsty, he gave him drink, for it is said, "He brought streams out of the rock" [Psalms 78:16].[241]

[239] Boyarin, *Sparks*, 99.

[240] Boyarin, *Sparks*, 109.

[241] Boyarin, *Sparks*, 105.

The opening quote from Exodus describes the angel of God and the Pillar of Cloud moving around the Israelites as, in their flight from the Egyptians, they were facing the Red Sea. Rabbi Yehuda's interpretation is motivated by the question: why all these movements? The highlighted point for our discussion is found in the phrase "He made of it a mashal". Turning the biblical narrative into a mashal shifts its status from a historical narrative—that is, a narrative that makes referential claims to events that actually happened—to a fictional narrative, one with no such referential claims. But there would be no point in making such a shift were it merely to remove something (i.e., the referential claims) without offering anything in return.

In the present case, however, the mashal—the fictional narrative of the father protecting his son—appears to add nothing substantial to our understanding of the biblical narrative. As Boyarin puts it, it only shadows the real story, replacing "God" with "father" and "Israelites" with "son".[242] Moreover, additional biblical materials are cited as "prooftexts" for the mashal, while they could just as well be applied to the original text to elucidate and, to use R. Yehuda's own term, enrich it. The function of the mashal, says Boyarin, is to charge the narrative of the Angel and Pillar with greater significance, as a narrative which stands not only for a particular historical event but represents a paradigm: in this case, the paradigm of "God's behaviour toward the Israelites during the Desert Wanderings".[243] In shifting from historical to fictional narrative, therefore, the particular events are invested with conceptual significance: they become meaningful.

The semiotic undecidability is clearly shown in the mixture of mashal with prooftexts; this flouts our expectations of a separate and corresponding set of actions performed by God for his "children" the Israelites, following that performed by the father for his son. The lack of separation, the merging together of the two stories, signifies that the mashal and the "real" narrative are in fact one; they are two faces of one paradigmatic story—the story, again, of "God's behaviour toward the Israelites during the Desert Wanderings". Coming back to our question—why is the father-son mashal necessary here?—we might say it is

[242] Boyarin, *Sparks*, 105–6.

[243] Boyarin, *Sparks*, 107.

necessary as a signifying device, as a tool for meaning-making. Boyarin quotes the rabbinic saying—"Until Solomon invented the mashal, no one could understand Torah at all"—to demonstrate the rabbinic view that meaning-making works only through meshalim. And since a mashal is always fictional, we can deduce that, for the Rabbis, meaning-making works through fiction-writing.[244] Borrowing and inverting Riffattere's dictum, Boyarin concludes: for the Rabbis, all that is exemplary is fiction and all fiction is exemplary.

With this insight, he suggests a way out of the problem of how to read the Bible. For the Rabbis, it is not an either-or question; the biblical text contains both factual truth *and* fictional truth, it can be read as historiography *and* as prose fiction. The former reading refers to the actuality of external events and the latter reading endows these events with significance beyond that of mere historical episodes. The rabbinic way to contain the tension between these two aspects of the text is to "translate" the biblical narrative into a parallel fictional narrative in the form of mashal (this two-sidedness of the narrative is conveniently shown in the father-son midrash).

So what is the function of the midrashic mashal? What kind of knowledge does it produce? The knowledge produced by the mashal is hermeneutic knowledge. "[F]or the Rabbis, fiction [hence, mashal] is par excellence an interpretative practice. If in our culture fiction is that which requires interpretation, for them fiction is that which interprets."[245] As a project of biblical interpretation, the midrash educates its readers on how to read the Bible. But it also educates its readers on how to read midrash. The dove is not merely a number in a catalogue, it is a dugma of dugma, and as such it teaches us how midrashic interpretation works, namely, through examples. That is why the search for what is exemplified (e.g., what is represented by the dove) might be no less important than what is found, the bottom line of the metaphor.[246]

Both Stern and Boyarin argue that the rabbinic mashal functions as a reflection on midrashic interpretation, but only Stern stresses its apologetic character—the

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[244] Boyarin, *Sparks*, 110–11.

[245] Boyarin, *Sparks*, 91n7.

[246] Boyarin, *Sparks*, 99–100.

mashal justifies the daring interpretive activity—while Boyarin focuses on the pedagogic aspect—the mashal teaches the correct way of doing hermeneutics. Furnished with Stern's and Boyarin's insights, we now turn close attention to following the quote from Benjamin's *Kafka*.

The Wunderblume

In his "Notes on Kafka", Theodor Adorno wrote that "Walter Benjamin rightly defined [Kafka's prose] as parable. It expresses itself not through expression but by its repudiation, by breaking off. It is a parabolic system the key to which has been stolen; […] Each sentence says 'interpret me', and none will permit it."[247] This formulation—*each sentence says "interpret me"*—is borrowed from rabbinic idiom, albeit rabbinic here refers to a later period than the talmudic and midrashic texts to which we have been referring so far. Thus, the eleventh-century commentator Rashi (acronym of Rabbi Shlomo Yitzchaki) writes in his commentary to Genesis 1:1: "'In the beginning God created'—This verse says, indeed, 'interpret me'."[248] This expression, capturing a verse which literally calls for explanation, is surely an apt description of Kafka's writing. But it applies just as much to some of Benjamin's own remarks.

In this section, I take up one such remark—the brief enigmatic statement from Benjamin's *Kafka* quoted above—and respond to its appeal for interpretation. A close analysis of this statement, inspired by midrashic exegetical logic and the literary analysis of midrash presented above, reveals some elements in the mechanics of Benjamin's writing style and provides keys for his reading of Kafka's work. I begin by taking Benjamin's statement to pieces, tracing the sources of the two quotes it contains. This process reveals a latent image that serves as a hermeneutical key for deciphering Benjamin's enigmatic statement. In my

[247] Theodor W. Adorno, "Notes on Kafka", in *Prisms* (MIT Press, 1983), 246.

[248] Rashi on Gen. 1:1 (my translation).

"'בראשית ברא' — אֵין הַמִּקְרָא הַזֶּה אוֹמֵר אֶלָּא דָּרְשֵׁנִי"

reading, Benjamin's statement turns out to be instructive—offering guidance on how to read both Kafka himself and Benjamin's text on Kafka.

* * *

Let us recall the quote from the beginning of this chapter:

> "Don't forget the best!" We are familiar with this remark "from a nebulous bunch of old stories, although it may not occur in any of them."[249]

First, let us take a look at the structure of this statement and its components. It consists of two quotes connected by a short phrase, the latter taken from Kafka's *Die Zürauer Aphorismen*. Aphorism no. 108 reads:

> "And then he went back to his work, as if nothing had happened." This is a remark with which we are familiar from a nebulous bunch of old stories, although it may not occur in any of them.[250]

Kafka's aphorism shares everything with Benjamin's statement except for the most important part, namely, the subject of the claim, the remark with which we are supposedly so familiar. In Benjamin's version, this remark is "Don't forget the best!" Benjamin, genuinely or not, assumes the reader is familiar with this saying, even as he playfully questions its very authenticity. What is, then, the "Don't forget the best!" saying? Where does it come from? Another text by Benjamin provides a hint to the source of this saying. In his 1932 *Ibizan Sequence*, there is a section titled "Don't forget the best". It reads:

> A man of my acquaintance was at his most well-organized at the unhappiest period in his life. He forgot nothing. He registered his current activities down to the last detail, and if he had an appointment—and he never forgot them—he was

[249] SW 2:2, 813 / GS 2:2, 434.

[250] My translation, based on the SW text above.

"'Dann aber kehrte er zu seiner Arbeit zurück, so wie wenn nichts geschehen wäre.' Das ist eine Bemerkung, die uns aus einer unklaren Fülle alter Erzählungen geläufig ist, trotzdem sie vielleicht in keiner vorkommt." Kafka, *Gesammelte Werke*, 40.

punctuality itself. His life's way seemed to have been smoothly paved, and there was not even the smallest crack for time to run out of control. And so matters rested for a while. Then circumstances brought about a change in his life. It began with his getting rid of his watch. He practiced arriving late, and if the person he was going to meet had already left, he sat down to wait. If he had to do something with an object close at hand, he managed to mislay it, and if he was supposed to clear something up somewhere, the confusion elsewhere increased. When he sat down at his desk, it looked as if someone had been living in it. But it was he himself who was building his nest in the ruins. Whatever he did, he made a little house for himself out of it, as children do when they play. Similarly, just as children keep coming across things they have hidden away and then forgotten—in their pockets, in the sand, in a drawer—so it was with his mind, with his entire life. Friends visited him when he least expected them but needed them most, and the gifts he sent, which were not sumptuous, arrived as punctually as if he had the paths of heaven in his hands. Around this time, he liked to recall the tale of the shepherd who one Sunday was given permission to enter the mountain with his treasures, but who also received the mysterious instruction, "Do not forget the best." At this period in his life, he felt quite well. He settled few things and thought of nothing as settled.[251]

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251 SW 2:2, 591.

"Eine mir bekannte Person war am ordentlichsten in der Periode ihres Lebens, als sie am unglücklichsten war. Sie vergaß nichts. Ihre laufenden Geschäfte registrierte sie bis ins Kleinste, und wenn es sich um eine Verabredung handelte—die sie niemals vergaß—war sie die Pünktlichkeit selbst. Ihr Lebensweg war wie gepflastert, und es blieb nicht die kleinste Ritze, wo die Zeit hätte ins Kraut schießen können. So ging es eine ganze Weile fort. Da traten Umstände ein, die eine Änderung im Dasein des Betreffenden zur Folge hatten. Es begann damit, daß er die Uhr abschaffte. Er übte sich im Zuspätkommen, und wenn der andere schon gegangen war, nahm er Platz, um zu warten. Hatte er etwas zur Hand zu nehmen, so fand er es selten, und mußte er irgendwo aufräumen, so wuchs die Unordnung anderswo um so mehr. Wenn er an seinen Schreibtisch trat, sah es aus, als ob da einer gehaust hätte. Er selber aber war es, welcher so in Trümmern horstete und hauste, und was er auch besorgte, gleich baute er, wie Kinder, wenn sie spielen, sich selber ein. Und wie die Kinder überall in Taschen, im Sand, im Schubfach auf Vergessenes stoßen, was sie sich da versteckt gehalten haben, so ging es ihm nicht nur im Denken, sondern auch im Leben. Freunde besuchten ihn, wenn er am wenigsten an sie dachte und sie am nötigsten hatte, und seine Geschenke, die nicht kostbar waren, kamen so zur rechten Zeit, als hätte er die Wege des Himmels in Händen. Damals erinnerte er sich am liebsten der Sage vom Hirtenbuben, der eines Sonntags Einlaß in den Berg mit seinen Schätzen, zugleich jedoch die rätselhafte Weisung mitbekommt: 'Vergiß das Beste nicht.' In dieser Zeit befand er sich leidlich wohl. Weniges erledigte er und hielt nichts für erledigt." GS 4, 407.

Later we should say a word about this peculiar anecdote. For now, we use it to trace the "Don't forget the best" saying. In this text, the reference is more elaborate, one taken from a story of a shepherd boy who finds a treasure in the mountain.

As it turns out, the "Don't forget the best" saying appears in a number of German folk tales that share a common structure. According to David J. Parent, in "the 'Vergiß-das-Beste-Nicht' *Sage*, this element is the distinguishing feature, the treasure has already been freely received and the warning is given 'Vergiß das Beste nicht' (Don't forget the best thing), i.e. the key or flower which makes the treasures accessible."[252]

The common narrative of these stories, in broad brushstrokes, is as follows: the hero—often a shepherd—walks in the mountains, finds a beautiful flower, the *Wunderblume*, and suddenly comes across a hitherto unknown place in the mountain—a cave or a hidden castle—where he or she finds a treasure. A mysterious voice calls out "Vergiß das Beste nicht!" but by the time the hero comes to her senses, she is already locked out of the place, which disappears forever. With the Wunderblume lost, she cannot find her way back to the treasure and is left with no more than the gold she managed to shove in her pockets. In these stories, as Parent points out, *das Beste* refers to the Wunderblume, a magical flower which serves as the key to the treasure.

When Benjamin echoes "Don't forget the best" in *the Kafka*, therefore, it is the image of a Wunderblume he has in mind. As we shall presently see, the flower image, and botanical images more broadly, permeate Benjamin's thought on Kafka—not an insignificant detail, as it reveals a central feature therein: much like the Rabbis, Benjamin thinks in images. The Rabbis use "tooth", "foot", and "horn" to denote different kinds of damages within Jewish civil law; similarly, Benjamin uses imagery concepts, some explicit (e.g., the Little Hunchback, after whom a section in the 1934 essay is named) and some implicit (e.g., the Wunderblume).

If the Wunderblume is a number in a colour catalogue, then the catalogue appears to be the shepherd story from which it is taken. But the intertext of this

[252] David J. Parent, *Werner Bergergruen's Das Buch Rodenstein: A Detailed Analysis* (Mouton, 1974), 84.

image goes further. In order to decipher the meanings and implications of the imagery concept, in this case the Wunderblume, we should look for places where the same image or related images appear in Benjamin. In doing so, we will be following not only midrashic exegetical logic but also Benjamin's own hint on how to read Kafka, namely, by "interpreting a writer from the center of his image world".[253] Thus, we may recall another mention of a flower in the same essay. Benjamin uses a metaphor to explain the unique way Kafka's parables unfold: while ordinary parables unfold like a paper boat into a smooth piece of paper, Kafka's parables unfold like a bud into a blossoming flower:[254]

> Kafka's parables [...] unfold [...] the way a bud turns into a blossom. That is why their effect is literary. This does not mean that his prose pieces belong entirely in the tradition of Western prose forms; they have, rather, "a relationship to religious teachings [Lehre] similar to the one Haggadah has to Halachah" [255]

This smooth shift from the blossoming flower to rabbinic literary categories is not a coincidence either. From the correspondence between Benjamin and Gershom Scholem, we know that during the same period he was writing the 1934 Kafka essay, Benjamin was reading Chaim Nachman Bialik's essay *Halachah and Aggadah*, where the latter wrote the following:

> As a dream seeks its fulfillment in interpretation, as will in action, as thought in speech, as flower in fruit—so Aggadah in Halachah. But in the heart of the fruit there lies hidden the seed from which a new flower will grow.[256]

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[253] SW 2:2, 495.

[254] While we deal here with the metaphor not its meaning, I would like to borrow a formulation from elsewhere which I believe captures Benjamin's idea: Kafka's parables do not convey the meaning to the audience but the audience to the meaning. This is an idea by Gerald Bruns, quoted in Boyarin, *Intertextuality*, 106.

[255] SW 2:2, 802-3.

"Kafkas Parabeln entfalten sich […] wie die Knospe zur Blüte wird. Darum ist ihr Produkt der Dichtung ähnlich. Das hindert nicht, daß seine Stücke nicht gänzlich in die Prosaformen des Abendlandes eingehen und zur Lehre ähnlich wie die Haggadah zur Halacha stehen." GS 2:2, 420.

[256] Chaim Nachman Bialik, *Revealment and Concealment: Five Essays*, trans. Zali Gurevitch (Ibis Editions, 2000), 46.

And:

> If a man professes to have nothing but Aggadah, his Aggadah should be narrowly examined; you may suspect it of being no more than a pretty flower. Such a man wants to pluck the flowers, but cares nothing for the fruit. In the end not even flowers will reward him; for without fruit there is no seed, and if there is no seed, where is the flower to come from?[257]

When Benjamin refers to Kafka's pieces as flowers, while in the same breath ascribing to them "a relationship to religious teachings [Lehre] similar to the one Haggadah has to Halachah", he surely has in mind Bialik's metaphor of haggadah as flower and halakhah as fruit. We get: Kafka's prose pieces relate to Lehre like a flower to fruit. They are mutually dependent: the flower transforms into a fruit, which in turn contains the seed for a new plant and a new flower. In the case of Kafka, however, we have the flower but the fruit is missing:

> But do we have the teachings [Lehre] which Kafka's parables accompany[…]? It does not exist; all we can say is that here and there we have an allusion to it. [258]

Are we, therefore, led by Benjamin to suspect Kafka's stories to be beautiful but useless, as no more than flowers without fruits?

Let us go back to the flower with which we began, the Wunderblume, one that is both distinguished in beauty and serves as a key for a hidden treasure. If Kafka's stories, like the haggadah, are the flower, then the missing Lehre, like the halakhah, is the hidden treasure. And yet the loss of the treasure is due to forgetting *the best*, namely, the flower itself. In the thrill of finding the treasure (the gold, the precious stones), the most important thing—the key to the treasure, the flower—is forgotten. If we pursue the analogy, we get the following: the Lehre which Kafka's stories should have accompanied is lost because the stories themselves are forgotten in the excitement of finding the Lehre.

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[257] Bialik, *Revealment and Concealment*, 82.

[258] SW 2:2, 803.

"Besitzen wir die Lehre aber, die von Kafkas Gleichnissen begleitet […] wird? Sie ist nicht da; wir können höchstens sagen, daß dies und jenes auf sie anspielt." GS 2:2, 420.

This formulation may appear strange, although it should not sound foreign to the ear of a Benjamin reader—or a Kafka reader, for that matter. It might have a simple explanation as well. Benjamin openly criticised interpretations of Kafka's work that reduce it to a one-dimensional thesis, whether theological or psychoanalytic.[259] When one feels joy over finding the Lehre—the "correct" interpretation—in a way that makes the stories redundant, one loses not only the stories but the Lehre as well (which, as an interpretation of the stories, has no value without them). Read that way, the imperative "Don't forget the best!" is a warning to the reader, an instruction on *how not to read* Kafka (or Benjamin, for that matter). Note that it is not a general instruction on how not to read. Some stories—ordinary parables for one—should be read precisely that way. They unfold like a paper boat into an open piece of paper, and the reader of the parable, rightfully, "takes pleasure in smoothing it out so that he has the meaning on the palm of his hand".[260] But Kafka's parables, according to Benjamin, are much more than that; they are novels in a capsule:

> Take, for example, the parable "Before the Law". The reader who read it in *A Country Doctor* [i.e., a collection of short stories by Kafka] may have been struck by the cloudy spot at its interior. But would it have led him to the never-ending series of reflections traceable to this parable at the spot where Kafka undertakes to interpret it? This is done by the priest in *The Trial*, and at such a significant moment that it looks as if the novel were nothing but the unfolding of the parable.[261]

And elsewhere he says:

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[259] GS 2:2, 425 / SW 2:2, 806.

[260] SW 2:2, 802.

[261] SW 2:2, 802–3.

"Man denke an die Parabel 'Vor dem Gesetz '. Der Leser, der ihr im *Landarzt* begegnete, stieß vielleicht auf die wolkige Stelle in ihrem Innern. Aber hätte er die nichtendenwollende Reihe von Erwägungen angestellt, die diesem Gleichnis dort entspringen, wo Kafka seine Auslegung unternimmt? Das geschieht durch den Geistlichen im *Prozess*—und zwar an einer so ausgezeichneten Stelle, daß man vermuten könnte, der Roman sei nichts als die entfaltete Parabel." GS 2:2, 420.

> Kafka then develops the parable. It grows up into a novel. And a closer look reveals that it has contained the seed of the novel from the outset. It was never completely transparent.[262]

Here we have Kafka's flowers/parables containing the seed not of the Lehre but of the novel. Elsewhere, Benjamin identifies the rise of the novel as a symptom of the decline of wisdom, defining wisdom as the ability to draw on one's own experience and give counsel. Detached from any oral tradition, the novel expresses the condition of the solitary individual in her perplexity.[263] Kafka's novels, which grow out of the parable, assume a strange position: "Novels are sufficient unto themselves. Kafka's books are never that; they are stories pregnant with a moral to which they never give birth."[264] Kafka's parables are too subtle to provide instruction; unlike ordinary parables, which betray their moral as smoothly as a piece of paper unfolds, Kafka's parables are intricate and elusive. They have in common with the rabbinic mashal a preoccupation with the interpretive act, yet unlike the latter they resist translation into a concrete situation.

What kind of stories are Kafka's stories, according to Benjamin? We have seen how he compared Kafka's parables to flowers without fruit. Elsewhere in *the Kafka*, he portrays a closely related yet different image. The 1931 radio essay ends with the following lines:

> If the author's large-scale novels are the well-tended fields that he has bequeathed to us, the new volume of stories from which this interpretation has been taken is the sower's bag that is filled with seeds—ones which have the strength of the natural seeds that sprout from graves even after millennia, and that we know will still bear fruit.[265]

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[262] SW 2:2, 785.

"[Kafka's] Parabel unterliegt dann doch der Gestaltung. Sie wächst sich zu einem Roman aus. Und einen Keim zu ihm trug sie, genau betrachtet, von Haus aus in sich. Sie war niemals ganz transparent." GS 6, 525.

[263] SW 3, 143–47.

[264] SW 2:2, 497.

[265] SW 2:2, 499.

The botanical metaphor is here expanded to include the image of a field (representing Kafka's novels), and the seeds that we thought were lacking in Kafka's pieces—the flowers without fruits—here represent the short stories themselves, which, we are told explicitly, still have the power to bear fruit. Is it simply a change of mind in Benjamin's understanding of Kafka, a development from the early, relatively optimistic 1931 radio essay to a more pessimistic view in his major 1934 essay? This possibility cannot be discarded, especially as it fits a further chronological development in the 1938 letter essay, where Benjamin regrets his 1934 essay due to its being "too apologetic" and judges Kafka's beauty to be that of a failure.[266] One could say that Benjamin, without losing a drop of his fascination with Kafka, gradually grew disillusioned with Kafka's capacity to become useful, to "bear fruit".

This possibility cannot be discarded, and yet I would like to put forward a different explanation. In "Experience and Poverty", a short piece on storytelling—the disappearing art of passing on experience—Benjamin recalls:

> Our childhood anthologies used to contain the fable of the old man who, on his deathbed, fooled his sons into believing that there was treasure buried in the vineyard. They would only have to dig. They dug, but found no treasure. When autumn came, however, the vineyard bore fruit like no other in the whole land. They then perceived that their father had passed on a valuable piece of experience: the blessing lies in hard work and not in gold.[267]

"Wenn die umfassenden Romane des Dichters die wohlbestellten Felder sind, die er hinterließ, so ist der neue Geschichtenband, aus dem auch diese Deutung entnommen ist, die Tasche des Sämanns mit Körnern, die die Kraft der natürlichen haben, von denen wir wissen, daß sie noch nach Jahrtausenden, aus Gräbern zutage befördert, Frucht treiben." GS 2:2, 683.

[266] BR, 764 / CB, 566.

[267] SW 2:2, 731.

"In unseren Lesebüchern stand die Fabel vom alten Mann, der auf dem Sterbebette den Söhnen weismacht, in seinem Weinberg sei ein Schatz verborgen. Sie sollten nur nachgraben. Sie gruben, aber keine Spur von Schatz. Als jedoch der Herbst kommt, trägt der Weinberg wie kein anderer im ganzen Land. Da merken sie, der Vater gab ihnen eine Erfahrung mit: Nicht im Golde steckt der Segen sondern im Fleiß." GS 2:1, 213–14.

This fable ties together several elements encountered so far: the botanical theme, the treasure motif, and the concept of passing on experience, the heart of tradition. This fable has a straightforward moral: the treasure is the fruit of hard work. Unlike this fable, Kafka's stories require interpretive efforts before they yield any fruit, if at all. This does not fully explain the classification of novels as fields, stories as a sower's bag full of seeds, and parables as flowers; I suspect Benjamin's metaphors overlap but do not neatly fit together. And yet, the field fable with its low-hanging moral and the more abstruse Wunderblume image share an emphasis on the importance of hard labour, be it physical or hermeneutic. In other words, the shift from Benjamin's 1931 field image to the 1934 flower image reflects not so much despair over Kafka's fruitfulness as a complication of the metaphor. Kafka's stories might yield, but here the transparent botanical image falls short; instead, by camouflaging the Wunderblume image in the "Don't forget the best" saying, Benjamin conveys the following message: reading Kafka requires ceaseless hermeneutic effort, wherein the key is no less important than the treasure to which it may lead.

Kafka's World-Theatre

As promised, we now go back to Benjamin's anecdote from the *Ibizan Sequence*. It tells the story of a person, supposedly an acquaintance of Benjamin, who used to be punctual and organised to the last detail, who never forgot a thing. After a turning point in his life, this person became careless and neglectful of social duties, the very opposite of his previous self. The depiction glorifies this later phase, romanticising it as some return to an age of innocence (as demonstrated by the combination of child play and heavenly inspiration). The reference to "Don't forget the best" implies that in his first, unhappy phase, this person forgot the best. We are expressly told, however, that he forgot nothing. These two claims can go together only if the best thing this person forgot is precisely *to forget*. He remembered everything except the importance of forgetting. And so Benjamin twists the saying he borrows from the shepherd story such that "the best" refers back to forgetting.

But if "the best" indeed refers to forgetting, then "Don't forget the best!" means *don't forget to forget!*—a highly paradoxical imperative. It overturns the acquaintance in his latter phase from someone who forgets to someone who remembers (remembering to forget, to be sure). In other words, it makes forgetting an active, wilful act.[268] A closely related idea is found in Heinrich von Kleist's narrative essay *On the Marionette Theatre*. The text relates a dialogue between the narrator and his friend, a successful opera dancer, over the latter's fascination with a local marionette theatre. To the amusement of the narrator, the dancer presents his thesis on the advantages of dancing puppets over human dancers. Puppets dance incomparably more gracefully because they are incapable of adornment and are unaffected by gravity. Human beings are, unfortunately, susceptible to both. These misfortunes, says the dancer, are part of our postlapsarian state:

> Such mistakes, he mused, cutting himself short, are inevitable because we have eaten of the tree of knowledge. And Paradise is bolted, with the cherub behind us; we must journey around the world and determine if perhaps at the end somewhere there is an opening to be discovered again.[269]

Knowledge prevents the possibility of a return to paradise. But two kinds of creatures are exempt from the consequences of the Fall: mechanical beings—for they have no knowledge at all, and God—for He has infinite knowledge.[270] As for humans, after tasting once from the fruit of the tree, there is no going back; but perhaps a push into infinity is possible.

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[268] This closely resonates with Nietzsche's "active forgetfulness":

"Forgetfulness is not just a *vis inertiae*, as superficial people believe, but is rather an active ability to suppress, positive in the strongest sense of the word. […] [T]here could be no happiness, cheerfulness, hope, pride, *immediacy*, without forgetfulness." Friedrich Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge University Press, 2007), 35 (emphasis in original).

[269] Heinrich von Kleist, "On the Marionette Theatre", *The Drama Review* 16, no. 3 (Sep 1972), 24.

[270] Kleist, "On the Marionette Theatre", 26.

> Therefore, I replied, somewhat at loose ends, we would have to eat again the tree of knowledge to fall back again into a state of innocence? Most certainly, he replied: That is the last chapter of the history of the world.[271]

In Kleist's narrative essay, the problem of the dancing human body is that it is self-conscious. Translating it back to our discussion, we might say that the body remembers itself. Therefore, it cannot have the perfection of mechanical movement, which effortlessly follows the centre of gravity. Remembrance, or consciousness, turns into an obstacle to a natural, innocent, graceful life.[272] Since there is no way to go back—Paradise is bolted and guarded with a sworded cherub—the only way is to go further: rather than undoing knowledge, to attain such a perfect knowledge that it turns into innocence; rather than undoing remembrance, to remember to such an extent that one even remembers to forget. Admittedly, this idea is confusing and may leave us, like Kleist's narrator, at a loose end. And yet we may find this idea resonating in Benjamin, not only in the *Ibizan Sequence* but also in our essay. The statement with which we began, from the 1934 Kafka essay—

> "Don't forget the best!" We are familiar with this remark "from a nebulous bunch of old stories, although it may not occur in any of them."[273]

[271] Kleist, "On the Marionette Theatre", 26.

[272] Here again, Nietzsche expressed a similar idea in his essay "On the Uses and Disadvantages of History for Life":

"Consider the cattle, grazing as they pass you by: they do not know what is meant by yesterday or today, they leap about, eat, rest, digest, leap about again, and so from morn till night and from day to day, fettered to the moment and its pleasure or displeasure, and thus neither melancholy nor bored. This is a hard sight for man to see; for, though he thinks himself better than the animals because he is human, he cannot help envying them their happiness—what they have, a life neither bored nor painful, is precisely what he wants, yet he cannot have it because he refuses to be like an animal. A human being may well ask an animal: 'Why do you not speak to me of your happiness but only stand and gaze at me?' The animal would like to answer, and say: 'The reason is I always forget what I was going to say'—but then he forgot this answer too, and stayed silent: so that the human being was left wondering." Friedrich Nietzsche, *Untimely Meditations*, ed. Daniel Breazeale, trans. R. J. Hollingdale, second ed. (Cambridge University Press, 1997), 60.

[273] SW 2:2, 813 / GS 2:2, 434.

—is followed by another assertion:

> But forgetting always involves the best, for it involves the possibility of redemption.[274]

Here as well, if forgetting is not itself the best thing, it involves the best. And this best thing is the possibility of redemption (*Erlösung*). Could it be that Benjamin had in mind something like Kleist's returning to Paradise through the back door? Interestingly, elsewhere in the same essay, Benjamin mentions *Erlösung* in the context of another theatre.

> Kafka's world is a world theatre. For him, man is on stage from the very beginning. The proof is the fact that everyone is hired by the Nature Theater of Oklahoma. [...] With their roles, these people look for a position in the Nature Theater the way Pirandello's six characters seek an author. For all of them this place is the last refuge, which does not preclude it from being their salvation [*Erlösung*]. Salvation is not a premium on existence, but the last way out for a man whose path, as Kafka puts it in *Er*, is "blocked ... by his own frontal bone."[275]

Kafka's world is a world-theatre. Benjamin bases this idea on the Nature-theatre of Oklahoma, where Karl Rossman, the protagonist of *The Man who Disappeared* (*Amerika*), finds himself at some point. The novel follows Karl, a boy in his teens, on his journey to and in America and away from his past. Kafka left the chapter

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[274] SW 2:2, 813.

"Aber das Vergessen betrifft immer das Beste, denn es betrifft die Möglichkeit der Erlösung." GS 2:2, 434.

Interestingly, in another version, "the possibility of redemption" appears instead as "the possibility to help": "Aber das Vergessen betrifft immer das Beste. Ja, es betrifft die Möglichkeit zu helfen." GS 2:3, 1243.

[275] SW 2:2, 804.

"Kafkas Welt ist ein Welttheater. Ihm steht der Mensch von Haus aus auf der Bühne. Und die Probe auf das Exempel ist: Jeder wird auf dem Naturtheater von Oklahoma eingestellt. [...] Mit ihren Rollen suchen die Personen ein Unterkommen im Naturtheater wie die sechs Pirandelloschen einen Autor. Beiden ist dieser Ort die letzte Zuflucht; und das schließt nicht aus, daß er die Erlösung ist. Die Erlösung ist keine Prämie auf das Dasein, sondern die letzte Ausflucht eines Menschen, dem, wie Kafka [in *Er*] sagt, 'sein eigener Stirnknochen... den Weg' verlegt." GS 2:2, 422–23.

on the Nature-theatre unfinished. According to Max Brod, who edited and published the unfinished novel posthumously, Kafka told him he intended it to be the concluding chapter.

After seeing a recruitment advertisement for the Oklahoma Theatre, Karl arrives at the hiring premises to look for a job, preferably, it appears, as a technician. But it is a theatre, and much of what happens indicates that the hiring process is already part of the play. Upon arriving, applicants are welcomed by a group of actresses dressed as angels who stand on pedestals and play the trumpets. When Karl meets a friend among those angel-costumed actresses, he takes her trumpet and plays a tune. His friend remarks in response: "You're an artist."[276] The requirements in the hiring process appear to be nothing but an empty display of formalities. When the applicants are asked to show their papers, Karl acts accordingly. He does not have any, but when the others hold up their papers, "Karl too raise[s] his hand, his empty hand to be sure",[277] and the Head of Personnel lets him pass. It might be in response to this incident that Karl remarks shortly afterwards: "It's a theatre, after all."[278] When Karl is asked about his education and former employment, his answers are accepted unquestioningly, without any proof. After being moved from one reception office to another, he finally arrives at the office for former European secondary school pupils.

> When Karl caught sight of the manager, he was almost frightened by the latter's resemblance to a teacher who was probably still teaching in the school at home. The resemblance, as immediately became apparent, consisted only in details, […] the spectacles resting on the broad nose, the full beard cared for as though it were an item on display […].[279]

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[276] Franz Kafka, *The Man who Disappeared (America)* (Oxford University Press, 2012), 198.

"Du bist ja ein Künstler." Franz Kafka, *Amerika* (Fischer, 1976), 227.

[277] Kafka, *The Man who Disappeared*, 201.

"auch Karl die Hand, allerdings die leere Hand erhob." Kafka, *Amerika*, 230.

[278] Kafka, *The Man who Disappeared*, 201.

"Es ist ja ein Theater." Kafka, *Amerika*, 230.

[279] Kafka, *The Man who Disappeared*, 202.

After being accepted as a former student at a European secondary school, Karl assumes that he had "been taken on as an actor".[280]

There is much to indicate, therefore, that in the Nature-theatre of Oklahoma life and theatre are conflated. Hence Benjamin's depiction of the applicants to the Nature-theatre as being like Pirandello's *Six Characters in Search of an Author*. The scene, which indeed could have been taken from an absurd play, attains a redemptive significance when we take into account Kafka's plans for this unfinished episode. In the Nature-theatre, Kafka told Brod, Karl would not only find an occupation but also reunite with his homeland and parents (whom he had left behind) in a sort of paradisical magic spell (*paradiesischen Zauber*).[281] In saying that the applicants to the Nature-theatre see it as their last refuge, Benjamin echoes Kafka's own words. When Karl arrives at the reception office for former European secondary school pupils, he is thinking "[t]his office must be the last refuge".[282] Its being their last refuge, Benjamin maintains, "does not preclude it from being their *Erlösung*".[283]

Here we see the central role of fiction in Benjamin's reading of Kafka: a fictional, theatrical role is a person's last refuge and *Erlösung*. To play in a theatre is to embody a fictional narrative, and in Kafka's *Amerika* the theatre is open for everyone—that is, everybody is a character, an actor by default and perhaps unwittingly—and everyone's theatrical character overlaps with his or her person.[284] Unlike Kleist's dancer, the people in Kafka's (theatre-)world do not

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"Als Karl den Kanzleileiter erblickte, erschrak er fast über die Ähnlichkeit, die dieser mit einem Professor hatte, der wahrscheinlich noch jetzt in der Realschule zu Hause unterrichtete. Die Ähnlichkeit bestand allerdings, wie sich gleich herausstellte, nur in Einzelheiten; […] die auf der breiten Nase ruhende Brille, der blonde, wie ein Schaustück gepflegte Vollbart […]." Kafka, *Amerika*, 232.

[280] Kafka, *The Man who Disappeared*, 202.

[281] Max Brod, "Nachwort", in *Amerika*, by Franz Kafka (Kurt Wolff Verlag, 1927), 389–90.

[282] Kafka, *The Man who Disappeared*, 202.

"Diese Kanzlei war wohl auch die letzte Zuflucht." Kafka, *Amerika*, 232.

[283] SW 2:2, 804.

[284] SW 2:2, 804 / GS 2:2, 422–23.

wish to become puppets. Their *Erlösung* works through fully taking on their roles as human beings. And their human faults, their clumsiness, their bodily heaviness, are proof of their being alive:

> He had the feeling that, by being alive, he was blocking his own path. In this obstruction, in turn, he found the proof for his being alive.[285]

Thus goes a short passage in Kafka's *Er*, the same text quoted by Benjamin in the paragraph above. What is included in such an *Erlösung*? Benjamin uses both *Ausflucht* (evasion or escape) and *Zuflucht* (refuge) to describe it:

> For all of them this place is the last refuge [*Zuflucht*], which does not preclude it from being their salvation [*Erlösung*]. Salvation is not a premium on existence, but the last way out [*Ausflucht*] for a man whose path, as Kafka puts it in *Er*, is "blocked… by his own frontal bone".[286]

Benjamin's swift shift from *Zuflucht* to *Ausflucht* could have been motivated by his wish to match it with *Ausweg* in the quote that follows:

> The law of this theater is contained in a sentence tucked away in *A Report to an Academy*: "I imitated people because I was looking for a way out [*Ausweg*], and for no other reason."[287]

But it seems to me Benjamin misses his own mark here. The protagonist of *A Report to an Academy* is a monkey in captivity who gradually learns to talk and act like a human being, and the short story is a *j'accuse* directed at the human race—nothing like the Nature-theatre, which is depicted, indeed, as a kind of refuge.

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[285] Franz Kafka, *Sämtliche Werke* (Suhrkamp, 2008), 1358 (my translation).

"Er hat das Gefühl, daß er sich dadurch, daß er lebt, den Weg verstellt. Aus dieser Behinderung nimmt er dann wieder den Beweis dafür, daß er lebt."

[286] SW 2:2, 804 / GS 2:2, 422–23.

[287] SW 2:2, 804.

"Und das Gesetz dieses Theaters ist in dem versteckten Satz enthalten, den der *Bericht für eine Akademie* enthält: '... ich ahmte nach, weil ich einen Ausweg suchte, aus keinem anderen Grund.'" GS 2:2, 423.

And yet, there is something uncanny about this Nature-theatre, not to mention the apocalyptic scene at the entrance of the hiring premises;[288] there is also an earthly horror hinted at in this whole enterprise. A theatre where people are put on display is not an unheard-of phenomenon; before falling out of vogue (and political correctness), so-called freak shows were quite a popular form of amusement.[289] These shows, displaying handicapped or deviant human bodies as curiosities, are perhaps not very different from Kafka's Nature-theatre, except that the latter takes everyone for a freak.[290]

The Nature-theatre of Oklahoma is not the only place in Kafka where life and theatre are conflated. Another such place, as Benjamin points out, is found in the ultimate chapter of *The Trial*.

> Before the end of his trial, K. seems to have an intimation of these things. He suddenly turns to the two gentlemen wearing top hats who have come for him and asks them: "'What theater are you playing at?' 'Theater?' asked one, the corners of his mouth twitching as he looked for advice to the other, who acted as if he were a mute struggling to overcome a stubborn disability." The men do not answer this question, but there is much to indicate that it has hit home.[291]

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[288] It is difficult to ignore the apocalyptic reference of the trumpet-blowing angels; and yet, unlike the organised narrative in the Book of Revelation, Kafka's angels are blowing their trumpets, which are out of tune, haphazardly and all at once.

[289] *See*, for example: Barbora Putová, "Freak Shows. Otherness of the Human Body as a Form of Public Presentation." *Anthropologie* 56, no. 2, part 1 (2018): 91–102. https://doi.org/10.26720/anthro.17.07.20.1.

[290] A similar idea—that Kafka thinks of the ordinary course of the world as gruesome—is pronounced by Günther Anders: "What makes the reading of [Kafka's] stories such a gruesome experience is his manner of treating the grotesque as everyday normality; […] In order to bring home to us that the things which are accepted as a matter of course in our world are horrible, Kafka inverts the terms and treats *blatant horrors* as a matter of course." Günther Anders, *Franz Kafka* (Bowes & Bowes, 1960), 13–15 (emphasis in original). Furthermore, this horror is specifically connected to the reduction of humans to their professions. *See* Anders, *Franz Kafka*, 47–50.

[291] SW 2:2, 804–5.

"K. scheint vor dem Ende seines Prozesses eine Ahnung von diesen Dingen auszugehen. Er wendet sich plötzlich den beiden Herren im Zylinder zu, welche ihn abholen und fragt: "'An welchem Theater spielen Sie.' 'Theater?', fragte der eine Herr mit zuckenden Mundwinkeln den anderen um Rat. Der andere gebärdete sich wie ein Stummer, der mit dem widerspenstigen

This idea—that the events taking place are scenes in a theatre play—here clearly articulated by Josef K., is arguably present in the novel from its very beginning. Klaus Mladek makes this case in his article "Radical Play: Gesture, Performance, and the Theatrical Logic of the Law in Kafka". Through Kafka's work, and especially through its extensive use of gestures, Mladek explores the relationship between the court and the theatre. His central case study is Kafka's novel *The Trial*, whose protagonist, Josef K., is—as Mladek repeatedly stresses—constantly "on stage": his actions are observed and interpreted as he unwittingly performs the role of the resisting subject.[292]

From the opening scene of the novel, in which K. is arrested in his lodging room, the plot is staged like a theatre play. The first thing K. notices, after waking up and not being served breakfast as usual, is that he is being watched by the old lady who lives across the street. In other words, he has an audience. The objects around him function as stage props—a bedroom becomes a courtroom, a nightstand serves as a tribunal table—and the officials appear like actors: oddly dressed and casually playing with objects such as matches in a matchbox. The arrest scene, says Mladek, is "an ironic quotation" of a courtroom drama.[293]

The novel is filled with gestures that no one—neither within nor outside the narrative—can fully decipher.[294] Put in Benjamin's words, gestures in Kafka are stripped of their "traditional supports" to become "a subject for reflection without end".[295] Kafka's portrayal of characters, especially those populating the world of the court in *The Trial*, makes use of gestures in the Brechtian sense of *gestus*: socially coded expressions of relationships and power dynamics.[296] In an essay on

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Organismus kämpft." Sie beantworten die Frage nicht, aber manches deutet darauf hin, daß sie von ihr betroffen werden." GS 2:2, 423.

[292] Klaus Mladek, "Radical Play: Gesture, Performance, and the Theatrical Logic of the Law in Kafka", *The Germanic Review: Literature, Culture, Theory* 78, no. 3 (2003): 224–225. https://doi.org/10.1080/00168890309597474.

[293] Mladek, "Radical Play", 226.

[294] Mladek, "Radical Play", 225–226.

[295] SW 2:2, 802.

[296] Mladek, "Radical Play", 231.

Brecht's epic theatre, Benjamin observes that the latter is distinguished by the quotability of its gestures. A quote, he further argues, is an interruption of a text—its removal from one context and insertion into another.[297] As Freddie Rokem points out, quotation plays a central role in the "philosophical performativity" of Benjamin's writing: the interruption caused by quotes—excerpts cut off from their original context and transported into a new one—characterises not only his method but also his mode of thought.[298]

Like Brecht, Kafka uses *gestus* to produce an alienation effect (*Verfremdungseffekt*). Yet unlike Brecht, gestures in Kafka often remain meaningless; their effect is to expose the universe in which they take place in its grotesque crudeness. Thus, Mladek writes, "[t]he court world of *The Trial* and Kafka's parables are inhabited by grotesque gestures: lawyers who carry each other, legs that sink into holes in the floor, ceilings so low that court officials must bend over like gargoyles, groups of people who gather in deformed clusters, walk piggyback, or as entwined bodies".[299]

According to Mladek, there is negative correlation between the meaningfulness and performative force of Kafka's gestures: the less sensible they are, the more compelling they become. Within this logic, the law becomes what it is, not through any intrinsic meaning or value, but simply because it is performed as law.[300] In the senselessness of its gestures, "[t]he novel marks the gradual and painful loss" of "the traditional mode of interpretation".[301] Kafka's work reminds us of the inseparable link between law and theatre. By highlighting the gestural—and grotesque—dimension of the legal sphere, Kafka blurs the boundary between court and stage, and between fiction and reality.[302]

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[297] SW 4, 305.

[298] Freddie Rokem, "'Suddenly a stranger comes into the room': Interruptions in Brecht, Benjamin and Kafka", *Studies in Theatre and Performance* 36, no. 1 (2016): 22. https://doi.org/10.1080/14682761.2015.1114334.

[299] Mladek, "Radical Play", 232.

[300] Mladek, "Radical Play", 228.

[301] Mladek, "Radical Play", 227.

[302] Mladek, "Radical Play", 225, 246.

Fiction-Making

We have discussed at some length the first part of the statement with which we began:

> "Don't forget the best!" We are familiar with this remark "from a nebulous bunch of old stories, although it may not occur in any of them."[303]

And it is now time to ask why Benjamin chose to seam together these two quotes. Why claim that the "Don't forget the best" saying sounds familiar to us from numerous tales, even though it may not have appeared in any of them? While the first part—that we are familiar with the saying—might hold true or not, depending on the reader, the second part—suggesting that the saying does not appear anywhere—is simply misleading. As we have seen, Benjamin himself refers to a story from which this saying is taken. And it is not only one but several stories that fit Benjamin's description in the *Ibizan Sequence* of a shepherd finding a treasure in the mountains, who hears the warning "Vergiß das Beste nicht!". Why would Benjamin suggest that something might be the case when he knows it is not so?

I would like to propose a general answer to this particular question, an idea borrowed from Boyarin's analysis of rabbinic fiction: Benjamin fictionalises as a tool to make a point. Like the Rabbis, Benjamin creates fictional narratives to exemplify, to engage in meaning-making, to signal that there is something here that goes beyond the specific issue at hand. This is not the only place where Benjamin fictionalises seemingly with no good reason. In the same essay, he cites an idea by Scholem[304] but attributes it to "a great rabbi",[305] and he glosses a legend

[303] SW 2:2, 813 / GS 2:2, 434.

[304] In a letter to Benjamin dated 9 July 1934, Scholem writes: "The great rabbi with the profound dictum on the messianic kingdom who appears in Bloch is none other than I myself; what a way to achieve fame!! It was one of my first ideas about the Kabbalah." Benjamin and Scholem, *The Correspondence*, 123. Scholem's footnote identifies this "profound dictum" with the one mentioned in the Kafka essay.

[305] SW 2:2, 811.

as "talmudic".[306] And yet these two instances are somewhat more rhetorically justifiable, as they grant the text a vague appeal of authority, or perhaps serve precisely to mock or challenge such an appeal. Our case, I would say, is more difficult to make sense of.

The truth is, "Vergiß das Beste nicht" appears in a number of German folk stories, and yet it is quite likely, at least for a contemporary reader, that it does not ring a bell. When Benjamin claims (in a formulation he borrows from Kafka) that this saying is familiar to us from many stories, even though it might not appear in any, he is playing with our minds. Whether the claim is true or not, we inevitably become aware of the possibility of misremembering, of remembering something that has not actually happened. This is the opposite of forgetting, which is not remembering something that has happened.

There is a double fiction here: Benjamin speaks *as if* we are all familiar with something *as if* it happened. He creates a fictional world in which we, the readers, engage—unwittingly— in the creation of fiction (by remembering something that has not happened). But in this unwitting creation, it seems, lies the key to the treasure, *the best* that we must not forget. In this short statement Benjamin takes us on a roller-coaster ride into his and Kafka's world and instructs us—not only negatively but also positively—on how to read Kafka. Negatively, through the Wunderblume image, he warns against consolidating the Lehre and forgetting the narrative that led to it. Positively, in making a fictional statement whereby we readers become the creators of fiction, he signals how meaning-making works, namely, through the creation of fiction.

Benjamin could not impart such instructions directly, because it would have been self-refuting, much like the imperative *remember to forget*! The correct mode for reading Kafka could only be illustrated through figures like Benjamin's acquaintance who practised forgetfulness and let things happen "as if he had the paths of heaven in his hands",[307] or the shepherd drifting in the mountains (before

[306] SW 2:2, 805. The source of the legend in question is yet to be determined; it could be a Hasidic tale, possibly with earlier kabbalistic influences, but it is not "talmudic". My thanks to Yehuda Dovber Zirkind for his generous assistance in the effort to trace the source of this story.

[307] SW 2:2, 591.

his desire to find the treasure again prevented it from happening), or Karl Rossman when he comes aboard the Nature-theatre.

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Let us briefly recap the chapter. We began by introducing the rabbinic form of mashal and presenting two theories concerning its role within rabbinic interpretation. The first theory, developed by David Stern, focuses in particular on a special case of a self-referential mashal. Stern emphasises that the rabbinic mashal functions as a rhetorical device whose primary purpose is to draw attention to and justify the act of interpretation itself. The second theory, developed by Daniel Boyarin, examines a different special case: an underdeveloped mashal in which the historical and fictional are not clearly distinguished. Whereas Stern understands mashal as apologetic, Boyarin emphasises its pedagogic function: through the creation of fictional narrative, the mashal serves to teach readers how to read the Bible.

After laying down the theory of mashal as foundation, we shifted to presenting the first talmudic reading of Benjamin's *Kafka*. The cryptic quote at the centre of this reading was retraced to reveal the latent image of the Wunderblume. By exploring the intertext within and outside Benjamin's writings, we first connected the quote and the Wunderblume image to Benjamin's statement on the unique character of Kafka's parables, and ultimately unearthed an instruction on how—and, mainly, how not—to read Kafka.

So far, we have not touched upon the question of law, and the categories of halakhah and haggadah were mentioned only in passing. In the next chapter—the second core chapter—we begin by exploring these two categories, and follow with a second talmudic reading of Benjamin's *Kafka*. This takes us closer to exploring alternative notions of law in *the Kafka*. After engaging with Benjamin's cryptic writing style in this chapter, and exploring his use of the duo halakhah and haggadah in the following chapter, the third core chapter addresses the question of law and justice.

Halakhah and Haggadah: The Mighty Paw

The Quote

> Kafka's real genius was that he tried something entirely new: he sacrificed truth for the sake of clinging to transmissibility, to its haggadic element. Kafka's writings are by their nature parables. But that is their misery and their beauty, that they had to become more than parables. They do not modestly lie at the feet of doctrine [Lehre], as Haggadah lies at the feet of Halakah. When they have crouched down, they unexpectedly raise a mighty paw against it.[308]

In the previous chapter, we looked into the latent image of the Wunderblume, which served as a key to the reading process. The closely related motif of the blossoming flower Benjamin uses to describe the way Kafka's parables unfold[309] sheds light on his statement above that Kafka's writings are "more than parables". The present chapter, which takes this quote as its point of departure, is focused on the question of Lehre and on the image—this time explicit and memorable—of the Mighty Paw.

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[308] CB, 565.

"Das eigentlich Geniale an Kafka war, daß er etwas ganz neues ausprobiert hat: er gab die Wahrheit preis, um an der Tradierbarkeit, an dem hagadischen Element festzuhalten. Kafkas Dichtungen sind von Hause aus Gleichnisse. Aber das ist ihr Elend und ihre Schönheit, daß sie mehr als Gleichnisse werden mußten. Sie legen sich der Lehre nicht schlicht zu Füßen wie sich die Hagada der Halacha zu Füßen legt. Wenn sie sich gekuscht haben, heben sie unversehens eine gewichtige Pranke gegen sie." BR, 763.

[309] "Kafka's parables [...] unfold [...] the way a bud turns into a blossom. That is why their effect is literary." SW 2:2, 802-3.

Before turning to Benjamin's quote, I introduce the two rabbinic categories of halakhah and haggadah. Since halakhah corresponds to law and haggadah to narrative, the chapter begins by addressing the question of the relationship between law and narrative. The first section discusses two works by legal scholar Robert Cover, which provide a theoretical framework for approaching this question. The second section shifts to the rabbinic context, offering a brief overview of the two categories and their intricate interrelation in rabbinic sources. With this background in place, I then return to *the Kafka* in the third section, titled "Kafka's Writings and the Missing Lehre". I begin by addressing the following question: to what kind of Lehre does Benjamin refer when he compares Kafka's writings to haggadah and their hidden Lehre to halakhah? Next, in the first subsection, titled "Kafka's Vorwelt", I explore the unique nature of Kafka's world through the Mighty Paw image. Finally, the second subsection is dedicated to a short story by Kafka, wherein the themes of Jewishness and creaturely life intersect. This story, which shows notable parallels with Benjamin's work, offers valuable insight into several of the key questions raised throughout the chapter.

Law and Narrative

This chapter centres on the quote above, focusing in particular on the duo of halakhah and haggadah. One of its central aims is to move beyond the simplified definitions of halakhah as law and haggadah as narrative by examining how these categories interact within rabbinic literature. I begin, however, with these definitions; using the common identification of halakhah with the legal and haggadah with the narrative elements of rabbinic writing as a starting point will allow us to move beyond it and develop a more nuanced understanding of both.

Before delving into the unique complexity of rabbinic thought, this section begins with the broader discourse on law and narrative as presented through the work of legal scholar Robert Cover, specifically his two essays "Nomos and Narrative" and "Violence and the Word". Cover provides a conceptual toolkit for discussing the relationship of law and narrative in *the Kafka*. Two sets of distinctions from his work will prove particularly useful: first, the contrast

between paideic and imperial forms of law; second, the tension between the hermeneutic and coercive impulses within any legal order. As we shall see, these distinctions offer a useful lens for the analyses that follow.

* * *

At the core of Robert Cover's essay "Nomos and Narrative" is the simple idea that law is constituted by narratives, through which it gains both legitimacy and meaning. Every legal system has a narrative or a collection of narratives that justifies it, that constitutes its authority, making it an integral part of reality rather than some isolated and arbitrary set of rules. It is only through these narratives that we can "make sense" of the law, relate to it (through either compliance or resistance), and become legal subjects. Before delving into the essay, which develops on and extends far beyond that simple maxim, let us illustrate it briefly through two narratives: Plato's dialogue *Crito*, and the biblical story of the revelation on Mount Sinai.

Plato's *Crito* is a dialogue between Socrates and his friend Crito, taking place while Socrates is kept in jail awaiting his execution. The background story of this scene is found in Plato's *Apology*, in the context of Socrates' trial and conviction by the Athenian court, a point of crisis where law fails to do justice to Plato's admired teacher and protagonist. The *Apology* consists of Socrates' three speeches: the first is his defence speech—he was accused of showing impiety towards the gods and corrupting the youth; the second a speech of commutation—after failing to convince the jury of his innocence, Socrates, according to the customs of Athenian law, is required to offer a milder punishment in place of the one suggested by the prosecutor; the third is a speech in reply to his final verdict: death by poisoning.

Throughout his speeches, Socrates repeatedly pronounces the injustice of his trial, and yet in the *Crito* he refuses his friend's offer to help him escape, maintaining that the law must be obeyed. To counter Crito's imploring appeals, Socrates presents the laws as personified entities coming forward to claim their rights from him. In this imagined dialogue, the Athenian laws reproach Socrates, saying that by deciding to remain a citizen of Athens rather than migrate to

another polis, he made a conscious choice of commitment. During his trial, the laws continue, Socrates could have proposed exile as an alternative punishment, and he might have been granted it. Not having done so, he must now bear the consequences. The laws compare their own authority to that of a father whose parental authority obliges his son to obedience, and to that of a country whose protection commands a citizen, if needed, to be killed on a battlefield.[310] These images, each of which merits its own discussion, portray an intricate relationship between law and justice; admittedly, the two do not always go hand in hand, but even in the face of an unjust law, a greater justice—the justice inherent in the constitution at the foundation of the law—commands obedience.

In the biblical narrative, the establishment of Ancient Israel as a people is at the same time the creation of law. The momentum of this mutual birth is the revelation on Mount Sinai, depicted in Exodus chapters 19–20. The context—narrated throughout the preceding chapters of the book—is the settlement of the people of Israel (i.e., the sons of the Patriarch Jacob) in Egypt, their enslavement by the Egyptian king, and finally the exodus, led by Moses as God's emissary. One way of reading the opening statement of the Decalogue—"I am the Lord your God Who brought you out of the land of Egypt, out of the house of slaves."[311]—is as framing what follows, namely, the Ten Commandments, within a context of liberation.[312] Accordingly, the commandments, the paradigm of law, cannot be taken as a set of dictates. In "Toward the Critique of Violence" (discussed in the preparatory chapter On Law), Benjamin writes similarly:

> [T]he question "May I kill?" meets its irreducible answer in the commandment "Thou shalt not kill." This commandment precedes the deed, [… and n]o judgment of the deed can be derived from the commandment. […] It exists not as a criterion of judgment, but as a guideline for the actions of persons or

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[310] Plato, *Crito*, 50a–52d.

[311] Exod. 20:2.

[312] As pointed out by Rémi Brague in *The Law of God: The Philosophical History of an Idea* (University of Chicago Press, 2007), 57–58. There are certainly other possible readings of this framing; for example, the opening statement could serve as a reminder of the people's eternal debt to God.

> communities who have to wrestle with it in solitude and, in exceptional cases, to take on themselves the responsibility of ignoring it. Thus it was understood by Judaism, which expressly rejected the condemnation of killing in self-defense.[313]

The above two examples are brief illustrations of how narratives can be read as shaping the meanings of and attitudes towards the law. In the *Crito*, the narrative depicts law as founded on a constitution, a mutual agreement between a polis and its citizens. From this point of view, the occasional injustice of a particular ruling is morally justified by the greater justice of law as a system. In Exodus, the narrative framing of the Ten Commandments in the context of liberation affects how their authority is interpreted, namely, as precepts not dictates.

This idea is developed into an intricate theory of law in Robert Cover's pioneering essay "Nomos and Narrative". Working within the framework of modern legal theory, Cover turns to the Bible as a model for the complex relationship between legal and narrative texts and the way it shapes the reality of interpretive communities (i.e., in the case of the Bible, communities for whom the Bible is a binding corpus). In his analysis of biblical law, he focuses on the recognition and double inheritance granted to the firstborn by the rule of succession:

> Should a man have two wives, the one beloved and the other hated, and the beloved one and the hated one bear him sons, and the firstborn son be the hated one's, it shall be, on the day he grants estate to his sons of what he has, he shall not be able to make the beloved one's son the firstborn over the firstborn son of the hated one. For the firstborn, the son of the hated one, he shall recognize to give him double of all that belongs to him, for he is the first yield of manhood, his is the birthright's due.[314]

Here presented through an *a fortiori* case, this rule hardly conveys anything unique to the biblical legal system. It is not this particular rule but Cover's reasoning for choosing it which is instructive. Its unparalleled significance stems from its being the precept most challenged by biblical narrative: from Cain and Abel, through the

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313 SW 1, 250.

314 Deut. 21:15–17.

patriarchs, to Moses and Aaron, the biblical narratives systematically overturn this rule, favouring the younger over his older brother. In spotlighting this tension between the legal text and the narratives that make up its normative world, Cover prepares the ground for his thesis on the destabilising character of narrative and interpretation. "To be an inhabitant of the biblical normative world", he contends, "is to understand [...] that divine destiny is likely to manifest itself precisely in overturning this specific rule."[315] One may concede this claim or not, but we are not concerned with the state of mind of hypothetical inhabitants of the biblical normative world. It is the implication of considering such a claim that is significant here: namely, that narratives fashion the meaning of law in various and potentially contradicting ways. What follows is a dense and terminology-laden discussion of Cover's work—an essential but demanding detour. As already noted, his insights provide a conceptual framework for the analyses in the sections to come.

The *Nomos* in the title means, for Cover, the normative universe we inhabit. A legal tradition contains not only a *corpus juris* but also a *mythos* which binds the conditions of material reality to the demands of the normative universe. According to Cover, every nomos is built on a tension between material reality and some vision of an imagined reality, where law acts as the force affecting transformations of the former into the latter. Law and legal institutions, therefore, only become meaningful when viewed in light of visions, of narratives that give them context. When one speaks of the meaning of the law, one can think of it in its narrower sense—namely, the interpretation of legal terms or application of legal precepts—but Cover wishes to spotlight the broader sense of meaning: that is, the moral commitments in whose light laws are perceived or made sense of.[316] To illustrate this, he observes: "There is a difference between sleeping late on Sunday and refusing the sacraments, between having a snack and desecrating the fast of Yom Kippur, between banking a check and refusing to pay your income tax."[317] The narrative framework (e.g., the biblical narratives and theological

[315] Robert M. Cover, "The Supreme Court, 1982 Term—Forward: Nomos and Narrative", *Harvard Law Review* 97, no. 1 (November 1983): 22.

[316] Cover, "Nomos and Narrative", 4-10.

[317] Cover, "Nomos and Narrative", 8.

interpretations that underlie the celebration of Holy Communion at Sunday Mass) endows the action (e.g., sleeping late on Sunday) with significance.

But how does a nomos come into being? With this question in mind, Cover shifts from the biblical world to the rabbinic, quoting from Mishnah Avot: "Simeon the Just said: Upon three things the world stands: upon Torah; upon the temple worship service; and upon deeds of kindness."[318] The "world" referred to here, says Cover, is a normative world, a nomos. Accordingly, the three things upon which the world stands are normative, world-creating forces that can be generalised: the "Torah" refers to the study and interpretation of canonical texts; the "temple worship service" is the ritual practice of the law; and the "deeds of kindness" reflect interpersonal commitments within the community. From this image Cover derives one ideal-type of law, which he calls *paideic*. The precepts and narratives of the paideic type of law are culture-specific, its discourse is expressive and performative, and its practice is focused on individual and communal growth. By contrast, the type of law associated with modern liberalism is not so much world-creating as system-maintaining, that is, designed to secure the coexistence of multiple normative worlds. This second ideal type—called the *imperial* type of law—is based on universal norms, its discourse is analytic and premised on objectivity, and its practice is institutionally enforced.

These two ideal types represent two conceptual poles that can be separated in discourse, but in reality coexist in every nomos as two different modes. Cover describes it as an oscillating process. The paideic mode is characterised by high narrative potency that, through its tendency to evoke multiple interpretations, destabilises the imagined unity of meaning. Launched from this fertile instability, *jurisgenesis*, the creation of law, takes place in a process of sectarian separation. The multiplicity of worlds necessitates, in turn, the implementation of the imperial mode in order to maintain each of these worlds and regulate their interactions. "The paideic", Cover writes, "is an etude on the theme of unity. Its primary psychological motif is attachment. […] The imperial is an etude on the theme of diversity. Its primary psychological motif is separation."[319]

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[318] Mishnah Avot 1:2, quoted in Cover, "Nomos and Narrative", 11.

[319] Cover, "Nomos and Narrative", 16.

At the heart of the organisation of law, therefore, there is a constant tension between control (law-as-power) and destabilisation (law-as-meaning).[320] The hermeneutic impulse—that is, the drive to create and interpret texts—is creative and inherently uncontrolled. In a utopian world, says Cover, law would be a form of intellectual play, a product of the human hermeneutic impulse alone. In reality, jurisgenesis and legal interpretation take place "in the shadow of coercion".[321] Along with the hermeneutic impulse, there is also a coercive impulse to enforce, to establish a rule through violent action. Legal interpretation is distinguished from literary interpretation by the former's association with committed action.[322] As Derrida puts it in "Force of Law", enforceability is not something added to the law; it is inherent in the concept of law that it can be enforced, and this being enforced—as the English language reflects—implies the use of force, the use of violence.[323] Since a nomos is a world within which law acts to transform reality into vision, it is an essential part of legal interpretation that there be some community committed to living by it, flesh and blood.[324] The violence inherent in legal interpretation, though, is not directed only at the human body; it also acts on law itself. Courts have a *jurispathic*, that is, law-destroying, character: within the multiplicity of law, the role of the judge is deciding in favour of one interpretation while "killing" the alternatives.[325] In their regulative function,

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[320] Cover, "Nomos and Narrative", 12-18.

[321] Cover, "Nomos and Narrative", 40.

[322] Cover, "Nomos and Narrative", 49.

[323] Derrida, "Force of Law", 5–6.

[324] Cover, "Nomos and Narrative", 44.

[325] Cover, "Nomos and Narrative", 40-41.

Cover points out that formulating the role of the court as removing ambiguities in the law is problematic since it presupposes a superior interpretive method employed by the court; instead, he suggests that the court prioritises certain interpretations while suppressing others, and is hence "jurispathic". A similar idea is implied by a sixteenth century kabbalist quoted by Scholem: "[W]hen Moses ascended the heights in order to receive the Torah he was shown forty-nine reasons for a prohibition and forty-nine reasons for a permission for every problem. He asked God about this and was told that this would be left to the sages of Israel of every generation, and that the decision was theirs to make." In: Scholem, "Revelation and Tradition", 302.

judges have indeed the power to make peace, but only to the extent that their decisions command violence.[326]

In another essay, "Violence and the Word", Cover develops the theme of violence, now speaking in much harsher tones. "Legal interpretation", the essay opens, "takes place in a field of pain and death."[327] The two foundational forces of law, hermeneutic and coercive, are strictly antagonistic, according to Cover. "'Interpretation' suggests a social construction of an interpersonal reality through language. But pain and death have quite other implications. Indeed, pain and death destroy the world 'interpretation' calls up."[328] Torture, Cover holds, is an extreme but paradigmatic case, where pain is inflicted on the victim with the deliberate purpose of destroying her normative world.[329] Jean Améry, an Austrian-Jewish essayist imprisoned and tortured by the Nazis, affirms:

> [I]n the world of torture man exists only by ruining the other person who stands before him. A slight pressure by the tool-wielding hand is enough to turn the other—along with his head, in which are perhaps stored Kant and Hegel, and all nine symphonies, and the *World as Will and Representation*—into a shrilly squealing piglet at slaughter.[330]

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[326] Cover, "Nomos and Narrative", 53.

[327] Robert M. Cover, "Violence and the Word", *The Yale Law Journal* 95, no. 8 (July 1986): 1601.

[328] Cover, "Violence and the Word", 1602.

[329] Cover, "Violence and the Word", 1603–5.

The attempt to crush the victim's nomos is piercingly depicted in a talmudic image relating the execution of Rabbi Hanina ben Teradyon: "They brought him to be sentenced, and wrapped him in the Torah scroll, and encircled him with bundles of branches, and they set fire to it." The imagery of the flesh entangled with the nomos—the Torah scroll—is a vivid illustration of their mutual dependence (hence the attempt to jointly reduce them to ashes). But the martyr's virtue is precisely in divorcing the law from the flesh, embodying the triumph of the normative world in the face of world-destroying pain and death. The same talmudic tractate continues by relating how Rabbi Hanina's "students said to him: Our teacher, what do you see? Rabbi Hanina ben Teradyon said to them: I see the parchment burning, but its letters are flying to the heavens." Bavli Avodah Zarah 18a.

[330] Jean Améry, *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and Its Realities* (Indiana University Press, 1980), 35.

Torture is the endpoint of a process which begins, according to Améry, with the first blow one suffers from a police interrogator. There begins, with the recognition of one's helplessness, the loss of trust in the world as one used to know it, with its written and unwritten social contracts.[331] But even in torture, says Cover, violence plays not only a destructive but also a constructive role. The breaking of one normative world is a method—extreme and perverse—of imposing another normative world, one whose logic is total domination on the part of torturers and total submission on the part of victims.[332] This, Cover argues, is a radical version of the way every legal system operates. In spite of its generally civil appearance, the act of sentencing a convicted criminal is largely dominated by actual violence or fear of violence. Similar to the case of torturer and victim, the shared interpretive world of judge and prisoner is shattered in the face of their irreconcilable experiences. Any fantasy of mutual understanding based on the conceptual unity of "punishment" must be renounced; we cannot "pretend that we talk our prisoners into jail".[333]

The role of the judge, however, cannot be understood in isolation from the legal system within which it operates. The individual judge is not a Hercules with superhuman intellectual capacities that allow her to arrive at the one correct decision.[334] The word of the judge, which mandates another's action, is subject to secondary rules of transforming word into deed,[335] the most important set of which ensures that the word of a single judge is not final. Every judge who happens to sit alone on a case knows her decision may be subject to appellate review and possible reversal.[336] Furthermore, legal interpretation is not a purely theoretical business; it must take into account its realisability within the social

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[331] Améry, *At the Mind's Limits*, 27–28.

[332] Cover, "Violence and the Word", 1603.

[333] Cover, "Violence and the Word", 1608. The case of Socrates (mentioned above) is significant precisely as an exception to this rule.

[334] Cover, "Violence and the Word", 1612, 1617.

[335] Cover, "Violence and the Word", 1611–12.

[336] Cover, "Violence and the Word", 1625.

organisation of violence. Apart from coherent meaning, it requires the potential to generate effective action, which depends on a social structure of cooperation.[337] In democratic legal systems, the organisation of law-as-violence is subject to considerable restraints. Central among them is separating legal interpretation from its application. As Cover reflects:

> We have done something strange in our system. We have rigidly separated the act of interpretation—of understanding what ought to be done—from the carrying out of this "ought to be done" through violence. At the same time we have, at least in the criminal law, rigidly linked the carrying out of judicial orders to the act of judicial interpretation by relating inflexible hierarchies of judicial utterances and firm obligations on the part of penal officials to heed them.[338]

This "something strange", however, is not unique to modern American law. In her essay, "Negotiating Violence and the Word in Rabbinic Law", Beth A. Berkowitz employs Cover's two essays, "Nomos and Narrative" and "Violence and the Word", to rethink the relationship between rabbinic law and violence. According to Cover, for law to be effective it must maintain a close enough relation to violence; to be legitimate, it must keep a sufficient distance from violence. Berkowitz looks into Chapter Six of Mishnah Sanhedrin, where the procedure of criminal execution is described, examining the dynamics of proximity and distance at work.[339] The chapter opens:

> When the trial has ended in a guilty verdict and the condemned man has been sentenced to be stoned, he is taken out to be stoned. The place of stoning was outside the court and a little beyond it [...] One man stands at the entrance to the court, with cloths in his hand, and another man sits on a horse at a distance from him but where he can still see him. If one of the judges says: I can teach a reason to acquit him, the other, i.e., the man with the cloths, waves the cloths as a signal to the man on the horse, and the horse races off after the court agents who are leading the condemned man to his execution, and he stops them, and they wait

[337] Cover, "Violence and the Word", 1616.

[338] Cover, "Violence and the Word", 1627.

[339] Beth A. Berkowitz, "Negotiating Violence and the Word in Rabbinic Law", *Yale Journal of Law & the Humanities* 17, no. 1 (Winter 2005): 133. http://hdl.handle.net/20.500.13051/7370.

> until the court determines whether or not the argument has substance. And even if he, the condemned man himself, says: I can teach a reason to acquit myself, he is returned to the courthouse, even four or five times, provided that there is substance to his words. If, after the condemned man is returned to the courthouse, the judges find a reason to acquit him, they acquit him and release him immediately. But if they do not find a reason to acquit him, he goes out to be stoned.[340]

Regarding the burial of the executed, the Mishnah specifies:

> After the executed transgressor is taken down he is buried, and they would not bury him in his ancestral burial plot. Rather, two graveyards were established for the burial of those executed by the court: One for those who were killed by decapitation or strangled, and one for those who were stoned or burned.[341]

The strong links between the judge's word and the deed it authorises, Berkowitz points out, are demonstrated through framing the procedure of execution as beginning and ending at the premises of the court. At the same time, the Mishnah emphasises the separation between word and deed by underlining the distance between the "court house" and the "stoning house", a distance which also makes up the time frame for (potentially unlimited) attempts at acquittal.[342] "In the Mishnah's terms", writes Berkowitz, "if the court house is not linked to the stoning house, it is not a court house but simply a house of scholars or thinkers. If the court house is also a stoning house, then the judges themselves turn into criminals."[343]

The separation of judicial decisions from the carrying out of punishments serves as a limiting measure to violence. Yet the restrictions placed on legal violence are not an attempt to extinguish it altogether. The law needs violence in order to function as law, but this violence should be, to borrow Cover's expression, domesticated or tamed. An inherent part of its taming is the division of roles: it is

[340] Mishnah Sanhedrin 6:1.

[341] Mishnah Sanhedrin 6:5.

[342] Berkowitz, "Negotiating Violence", 135–39.

[343] Berkowitz, "Negotiating Violence", 143.

one person's voice that pronounces the verdict, and another's hand that carries it out. The multiplicity of actors in the legal process is not confined to the distinction of voice from hand but also requires that there be, at least potentially, multiple voices participating in the decision. The multiplicity of voices—either in the form of courts with multiple judges or in the judge's decision being subject to appeal and reversal—is a fundamental principle of the court system and its attempt to tame violence.[344] Interestingly, Cover does not explain this principle as a method of securing, as much as possible, a fair trial. In fact, he stresses the compromising character of such practice, whereby many court decisions bear the "scars or marks of having been written primarily to keep the majority" or "to avoid reversal".[345] It is to avoid the tyranny of a single actor—a Herculean judge, perhaps—that, to be legitimate, the organisation of law-as-violence must be a social organisation whose multiple actors share responsibility for the violent acts in which they participate.

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Within Cover's theory, law has the normative role of transforming reality into vision. In line with this concept of law, narratives serve to convey the landscape of visions within which it operates. While this view stresses the foundational character of narrative, the hermeneutic impulse—the creation and interpretation of narratives—can also act to destabilise authority. And so the force upon which law is founded contains the very seed of its subversion. The narratives, one could say with Benjamin, "raise a mighty paw against"[346] the law. The hermeneutic impulse, when isolated from its coercive counterpart, recalls to mind Benjamin's "law which is studied but no longer practiced"[347] or, in Berkowitz's terms, a court house that, disconnected from a stoning house, turns into a house of scholars.[348]

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[344] Cover, "Violence and the Word", 1628.

[345] Cover, "Violence and the Word", 1627.

[346] Benjamin and Scholem, *The Correspondence*, 225.

[347] SW 2:2, 815.

[348] This law which is studied but not practiced is discussed in the next chapter (the Gate chapter).

The tension between law-as-power and law-as-meaning, between the coercive impulse and the hermeneutic impulse—in particular when taken to the extreme in the case of torture—suggests a sort of zero-sum game between violence and meaning. It, therefore, renders meaninglessness itself a form of violence. Such an idea might explain why the legal systems in Kafka's world appear so oppressive even without or before resorting to the use of force. The meaninglessness of Josef K.'s arrest in *The Trial* is the centre of the gravitational oppressive force that moves the plot, even as the legal proceedings only become violent (or forceful) at the very end of the story. The horror of the execution machine in *In the Penal Colony* multiplies when the explorer—and the reader—discovers that the verdict is rendered without a trial and the condemned man is informed neither of his crime nor his punishment. Addressing the same idea from the other side, we may argue that meaning-making is a counter-force to violence.[349]

Let us briefly recall the key terms and distinctions introduced in this section. We first encountered Cover's division of law into two ideal types: the paideic type—historical, culture-specific, and world-creating—and the imperial type—universal, objective, and system-maintaining. With Cover, we also identified two fundamental forces at work within every legal system: the hermeneutic impulse to create and interpret texts, and the coercive impulse to enforce the law, often violently. As we saw with Berkowitz, the tension between these two impulses is not foreign to the rabbinic legal tradition. Yet it is characteristic of this tradition that such tensions are thematised within the rabbinic text itself—that is, they are subjected to the hermeneutic impulse. In the next section, where we discuss the rabbinic categories of halakhah and haggadah, this dynamic will be illustrated by a striking talmudic story.

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[349] This might be what Benjamin meant when he wrote in the *Critique* that "there is a sphere of human agreement that is nonviolent to the extent that it is wholly inaccessible to violence: the proper sphere of 'understanding,' language." SW 1, 245.

Halakhah and Haggadah

Despite repeatedly using the two rabbinic categories in his Kafka essays, it is doubtful whether Benjamin knew much about halakhah and haggadah firsthand, that is, from rabbinic sources.[350] Reading *the Kafka*, one gets the impression that Benjamin had no more than a simplistic understanding of the two categories of haggadah and halakhah and their relationship, although he provides a sort of definition:

> 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 [Lehre]—the Halachah.[351]

Haggadah, according to Benjamin, refers to the stories that "explicate and confirm" the halakhah. Halakhah is not defined but simply identified with Lehre (a term often translated as doctrine or teaching). The same idea, namely, that the haggadah contains mere confirmation or clarification of the halakhah, is poetically expressed in Benjamin's statement that the haggadah "modestly lie[s]" at the feet of halakhah. The opening quote of this chapter, containing this statement and the Mighty Paw image, is taken from Benjamin's 1938 letter essay addressed to his friend Gershom Scholem. In a letter of reply, Scholem firmly rejected this depiction of haggadah as subservient to halakhah: "The antinomy of the aggadic you mention is not specific to the Kafkaesque Aggada alone; rather it is grounded in the nature of the aggadic itself."[352]

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[350] Recently, Daniel Weiss challenged the general scholarly position regarding Benjamin's scant familiarity with Jewish sources. *See* Daniel H. Weiss, *Modern Jewish Philosophy and the Politics of Divine Violence* (Cambridge University Press, 2023), 242–48.

[351] SW 2:2, 496.

"Man hat hier an die Form der Haggadah zu erinnern: so heißen bei den Juden Geschichten und Anekdoten des rabbinischen Schrifttums, die der Erklärung und Bestätigung der Lehre—der Halacha—dienen." GS 2:2, 679.

[352] Benjamin and Scholem, *The Correspondence*, 236. A letter from Scholem to Benjamin dated 6–8 November, 1938.

If we take Benjamin's comment seriously—potentially beyond the scope of his own knowledge—and concede that the halakhah-haggadah relationship contains a key to Kafka's text, it may be worthwhile to consult the rabbinic sources. When the two categories are examined in rabbinic literature, one finds that the haggadah has a much more complex role than merely confirming and explicating the halakhah. Halakhah and haggadah are rabbinic terms; they first appear in the earlier stratum of rabbinic literature.[353] While they are regularly used in the rabbinic texts, their usage varies and their distinction is not everywhere dichotomous. Indeed, in the rabbinic sources we find all kinds of interactions between these two (not necessarily stable) categories.

The present section is dedicated to an overview of the relationship between halakhah and haggadah in rabbinic literature, drawing on several recent works by Moshe Simon-Shoshan, Ishay Rosen-Zvi, and Moshe Halbertal. Simon-Shoshan suggests that halakhah and haggadah be read as two different approaches to the law; Rosen-Zvi proposes different models of the halakhah-haggadah relationship in the Mishnah, and further complicates the distinction of the two as legal versus non-legal; finally, Halbertal reads a story from the Talmud where the subversive tendency of haggadah is taken to the next level.

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According to Simon-Shoshan, the mishnaic haggadah has a liminal role both in formal and thematic organisation. In terms of form, haggadic passages often appear at the end of a literary unit (a tractate, a chapter, etc.) as a framing device separating different halakhic discussions; thematically, haggadic texts often serve to place the technical halakhic discourse within broader—such as social, historical, and theological—contexts.[354] In Simon-Shoshan's reading, the interaction of halakhah and haggadah reflects the mishnaic dialogue between two different and complementary approaches to law. The strictly halakhic passages correspond to

[353] Known as the tannaic literature and including the Mishnah, Tosefta, and tannaic midrashim. *See* Steven D. Fraade and Moshe Simon-Shoshan, "Halakha and Aggada in Tannaic Sources", in *The Literature of the Sages: A Re-visioning*, ed. Christine Hayes (Brill, 2022), 464.

[354] Fraade and Simon-Shoshan, "Halakha and Aggada", 474, 482.

the apodictic approach, the systematic formulation of timeless legal principles. The more haggadic texts correspond to the casuistic approach, where the law emerges from specific circumstances in a particular historical context. Interweaving texts with different degrees of narrativity, the Mishnah negotiates the two approaches, reflecting the view that "processes of formulation, transmission, and implementation are not external to the law but integral to it".[355]

Ishay Rosen-Zvi, following the pioneering scholar of haggadah and midrash, Yonah Frankel, presents three mishnaic paradigms of the function of haggadah in relation to the halakhah. The first is to provide religious meaning to the halakhic terminology. Thus, for example, in Mishnah Rosh Hashanah it is stated that one fulfils the commandment of hearing the *shofar* (i.e., ram's horn) only if one intends (lit. directs one's heart) to fulfil this obligation.[356] This halakhic statement is followed by a haggadic passage that opens with a biblical verse from Exodus depicting the war between the Israelites and Amalek. According to the interpretation of the verse in the text, as long as the Israelites directed their hearts towards God in Heaven, they prevailed in their war against Amalek. The halakhic term of intention is explained through a reference to a non-halakhic context, charging the law with religious meaning.[357] We might add that this method allows the Mishnah to underscore the significance, even high stakes, of the commandment without referring to concrete sanctions.

A second function haggadah serves is to offer an alternative to the halakhic logic. For example, during the seven days of the festival of Sukkot one is obliged to reside in the *sukkah* (i.e., a temporary hut built especially for this purpose). But what happens, the Mishnah asks, should it rain? The halakhic answer goes thus: if it rains so heavily that the food is spoiled by the rainwater, it is permitted to vacate the sukkah and go indoors. This halakhic statement is followed by a haggadic parable: "The Sages told a parable: To what is this matter comparable? It is comparable to a servant who comes to pour wine for his master, and he [the

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[355] Fraade and Simon-Shoshan, "Halakha and Aggada", 484.

[356] Mishnah Rosh HaShanah 3:7.

[357] ישי רוזן-צבי, *בין משנה למדרש*, פרק 6.א.

master] pours a jug of water in his face."[358] When the haggadah compares the person who dines in the sukkah (to obey or pay respect to God) and gets a drenching from above, to a servant who pours wine (to obey or pay respect to his master) and gets a drenching from him, it interprets the rain as an expression of God's discontentment. While the halakhic rule prosaically states that one is exempt from the obligation in the case of heavy rains, the haggadic parable adds a theological explanation for the natural circumstances, rendering the obligation, beyond a technical matter, an indicator of divine will. Along with these two functions, where the haggadah is somewhat in tension with the halakhah, Rosen-Zvi mentions a third function, namely, establishing and strengthening the halakhic discourse.[359]

Rosen-Zvi further proposes a more nuanced view of the relationship between halakhah and haggadah. The Mishnah employs a spectrum of narrative styles in its presentation of halakhic matters that range from laconic instruction to detailed and colourful narratives. Accordingly, says Rosen-Zvi, instead of tension between halakhah and haggadah, the text contains a tension between different components of the halakhic sphere to which the halakhah and haggadah together give expression. The haggadic style allows the rabbis to present theological and metaphysical alternatives to the halakhic logic without undermining its authority, to express the ambivalence of the rabbis while maintaining the halakhic order.[360] The Mishnah is first and foremost a halakhic project, but that does not mean it contains what we would normally expect of a legal code. Thus, Rosen-Zvi demonstrates that deterrence can hardly be the purpose of the Mishnaic text, as it often does not specify the punishment for certain transgressions. The Mishnah generally assumes that its readers are willing subjects seeking guidance, not miscreants in need of restriction. In Cover's terminology, we might say that the mishnaic law comes much closer to the paideic ideal type of law than to the imperial one. Accordingly, many of the halakhic rules pertain to inner dispositions

[358] Mishnah Sukkah 2:9.

[359] ישי רוזן-צבי, *בין משנה למדרש*, פרק 6.א .

[360] ישי רוזן-צבי, *בין משנה למדרש*, פרק 6.ב.

(intention, contemplation, etc.) that cannot be externally regulated or sanctioned.[361]

One such example is the halakhic rules that guide asking for and granting forgiveness, a topic discussed in Moshe Halbertal's article "At the Threshold of Forgiveness: A Study of Law and Narrative in the Talmud". While Rosen-Zvi's analysis focused on the Mishnah, Halbertal's reading addresses the talmudic text, which develops the composition of haggadah into a masterful art. In the context of Yom Kippur, the Jewish Day of Atonement, the Talmud discusses the legal issue of forgiveness—the halakhic rules regulating the obligation of an injurer to appease the injured, and the requirement for the injured to forgive. The talmudic text, aware of the complexity of the issue and the problems arising from the very attempt to legalise such a delicate matter as forgiveness, presents a series of stories which, as Halbertal shows, artfully convey the limits of the legal text in which they are embedded. One story cited by Halbertal is the following:

> A certain butcher injured Rav, and he did not come before him [to seek forgiveness]. On the day before Yom Kippur, [Rav] said, "I will go and appease him." R. Huna met him. He asked, "Where is my master going?" He said, "To appease so-and-so." [R. Huna] said [to himself] "Abba [i.e. Rav] is going to kill a man!" Rav went and stood over him. The butcher was seated, cleaning the head [of an animal]. He raised his eyes and saw him [Rav]. He said to him, "Abba, go; I have nothing to do with you." While he was still cleaning the animal's head, a bone shot out, struck the butcher's neck, and killed him.[362]

This story takes place on the eve of Yom Kippur, the Jewish day of atonement, when it is believed that every Jew is judged according to his or her sins and good deeds, to determine whether he or she will live or die in the following year. A certain butcher, we are told, injured (i.e., offended) Rav, a sage also known as Abba. Rav decides to try and appease the butcher, but his attempt does not turn out well; the butcher refuses to apologise and is killed in a very unusual work accident. Since the only way to expiate the offence caused by the butcher is for

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[361] ישי רוזן-צבי, *בין משנה למדרש*, פרק 5.א.

[362] Bavli Yoma 87a, quoted in Moshe Halbertal, "At the Threshold of Forgiveness. A Study of Law and Narrative in the Talmud", *Jewish Review of Books* 7, no. 1 (2011): 33.

him to gain Rav's forgiveness, Rav's act initially appears to be an act of humility and generosity. Nevertheless, Halbertal contends, the story's ending, as foreshadowed by R. Huna's remark, reveals the deadly nature of Rav's act. There is a threshold to be crossed between the injurer and the injured, and this crossing could be an act of goodwill as much as an act of aggression. The story, says Halbertal, forcefully confronts us with the thin line separating good from ill intention and, therefore, marks the area where the law's hand falls short, where the text cannot offer any further corrections to the legal scheme and solve the problems it anticipates.[363] The threshold that needs to be crossed in this specific case of forgiveness symbolises a general threshold between intention and deed that cannot be regulated by the halakhic law; it thereby further symbolises another threshold, one that cannot be passed: that between law and life, represented by the narrative.

This story contains an image that is at least as striking as Benjamin's "mighty paw". The repudiating butcher did not die, as we might have expected, following his condemnation in Yom Kippur, but on the spot, struck by a dead animal's bone. The butcher's creaturely and miraculous death calls our attention to the horror of the halakhic order, to the inherent violence of any legal system, including the Jewish one. And yet this horror does not bring about the abolition of halakhic law. In the rabbinic dialectic of halakhah and haggadah, neither excludes the other. Both the narrative and the legal scheme live in the talmudic text side by side. The narrative, by its very presence in the text, subverts the idea of a self-sufficient, all-pervasive law. The role of the story, the role of the haggadah in this case, is to mark the limits—the threshold—of the halakhah without destroying it altogether.[364]

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[363] Halbertal, "At the Threshold of Forgiveness", 33–34.

[364] In the subsection "Kafka's Vorwelt" of this chapter, I refer to Vivian Liska's interpretation of the Mighty Paw image in Benjamin's quote above. Liska, drawing on the same article by Halbertal to distinguish three paradigms of the halakhah-haggadah relationship, associates the role of haggadah with the image of the Mighty Paw—namely, as a force that limits the law without destroying it. While my reading agrees with Liska's depiction of haggadah, I understand Benjamin's reference to the Mighty Paw as, among other things, a warning. *See* Liska, "Law and Sacrifice in Kafka and His Readers", 263–69.

Kafka's Writings and the Missing Lehre

Let us recall the opening quote of this chapter:

> Kafka's real genius was that he tried something entirely new: he sacrificed truth for the sake of clinging to transmissibility, to its haggadic element. Kafka's writings are by their nature parables. But that is their misery and their beauty, that they had to become more than parables. They do not modestly lie at the feet of doctrine [Lehre], as Haggadah lies at the feet of Halakah. When they have crouched down, they unexpectedly raise a mighty paw against it.[365]

Benjamin makes an analogy between the halakhah-haggadah relationship and the relationship of Kafka's writings to Lehre. Even though the text expresses a contrast between the two relationships, the analogy is based on some fundamental similarity.[366] In this quadruple, Lehre is the one unknown (assuming that haggadah, halakhah, and Kafka's writings are fairly comprehensible). We should note that, as Benjamin states in several places, the Lehre that corresponds to Kafka's writings is hidden or even missing.[367] What is this Lehre whose relation to Kafka's works is (at least partially) analogous to the halakhah's relation to haggadah?

In his memoir *Walter Benjamin: The Story of a Friendship*, Gershom Scholem recalls how, for Benjamin,

> the concept of *Lehre* […] included the philosophical realm but definitely transcended it. In his early writings he reverted repeatedly to this concept, which he interpreted in the sense of the original meaning of the Hebrew *torah* as "instruction," instruction not only about the true condition and way of man in the world but also about the transcausal connection of things and their rootedness in God.[368]

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365 CB, 565 / BR, 763.

366 Elsewhere Benjamin writes explicitly that Kafka's prose pieces have "a relationship to religious teachings similar to the one Haggadah has to Halachah." SW 2:2, 803.

367 E.g,: SW 2:2, 803; SW 2:2, 478.

368 Gershom Scholem, *Walter Benjamin: The Story of a Friendship* (Faber and Faber, 1982), 55-56.

The Hebrew word torah (also Torah) derives from a root which means to teach, instruct, or command. The term torah often refers to Jewish law or Jewish Scriptures—from the Five Books of Moses to the entire Hebrew Bible, and even to the totality of Jewish teachings. However, in both rabbinic and kabbalistic sources, torah also has a spiritual meaning, where it is seen as a pre-creational being, used by God as a blueprint for the creation of the world.[369] This dual meaning of torah reappears in the next subsection, where I discuss Benjamin's identification of Kafka's world with the Vorwelt. For now, I focus on torah as teaching, which comes close to the literal meaning of Lehre. The nature of Lehre in regard to Kafka's work was a point of dispute between Benjamin and Scholem. In a letter dated 1 August 1931, Scholem wrote to Benjamin:

> It would be an enigma to me how you as a critic would go about saying something about [Kafka's] world without placing the *Lehre*, called *Gesetz* in Kafka's work, at the center.[370]

Years later, Benjamin would express his dissent:

> Scholem very clearly sensed the limits beyond which even my current version is disinclined to go when he reproached me with passing over Kafka's concept of the "laws" [*Gesetze*]. At some later time, I will attempt to demonstrate why the concept of the "laws" in Kafka—as opposed to the concept of "doctrine" [Lehre]—has a predominantly illusory character and is actually a sham.[371]

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[369] Bereshit Rabbah 1:1. *See also* M. Avot 3:14; Sifrei Devarim 48:12.

[370] Scholem, *Walter Benjamin: The Story of a Friendship*, 170–71.

"Wie du als Kritiker es anstellen wolltest, ohne die Lehre, bei Kafka Gesetz genannt, ins Zentrum zu stellen, etwas über die Welt dieses Mannes zu sagen, wäre mir ein Rätsel." Gershom Scholem, *Walter Benjamin: Die Geschichte einer Freundschaft* (Suhrkamp, 1997), 213.

[371] CB, 463. A letter from Benjamin to Werner Kraft dated 12 November 1934.

"Immerhin hat Scholem die Grenzen, über die schon die gegenwärtige Niederschrift sich nicht zu bewegen gewillt ist, sehr deutlich empfunden, wenn er mir zum Vorwurf macht, an Kafkas Begriff der "Gesetze" vorüberzugehen. Ich werde—in einem späteren Zeitpunkt—den Versuch machen, aufzuzeigen, wieso—im Gegensatz zum Begriff der "Lehre"—der Begriff der "Gesetze" bei Kafka einen überwiegend scheinhaften Charakter hat und eigentlich eine Attrappe ist." BR, 629.

While Scholem identifies the Lehre in Kafka with law, Benjamin not only distinguishes between the two but also thinks that law in Kafka is illusory, while Lehre (as the opening quote illustrates) is the hidden reference, the invisible master, of the narrative.

In the first chapter of his book *The Remnant: Franz Kafka's Letter*, Eli Schonfeld offers an analysis of Kafka's parable "Before the Law". At some point in the text, he asks a similar question: What is this Lehre that Benjamin finds in Kafka's writings? In the next chapter, when discussing Kafka's parable, I follow Schonfeld's interpretation more closely; for now, I want to focus on a single point, his main point or consequence, which pertains to the question of law in relation to Lehre.

In Schonfeld's reading, the main event in the story takes place at the end of the parable. After years of waiting and as he approaches the end of his life, it occurs to the man to ask the door-keeper why no one else has ever come to seek admittance to the law. The door-keeper, realising the last moments of the man's life are at hand, says: "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it."[372] The man, who believed the law to be universal and open to all, learns that this law was intended for him alone; he learns that the law is not a universal but a singular law.[373] In Kafka, Schonfeld writes: "True law is not universal. Or more precisely: law, insofar as it relates to truth, is not universal. Law as truth is possible only insofar as it is the law of the singular. And therefore, only insofar as it is not law anymore, but teaching: *Lehre*."[374] Lehre does not refer to a formal legal system coercing its subjects into order; instead, it is "a teaching through which the world makes sense".[375] In Cover's terminology, Lehre is the nomos of a paideic law.

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[372] Kafka, *The Complete Stories*, 4.

"Hier konnte niemand sonst Einlaß erhalten, denn dieser Eingang war nur für dich bestimmt. Ich gehe jetzt und schließe ihn." Kafka, *Gesammelte Werke* 4, 121.

[373] Schonfeld, *The Remnant*, 33. Derrida pointed in a similar direction in his reading of the parable (where he links singularity with literature). *See* Jacques Derrida, "Before the Law", in *Acts of Literature* (Routledge, 1992), 187, 213.

[374] Schonfeld, *The Remnant*, 33.

[375] Schonfeld, *The Remnant*, 17.

Schonfeld's analysis focuses on the singular quality of Kafka's law, the singular quality of Lehre. I would like to stress another aspect of Lehre (one that is present in Schonfeld's analysis as well but takes a secondary position), namely—as the term itself suggests—its focus on teaching and studying. The theme of studying is treated lengthily in Benjamin's 1934 essay. Benjamin's dense train of thought shifts from students' ascetic abstinence from sleep to study as "a cavalry attack against [forgetting]",[376] culminating in the grand statement that "[t]he law which is studied but no longer practiced is the gate to justice".[377] Benjamin continues:

> The gate to justice is study. Yet Kafka doesn't dare attach to this study the promises which tradition has attached to the study of the Torah. His assistants are sextons who have lost their house of prayer; his students are pupils who have lost the Holy Writ [*Schrift*].[378]

The next chapter (the Gate chapter) is dedicated to exploring this law—studied but not practiced—which is, according to Benjamin, the gate to justice. Here, I would like to focus on the latter part of the quote, which mentions Kafka's students as those who have lost the Scripture. Scholem, who read and commented on Benjamin's not yet published manuscript, wrote in a letter to Benjamin on 17 July 1934:

> Those pupils of whom you speak at the end are not so much those who have lost the Scripture […] but rather those students who cannot decipher it.[379]

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[376] SW 2:2, 814.

[377] SW 2:2, 815 / GS 2:2, 437.

[378] SW 2:2, 815.

"Die Pforte der Gerechtigkeit ist das Studium. Und doch wagt Kafka nicht, an dieses Studium die Verheißungen zu knüpfen, welche die Überlieferung an das der Thora geschlossen hat. Seine Gehilfen sind Gemeindediener, denen das Bethaus, seine Studenten Schüler, denen die Schrift abhanden kam." GS 2:2, 437.

[379] Benjamin and Scholem, *The Correspondence*, 126–27.

"Nicht so sehr Schüler, denen die Schrift abhanden gekommen ist […] als Schüler, die sie nicht enträtseln können, sind jene Studenten, von denen Du am Ende sprichst." Walter Benjamin and Gershom Scholem, *Briefwechsel 1933-1940* (Suhrkamp, 1980), 158.

Benjamin, in turn, replied:

> Whether the pupils have lost it or whether they are unable to decipher it comes down to the same thing, because, without the key that belongs to it, the Scripture is not Scripture, but life. Life as it is lived in the village at the foot of the hill on which the castle is built.[380]

The village at the foot of the hill is where K. arrives in Kafka's novel *The Castle*. Reading this comment, one is bound to wonder: What kind of life is lived in the village on Castle Hill?

Kafka's Vorwelt

In the 1931 Kafka essay, we read the following:

> Modern man dwells in his body as K. does in the village: as a stranger, an outcast who is ignorant of the laws that connect this body to higher and vaster orders.[381]

The Castle, Kafka's novel referenced here, begins when K. arrives at a distant village, supposedly after being invited by the castle to conduct some land-surveying work. The castle authorities, however, neither confirm nor deny this invitation, and the plot unfolds as K. struggles to contact the castle and clarify his position. Just as K. is a stranger in the village, says Benjamin, modern people are aliens in their own bodies. Just as K. is ignorant of the laws of the castle controlling the village, modern people are ignorant of the laws which emanate from higher orders and control their bodies. The source of this alienation is the body itself—their creaturely existence—belonging to another sphere:

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[380] Benjamin and Scholem, *The Correspondence*, 135. A letter from Benjamin to Scholem dated 11 August 1934.

"Ob sie den Schülern abhanden gekommen ist oder ob sie sie nicht enträtseln können, kommt darum auf das gleiche hinaus, weil die Schrift ohne den zu ihr gehörigen Schlüssel eben nicht Schrift ist sondern Leben. Leben wie es im Dorf am Schloßberg geführt wird." Benjamin and Scholem, *Briefwechsel*, 167.

[381] SW 2:2, 497 / GS 2:2, 680.

> Modern man dwells in his body as K. does in the village: as a stranger, an outcast who is ignorant of the laws that connect this body to higher and vaster orders. Much light is shed on this aspect of his works by the fact that Kafka frequently places animals at the center of his tales. [… W]hen the animal is identified for the first time […] you are suddenly jolted and realize how far you have drifted away from the continent of human beings.[382]

And elsewhere he writes:

> For just as K. lives in the village on Castle Hill, modern man lives in his own body: the body slips away from him, is hostile toward him. It may happen that a man wakes up one day and finds himself transformed into vermin. Strangeness—his own strangeness—has gained control over him.[383]

What is the source of this strangeness? Where is this faraway land from which Kafka's animal stories emerge? To answer this, we need to look into Benjamin's characterisation of Kafka's world. At one place in *the Kafka*, Benjamin writes:

> Even the world of myth […] is incomparably younger than Kafka's world, which has been promised redemption by myth.[384]

What defines this pre-mythical world of Kafka—also designated Vorwelt by Benjamin—which "has been promised redemption by myth"? In the 1934 major essay we read:

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[382] SW 2:2, 497–98.

"So wie der K. im Dorf am Schloßberg lebt der heutige Mensch in seinem Körper: ein Fremder, Ausgestoßener, der nichts von den Gesetzen weiß, die diesen Leib mit höheren weiteren Ordnungen verbinden. Es kann gerade über diese Seite der Sache viel Aufschluß geben, daß Kafka in den Mittelpunkt seiner Erzählungen so oft Tiere stellt. […] Stößt man dann erstmals auf den Namen des Tieres […] so erwacht man mit einem Chock und merkt mit einem Mal, daß man vom Kontinent des Menschen schon weit entfernt ist." GS 2:2, 680.

[383] SW 2:2, 806.

"Denn so wie K. im Dorf am Schloßberg lebt der heutige Mensch in seinem Körper; er entgleitet ihm, ist ihm feindlich. Es kann geschehen, daß der Mensch eines Morgens erwacht, und er ist in ein Ungeziefer verwandelt. Die Fremde—seine Fremde—ist seiner Herr geworden." GS 2:2, 424.

[384] SW 2:2, 799.

"Die Welt des Mythos […] ist unvergleichlich jünger als Kafkas Welt, der schon der Mythos die Erlösung versprochen hat." GS 2:2, 415.

> Kafka did not consider the age in which he lived as an advance over the beginnings of time. His novels are set in a swamp world [*Sumpfwelt*].[385]

This swamp world is characterised by a dream-like melting of one thing into another, where creatures are in a perpetual state of becoming, where "[n]one has a firm place in the world, or firm, inalienable outlines, […] none that is not trading qualities with its enemy or neighbor, none that has not completed its period of time and yet is unripe".[386] Here, we witness the first distinctive feature of the Vorwelt, namely its swamp-like nature, where matter is not neatly organised into form. Another passage of the major essay states:

> Laws and definite norms remain unwritten in the prehistoric world [*Vorwelt*]. A man can transgress them without suspecting it and then must strive for atonement.[387]

This remark, as Benjamin observes, echoes a similar idea by the German-Jewish philosopher Hermann Cohen, who argued that the unwritten laws of antiquity inherently lead to their own violation.[388] The second distinctive feature of the Vorwelt is, accordingly, that it is permeated by an all-pervasive, unwritten law one is bound to transgress. In a preparatory note from 1931 titled *Versuch eines Schemas zu Kafka*, Benjamin contrasts Kafka's Vorwelt with the world of torah, which serves as a countermeasure to the pre-mythical stage of humanity. He writes:

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[385] SW 2:2, 808.

"Das Zeitalter, in dem Kafka lebt, bedeutet ihm keinen Fortschritt über die Uranfänge; Seine Romane spielen in einer Sumpfwelt." GS 2:2, 428.

[386] SW 2:2, 799.

"Keine hat ihre feste Stelle, ihren festen, nicht eintauschbaren Umriß [, …] keine die nicht mit ihrem Feinde oder Nachbarn tauscht; keine welche nicht ihre Zeit vollbracht und dennoch unreif [wäre]." GS 2:2, 415.

[387] SW 2:2, 797.

"Gesetze und umschriebene Normen bleiben in der Vorwelt ungeschriebene Gesetze. Der Mensch kann sie ahnungslos überschreiten und so der Sühne verfallen." GS 2:2, 412.

[388] SW 2:2, 797.

> It is as if Kafka wanted to prove experimentally the much greater aptness of the torah to a prehistoric stage of humanity which, however, gets lost in it. But this stage does not completely get lost even in the torah. The ritual purity and dietary laws refer to a Vorwelt, of which nothing has been preserved except for these countermeasures against it.[389]

Earlier, we mentioned the double meaning of the term torah: it often denotes Jewish law or teaching, but can also refer to a blueprint for the creation of the world. The two meanings of torah correspond to the two features of the Vorwelt: torah as a blueprint of creation is the organising principle of matter into form, and torah as teaching and commandment is the organising principle of law. With this in mind, one might suggest that when Benjamin says that Kafka's world "has been promised redemption by myth", it is the biblical Creation myth he has in mind—the mythical narrative of imposing order on the chaos of the primordial sea. The myth explains the origin of the world—that is, the world of torah—characterised by its distinct forms and moral order.

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Let us briefly retrace the route we have taken in this subsection. We said that Benjamin identifies Kafka's world with a primordial Vorwelt which is contrasted, both in material form and legal order, to the world of torah. According to Benjamin's *Kafka*, the human body is a remnant of the pre-mythical, unordered Vorwelt. That is the reason modern people feel alienated within their own bodies. This Vorwelt, with its swamp-like existence, still extends its grip over the human body, hence "[m]odern man dwells in his body as K. does in the village: as a stranger".[390] Life at the Castle Hill village is creaturely life: life lived in strangeness,

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[389] Walter Benjamin, *Benjamin über Kafka* (Suhrkamp, 1981), 116 (my translation).

"Es ist als wenn Kafka experimentell die sehr viel größere Angemessenheit der Thora an eine, obzwar in ihr verschollene, prähistorische Stufe der Menschheit erweisen wollte. Aber ganz verschollen ist diese Stufe auch in der Thora nicht. Die Reinigungs- und Speisegesetze beziehen sich auf eine Vorwelt, von der nichts mehr erhalten ist als diese Abwehrmaßnahmen gegen sie."

[390] SW 2:2, 497-98 / GS 2:2, 680.

in ignorance of the higher orders to whose laws it is subject. In their ignorance, the pupils who have lost the key to the Scripture reduce it to such a life.[391] For this reason, it is of no consequence for Benjamin whether Kafka's students lost the Scripture itself or only the key to deciphering it, because either way their study becomes life in ignorance.

"Reversal", Benjamin writes in his *Kafka*, "is the direction of study which transforms existence into script."[392] With the right key, the text could have transformative power, turning low, creaturely life into a higher form of existence. Without the key, however, one could not extract from the text any instruction, one could only use the text for study, and such an excessive study that it consumes one's life. That is why study has a motion of reversal: it "transforms existence into script", it reverses creaturely life back into text.

There is a painting by the Mexican surrealist painter Remedios Varo titled *Bordando el manto terrestre* (*Embroidering the Earth's Mantle*), in which a group of monastic-like figures sit in a circle inside a narrow tower, faces turned outwards, diligently embroidering a tapestry that extends out of the building's windows and becomes the Earth's surface. One could imagine that the students who lost the key to the scripture could have been those figures if only they possessed the arcane knowledge required to turn text (or textile) into reality. But, lacking that knowledge, all they can do is reverse the process, unravelling existence into its textual threads.

Yet, despite the students' ignorance, Benjamin declares their study no less than the "gate to justice".[393] In the next chapter, we explore this imposing statement; here, we return to the quote at the centre of the present chapter. When Benjamin portrays Kafka's stories as a beast of prey, crouching down before the Lehre yet "unexpectedly rais[ing] a mighty paw against it", he portrays a creature whose hind legs are rooted in the Vorwelt. It is this creaturely existence, whose laws

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[391] Benjamin and Scholem, *The Correspondence*, 135. A letter from Benjamin to Scholem dated 11 August 1934.

[392] SW 2:2, 815.

"Umkehr ist die Richtung des Studiums, die das Dasein in Schrift verwandelt." GS 2:2, 437.

[393] SW 2:2, 815 / GS 2:2, 437.

control, still today, the human body, whose forces the halakhah—the Lehre—continuously tries to overpower. In this ongoing struggle, we may ask: On whose side is Benjamin? In other words, what is Benjamin's stance towards the Vorwelt?

Before attempting an answer of my own, I present two possible and opposing answers to this question, drawing on works by Vivian Liska and Brendan Moran.

In her article "Law and Sacrifice in Kafka and His Readers", Liska addresses the question of law in Kafka's work in two of his readers: Giorgio Agamben and Walter Benjamin. In her analysis of Benjamin's Kafka reading, Liska focuses in particular on the mighty paw image. In Liska's reading, the rabbinic worldview offers a model for a healthy relationship between literature (representing lived experience) and law, wherein the latter does not oppress the former nor the former destroy the latter. Liska maintains that for Benjamin, Kafka's stories with their mighty paw limit the law, keeping it within its proper boundaries without crushing it altogether. According to Liska, the Vorwelt represents an oppressive regime—which Benjamin identifies with the political law of his time—a world that could and should be overcome with the halakhic order. Haggadah is the creaturely element which serves the halakhic law by keeping it within boundaries, by guarding the law against becoming detrimental to human life.[394]

Brendan Moran, in his article "Literature as Miscreant Justice: Benjamin and Scholem Debate Kafka's Law", offers a different interpretation of the mighty paw image and Benjamin's view of the Vorwelt. Moran reads the mighty paw raised by Kafka's stories as a creaturely existence emerging from the swamp-like Vorwelt and threatening the halakhic order.[395] For Moran, the Vorwelt is not an oppressive form of existence but a primal realm of possibilities, and the halakhah is an

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[394] Vivian Liska, "Law and Sacrifice", 263–69.

In my reading, I take the mighty creature representing Kafka's writings to be a vorweltic creature whose threatening presence relates back to the swamp world. In Liska's reading, the Vorwelt is a realm of oppressive law, and the creaturely element in the Mighty Paw image is not vorweltic but only haggadic. The haggadic element is read positively, as the voice raised by lived life against a potential tyranny of the halakhic law (but without, as far as I can tell, an oppressive potential of its own).

[395] Brendan Moran, "Literature as Miscreant Justice: Benjamin and Scholem Debate Kafka's Law", *The Journal of Speculative Philosophy* 34, no. 3 (2020): 392. https://doi.org/10.5325/jspecphil.34.3.0390.

attempt to determine a path against this lawless sphere. Kafka's stories, in contrast, are haggadah without halakhah; they express the absence of law and the absence of a path.[396]

While Liska interprets the mighty paw image in light of the halakhah-haggadah duo, Moran's analysis appears to draw on the opening statement of the quote. Let us recall it:

> Kafka's real genius was that he tried something entirely new: he sacrificed truth for the sake of clinging to transmissibility, to its haggadic element. Kafka's writings are by their nature parables. But that is their misery and their beauty, that they had to become more than parables. They do not modestly lie at the feet of doctrine [Lehre], as Haggadah lies at the feet of Halakah. When they have crouched down, they unexpectedly raise a mighty paw against it.[397]

Kafka sacrificed truth (i.e., established conclusions) for the sake of transmissibility (i.e., perpetual study). In Moran's reading of Benjamin, study involves an exercise of justice insofar as it subverts hitherto established knowledge and spotlights unacknowledged possibilities.[398] The realm of possibilities is identified by Moran with Benjamin's swamp-like Vorwelt.

In my reading, Benjamin's stance aligns with neither Liska's nor Moran's interpretations of it: he neither chooses to overcome the Vorwelt nor to recover it. Instead, Benjamin calls for remembering this Vorwelt and its swamp-like existence, acknowledging its forces, which shall not be celebrated but revered: forces that have been generally tamed in the modern world and yet may, occasionally, raise a mighty paw against it. This idea comes pretty close to Cover's notion of the hermeneutic impulse; the mighty creature, a remnant of the Vorwelt, represents not only creaturely (i.e., created) but also creative force and, like Cover's hermeneutic impulse, it has the potential to destabilise, even subvert, the authority for which it serves as foundation.

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[396] Moran, "Literature as Miscreant Justice", 396.

[397] CB, 565 / BR, 763.

[398] Moran, "Literature as Miscreant Justice", 397.

There is one story by Kafka which expresses this tension precisely: the creaturely presence of the Vorwelt in the midst of modern, civilised life, and the impossibility (and undesirability) of doing away with it. The next subsection offers a reading of this story.

The Animal in the Synagogue

Among Kafka's fictional narratives, there is one with an explicitly Jewish theme.[399] It is a short story, untitled by Kafka, beginning with the following sentence: "In our synagogue lives an animal approximately the size of a marten."[400] The whole story takes the form of a monologue, narrated by a member of the synagogue community, about the mysterious animal who lives in the synagogue and will not be driven out. This animal—"approximately the size of a marten", with a long neck, sharp teeth, and pale, blue-greenish fur—comes out of its hiding place during service, entertaining its onlookers with all kinds of fanciful acrobatics. At some point, we are told, a halakhic ruling was made which stated the animal should be driven out of the holy synagogue. "It was easy to dictate this from afar", the narrator concedes. "In reality, it proved quite impossible to get rid of the animal."[401]

At the time Benjamin wrote the major essay (in 1934), he could not have been familiar with the story, first published in 1937 in the supplementary volume of the first edition of Kafka's collected works.[402] And yet, it is hard not to read this story—and the fact that the only explicitly Jewish story by Kafka features an

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[399] The only one, according to Dan Miron. *The Animal in the Synagogue: Franz Kafka's Jewishness* (Lexington Books, 2019), 38, 47; *see also* Robert Alter, *Necessary Angels: Tradition and Modernity in Kafka, Benjamin, and Scholem* (Harvard University Press, 1991), 53.

[400] Franz Kafka, [In Our Synagogue], trans. Dan Miron, in *The Animal in the Synagogue: Franz Kafka's Jewishness*, by Dan Miron, (Lexington Books, 2019), 43.

"In unserer Synagoge lebt ein Tier in der Größe etwa eines Marders." Kafka, *Sämtliche Werke*, 1157.

[401] Kafka, [In Our Synagogue], 45.

"Aber es war leicht, von der Ferne zu dekretieren, in Wirklichkeit war es ja unmöglich, das Tier zu fangen." Kafka, *Sämtliche Werke*, 1159.

[402] Miron, *The Animal*, 38, 68.

animal that resides in a prayer house—in light of Benjamin's comment on the torah and the Vorwelt, or the Mighty Paw. First, to introduce the story, I follow Dan Miron's literary analysis in his book *The Animal in the Synagogue: Franz Kafka's Jewishness*, with its attentiveness to both the expressed and the implied levels of the narrative. Next, I offer a reading of the narrative within the context of the present chapter, connecting it to the theme of the Vorwelt and to the question of law.

Before presenting Miron's analysis of the story, it may be worth contextualising it within the broader discussion in which it is situated in Miron's book: namely, the question of Kafka's Jewishness.[403] As Miron emphasises on multiple occasions, the near-total silence on Jewish matters in Kafka's fiction is in strong contrast with his diaries and letters, where he often reflects on questions of Jewish identity and on that of his own Jewishness. Vivian Liska chose to open her book *When Kafka Says We*, which deals with questions of belonging in German-Jewish communities, with the following entry from Kafka's diary: "What do I have in common with Jews? I have hardly anything in common with myself and should stand very quietly in the corner, content that I can breathe."[404] As Liska points out, this statement—which presents the smooth shift in Kafka's reflections from the problem of belonging to a Jewish community to the much broader modern crisis of identity—spotlights the source of Kafka's genius, namely, his ability, in Robert Alter's words, "to convert the distinctive quandaries of Jewish existence into images of the existential dilemmas of mankind *überhaupt*".[405]

Kafka's relationship with his Jewish identity, as can be gathered from the statement above, was complicated and ambivalent. A famous and characteristic episode in this respect is Kafka's fascination with Yiddish theatre. In 1911, Kafka attended a performance of a Yiddish theatre troupe in Prague. Fascinated by the

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[403] Miron discusses Kafka's Jewishness as part of what he terms the "modern Jewish literary complex". For further reading, *see* Dan Miron, *From Continuity to Contiguity: Toward a New Jewish Literary Thinking* (Stanford University Press, 2010).

[404] Kafka, quoted in Vivian Liska, *When Kafka Says We: Uncommon Communities in German-Jewish Literature* (Indiana University Press, 2009), 1.

[405] Alter, Necessary Angels, 53.

show, he started frequenting the Yiddish theatre and became close with some of its members, in particular the Polish actor Yitzchak Löwy. It was as a result of this friendship that Kafka gave his famous lecture on Yiddish in 1912, opening an evening of dramatic readings in Yiddish by Löwy. In his *Letter to His Father*, Kafka accuses his father of comparing the eastern Jew Löwy to vermin (*Ungeziefer*) and citing the famous saying that he who lies down with dogs, gets up with fleas.[406] Even though the tone of the comment in the letter is critical of his father, Kafka himself betrays similar sentiments.[407] On one occasion, he reflects on Jewishness as a source of fascination only as it appears in isolation in the eyes of an outsider, making the following upsetting comparison:

> [Just as the] convulsive starting up of a lizard under our feet on a footpath in Italy delights us greatly, again and again we are moved to bow down, but if we see them at a dealer's by hundreds crawling over one another in confusion in the large bottles in which otherwise pickles are usually packed, then we don't know what to do.[408]

The comparison between Jews and creeping creatures (reptiles, insects) serves to depict a mixture of fascination and aversion to these strange forms of existence (creaturely, Jewish). In Benjamin's reading, the creeping creatures that feature in Kafka's fiction are representatives of a broader order of humanity, that is, the modern individual:

> Incidentally, it is worth paying attention to the kinds of animals Kafka chooses to embody his ideas. They always dwell in the interior of the earth, or, like the beetle in *Die Verwandlung* [*The Metamorphosis*], they are creatures that hide away on the ground, in cracks and crannies. This scurrying away seems to the author the only

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[406] Kafka, *Sämtliche Werke*, 1295.

The term *Ungeziefer* is the same one that appears in Kafka's *The Metamorphosis* (*Die Verwandlung*), when Gregor Samsa wakes up as an *ungeheueren Ungeziefer* (monstrous vermin). The dog and fleas resonate with the novel *The Trial*: the fleas (in the doorkeeper's coat) appear in the parable "Before the Law", told to Josef K. by the prison chaplain, one chapter before K. is executed and dies "like a dog".

[407] Miron, *The Animal*, 122.

[408] Kafka, quoted in Liska, *When Kafka Says We*, 19.

> appropriate behavior for the isolated members of his generation and their context, with their ignorance of the law.[409]

And we come again to the question of law. But let us go back to our story of the animal in the synagogue. Despite its intrinsic interest, the short story hidden among Kafka's notes received relatively little attention from Kafka critics, mainly due to its exclusion from or marginalisation in publications of Kafka's work.[410] Miron's book, whose first part is dedicated to a critical translation and a literary analysis of the story, offers one correction for this unfortunate state of affairs.

Noting that the story takes the form of an argumentative monologue, Miron asks the three following questions: What is the claim the narrator tries to make? What tools does he use to make this claim? And to whom is the claim addressed?[411] The narrator, a member of the synagogue community (as expressed by the word "our" in the opening sentence: "In our synagogue lives an animal approximately the size of a marten."), is trying to convince the reader (an outsider, not part of "us") that the presence of the animal in the synagogue is a trifling matter, making the case that the regular routine of the synagogue goes on undisturbed. And yet the very attempt at persuasion—the collected, matter-of-fact tone, the piled up, at times contradicting claims—betray the narrator's awareness of the scandalous presence of the animal, which he vehemently attempts to downplay.[412]

According to the narrator, during service the animal emerges out of its unknown hidden place ("obviously in some hole in the wall which has not yet been discovered"[413]), due to its anxiety caused by the noise. As Miron points out,

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[409] SW 2:2, 498.

"Übrigens ist die Wahl der Tiere, in deren Gedanken Kafka die seinigen einhüllt, beziehungsvoll. Es sind immer solche, die im Erdinnern, oder wenigstens wie der Käfer in der "Verwandlung" Tiere, die auf dem Boden verkrochen in seinen Spalten und Ritzen leben. Solche Verkrochenheit scheint dem Schriftsteller für die isolierten gesetzunkundigen Angehörigen seiner Generation und Umwelt allein angemessen." GS 2:2, 681.

[410] *See* Miron, *The Animal*, 37–41.

[411] Miron, *The Animal*, 55.

[412] Miron, *The Animal*, 47, 56.

[413] Kafka, [In Our Synagogue], 44.

this claim is quite paradoxical; if the animal is frightened by the noise, one would expect it to stay in its hiding place instead of going out into the open and closer to its supposed source of threat.[414] And the animal, so the narrator tells us, not only goes out into the open but also engages in all kinds of acrobatics ("it never hesitates when performing the most daring somersaults"[415]). Even though he acknowledges the animal's pleasure in its tricks ("with obvious contentment, it claws itself to the meshed lattice"[416]) and the entertainment it provides to its viewers ("the way in which it turns around up there when it reaches the ledge's end is worthy of being watched"[417]), as well as the animal's evident interest in the ritual ornaments ("The curtain that covers the Ark of the Covenant hangs on a glinting brass bar which seems to captivate the animal."[418]), the narrator takes pains to boil the whole drama down to anxiety, either that of the congregation (represented by the women) or of the animal itself.[419]

Miron stresses how unsound the narrator's reasoning is, according to which the animal comes out of its hidden place during service due to its fear of the synagogue's hustle and bustle. On the contrary, we should assume that the animal, perhaps overcoming its natural timidity, is attracted to the synagogue's activity

"offenbar in irgendeinem Mauerloch, das wir noch nicht entdeckt haben." Kafka, *Sämtliche Werke*, 1158.

414 Miron, *The Animal*, 56–57.

415 Kafka, [In Our Synagogue], 44.

"es zögert nicht, den gewagtesten Luftsprung zu machen." Kafka, *Sämtliche Werke*, 1158.

416 Kafka, [In Our Synagogue], 43.

"mit sicherbarem Behagen krallt es sich in die Maschen des Gitters." Kafka, *Sämtliche Werke*, 1157.

417 Kafka, [In Our Synagogue], 44.

"die Art, wie es dort oben, am Ende angekommen, wieder wendet, ist sehenswert." Kafka, *Sämtliche Werke*, 1158.

418 Kafka, [In Our Synagogue], 44.

"der Vorhang der Bundeslade wird von einer glänzenden Messingstange getragen, die scheint das Tier zu locken." Kafka, *Sämtliche Werke*, 1159.

419 Miron, *The Animal*, 58.

for some reason. The source of this attraction might be the attention it gets while performing its circus-like show or, as Miron suggests, it may be "attracted to the ritual objects, and especially the Ark of the Covenant and the brass bar that hangs above it".[420] In these ritualistic objects the animal is perhaps the last attendant of the synagogue to feel a "numinous charge".[421]

The implied author, as Miron asserts, gives us every reason to be sceptical about the narrator's thesis. The ample contradictions in the narrator's account, as well as one slip of the tongue, undermine his credibility; he appears to be neither logical nor fully honest.[422] We may therefore fairly infer that the implied author intentionally depicts the narrator as unreliable, inviting the question of what purpose such a depiction might serve. It is quite likely that the implied author wishes to convey the opposite of the thesis of which the narrator takes pains to convince us, the implied thesis being that the animal's presence in the synagogue *is* scandalous and pertains to the decayed state of the synagogue, the Jewish community, and even perhaps the state of (Jewish) tradition more generally. And yet the animal also possesses some hidden knowledge or recognition of holiness which has apparently been lost by the synagogue goers.[423]

Miron highlights the key characteristics of the animal in the narrative: its attachment to the synagogue, unattractive appearance, acrobatic skill, ambiguous old age, and excessive anxiety.[424] Regarding the animal's appearance Miron writes the following:

> [T]he animal in the synagogue is frightfully ugly, seemingly composed of various remnant parts of other animals that do not pleasantly combine. It approximates the size of a marten, but it does not look like a marten. It has a particularly long neck (uncharacteristic of martens), its face is triangular, its eyes are lidless, its upper teeth protrude forward like those of a rodent (though the marten is a small carnivorous mammal of the weasel family), and its whiskers are a "line of long,

[420] Miron, *The Animal*, 69.

[421] Miron, *The Animal*, 69.

[422] Miron, *The Animal*, 59–61.

[423] Miron, *The Animal*, 65, 68–69.

[424] Miron, *The Animal*, 64.

> bright, stiff-enough hairs on the upper lip, which bristle over the teeth." […] In short, the animal in the synagogue is not a marten, nor is it any other known animal.[425]

Miron interestingly suggests that "[t]here is a deep connection between the identity of the animal and its location in a place of worship",[426] without elaborating on precisely what this connection is. He writes that the animal, being uncorrupted by culture and education, is still capable of intuitively recognizing the significance of the ritual objects—the Ark of the Covenant and the brass bar.[427] But it is not entirely clear why it would require an ageless, mysterious animal for that (where, for instance, a young innocent child would do). Later he suggests that the animal represents the lost vitality of the synagogue community,[428] symbolising Jewishness as an existential core, as opposed to the community's traditional-legalistic Judaism.[429] There seems to be a parallelism between the inability (or refusal) to recognise the religious significance of the ritual objects and the denial of the significance of the animal's presence in the synagogue. "The animal", writes Miron, "represents something primordially, principally, even 'primitively' Jewish, that the modern Judaism of the narrator and his constituents are trying to ignore."[430]

This comes very close to Benjamin's idea of the Vorwelt, which Miron mentions briefly.[431] What is particularly interesting is that the presence of the animal is both undesirable (e.g., according to the halakhic ruling demanding its evacuation) and desirable, as a reminder of the long-lost holiness of the ritual objects. Perhaps the animal in the synagogue is a mirror image of Benjamin's statement about the Vorwelt and the torah: the mysterious vorweltic animal refers

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[425] Miron, *The Animal*, 64–65.

[426] Miron, *The Animal*, 68.

[427] Miron, *The Animal*, 71.

[428] Miron, *The Animal*, 74.

[429] Miron, *The Animal*, 80–81.

[430] Miron, *The Animal*, 77–78.

[431] Miron, *The Animal*, 66–67.

to a realm of law containing countermeasures against it, of which nothing remains but this creature.[432]

Another motif that strongly resonates with Benjamin's *Kafka* is the animal's angst. At some point in *the Kafka*, Benjamin makes the following remark: "This much is certain: of all of Kafka's creatures, the animals have the greatest opportunity for reflection. What corruption is in the law, anxiety [*Angst*] is in their thinking. It messes a situation up, yet it is the only hopeful thing about it."[433] Without Kafka's *Animal in the Synagogue*, it is unclear what to make of this statement.[434] However, with this story in mind, we may be able to offer a coherent interpretation. The animal's angst, which drives it into distractive acrobatic performances, "messes up" the synagogue service, but precisely because of that, it draws attention to the inherent corruption of the synagogue community, the loss of the religious and existential core of its legal tradition. Therefore, it is "the only hopeful thing" because only this distractive presence can awaken the hearts of the synagogue goers, and lead them, ultimately, to recognising the holiness in their midst. If this connection is not strange enough, let us take a look at another passage from *the Kafka*:

> As we see, even the people in power are as lawless as those at the bottom of the pile, and creatures from every level of society mix indiscriminately; the only bond that unites them is a unique feeling of anxiety [Angst]. This anxiety [Angst] is not a reaction, but something organic. [… It is] at one and the same time and in equal

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[432] "The ritual purity and dietary laws refer to a Vorwelt of which nothing has been preserved except for these countermeasures against it. Put differently: only the halakhah still contains traces of this remotest state of humanity." Benjamin, *Benjamin über Kafka*, 116 (my translation).

"Die Reinigungs- und Speisegesetze beziehen sich auf eine Vorwelt, von der nichts mehr erhalten ist als diese Abwehrmaßnahmen gegen sie. Mit andern Worten: nur die Halacha enthält noch Spuren dieser fernsten Daseinsart der Menschheit."

[433] SW 2:2, 810.

"Soviel ist sicher: unter allen Geschöpfen Kafkas kommen am meisten die Tiere zum Nachdenken. Was die Korruption im Recht ist, das ist in ihrem Denken die Angst. Sie verpfuscht den Vorgang und ist doch das einzig Hoffnungsvolle in ihm." GS 2:2, 430–31.

[434] Michael Mack has proposed an interpretation of this statement, suggesting that corruption can lead to the destruction of profane life and ultimately to messianic redemption. This reading, however, does not take into account Benjamin's emphasis on animals. *See* Mack, "Between Kant and Kafka", 267.

> measure both fear [Angst] of the primeval, the immemorial, and also fear [Angst] of what is close by, the immediate future with all its urgency.[435]

Towards the end of the story, the narrator reflects on the animal's angst:

> What are the dangers it should fear? Who intends to do it any harm? Has it not been left to itself for so many years? The men do not at all trouble themselves about its presence, and the majority of women would, it seems, be very saddened by its disappearance. What's more, it is the only animal in the house, and thus it doesn't have one single enemy. […] And yet, the Angst. Is it triggered by the memory of something from the distant past or by a premonition of future times?[436]

In both places—Benjamin's *Kafka* and Kafka's story—this strange, mysterious angst, which cannot be explained as a reaction to external circumstances, relates to both (distant) past and future.

Many of Kafka's stories contain laws in various configurations, but *The Animal in the Synagogue* is the only one which contains a piece of halakhah (even though the word halakhah itself is not mentioned). Towards the very end of the story we read: "The expert judgments of various famous rabbis came in, and the views were split, with the majority being in favor of chasing the animal away and rededicating God's house."[437]

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[435] SW 2:2, 498.

"Man sieht, auch diese Oberen sind so gesetzlos, daß sie auf einer Stufe mit den Untersten erscheinen, und ohne Scheidewände wimmeln die Geschöpfe aller Ordnungen durcheinander, heimlich nur solidarisch in dem einen einzigen Gefühl der Angst. Eine Angst, die nicht Reaktion sondern Organ ist. […] Diese Angst […] ist gleichzeitig und zu gleichen Teilen Angst vorm Uralten, Unvordenklichen und Angst vorm Nächsten, dringend Bevorstehenden." GS 2:2, 681–82.

[436] Kafka, [In Our Synagogue], 45.

"Was für Gefahren hat es denn zu fürchten? Wer beabsichtigt ihm etwas zu tun? Lebt es denn nicht seit vielen Jahren völlig sich selbst überlassen? Die Männer kümmern sich nicht um seine Anwesenheit, und die Mehrzahl der Frauen wäre wahrscheinlich unglücklich, wenn es verschwände. Und da es das einzige Tier im Haus ist, hat es also überhaupt keinen Feind. […] Und doch diese Angst. Ist es die Erinnerung an längst vergangene oder die Vorahnung künftiger Zeiten?" Kafka, *Sämtliche Werke*, 1159.

[437] Kafka, [In Our Synagogue], 45.

It is interesting to think of the relationship between the narrative and the halakhah contained in it. On the level of the narrator, the narrative is an attempt to do away with the animal, not physically but symbolically, that is, to deny the significance of its presence. This, of course, works in a manner contrary to the narrator's intention: the greater the effort he puts into convincing the reader otherwise, the greater the problem appears (which might be the implied author's intention). The halakhic ruling mentioned in the story (only at the end, and almost in passing) states that the animal should be chased away and the synagogue be rededicated, which suggests it was defiled by the animal's presence. These two textual reactions to the animal's presence in the synagogue—the halakhic decision and the narrative—are opposed in that one takes it as a very serious problem while the other understates its significance. And yet both have something in common, as both are textual substitutes for what cannot be done in practice, namely, getting rid of the animal.[438] The story ends on such a note:

> It was easy to dictate this from afar. In reality, it proved quite impossible to get rid of the animal.[439]

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We began this chapter with Benjamin's quote invoking the halakhah-haggadah duo and depicting Kafka's stories as raising a "mighty paw" against the Lehre. After introducing Robert Cover's work on law and narrative—in particular his binary pair of the paideic and imperial types of law, and his opposition of the

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"Man holte die Gutachten verschiedener berühmter Rabbiner ein, die Ansichten waren geteilt, die Mehrheit war für die Vertreibung und Neueinweihung des Gotteshauses." Kafka, *Sämtliche Werke*, 1159.

[438] Admittedly, it can be fairly argued that the halakhic ruling was pronounced with the intention of being implemented. And yet, as it happens, the decision could not be put in practice and one is left with the decision alone.

[439] Kafka, [In Our Synagogue], 45.

"Aber es war leicht, von der Ferne zu dekretieren, in Wirklichkeit war es ja unmöglich, das Tier zu fangen." Kafka, *Sämtliche Werke*, 1159.

hermeneutic and coercive impulses—we shifted to discussing the different roles of haggadah in relation to halakhah in rabbinic sources. Contrary to the simple identification of halakhah as law and haggadah as narrative that confirms the law, we encountered several models of relationship, including those where the haggadah challenges, complicates, and even undermines the halakhah. Next, we moved on to discussion of the quote. We saw that for Benjamin, Lehre is distinct from law in Kafka, and suggested that, unlike the latter, Lehre is singular and focused on study. The image of the Mighty Paw was linked to Benjamin's characterisation of Kafka's world as a Vorwelt, that is, a primordial realm where both material relations and legal norms are not fully formed. Finally, we discussed Kafka's only explicitly Jewish narrative, where a vorweltic animal dwells in a synagogue, which both defiles the holy place but also potentially serves as a reminder of a long lost numinosity.

In the next and final chapter, we tackle a quote which directly touches upon the question of law. Accordingly, we explore the possibility of another, non-oppressive and just law, a law which, in Benjamin's words, is "the gate to justice".[440]

[440] SW 2:2, 815 / GS 2:2, 437.

Rabbinic Scholars and Ignorants: The Gate

The Quote

> The law which is studied but no longer practiced is the gate to justice.[441]

We have already come across this quote from *the Kafka*, a short sentence that lies at the heart of my reading in this chapter. And already at the outset it raises a number of questions: about the nature of the law Benjamin refers to, about the meaning of justice he has in mind, about the kind of study he recommends, and the type of practice he appears to disfavour. But it also contains an image, much less vibrant, indeed, than the Mighty Paw or the Wunderblume, much more easily dismissed as a figure of speech, and yet, an image nonetheless: the gate.

Unlike the two previous chapters, where we began with some background theory before addressing the quote, this chapter begins with the talmudic reading of the quote above. This reading, given in the first section, is not focused around a particular question, but follows certain textual threads in the rich and dense paragraph from which the quote is taken. It serves, particularly at this later stage of the work, to deepen the method of talmudic reading and to remind us of the importance of the key—the Wunderblume—even as we draw closer to the hermeneutic treasure it may unlock. In the second section, I address the conceptual question of the kind of law that could be "the law which is studied but

[441] SW 2:2, 815.

"Das Recht, das nicht mehr praktiziert und nur studiert wird, das ist die Pforte der Gerechtigkeit." GS 2:2, 437.

no longer practiced". In the third and last section, I examine the image of the gate in light of two other gates: one from Kafka's "Before the Law" and another from Benjamin's theses "On the Concept of History".

The Paragraph and the Intertext

Attempting to situate our quote within its immediate context in *the Kafka* turns out to be a far from simple task. This sentence closes a paragraph towards the end of the 1934 major Kafka essay. For the sake of contextualising the sentence within the text, a natural place to start would be the beginning of the paragraph. But this paragraph, more than a page and a half long, rushes through various themes (a partial list: *gestus*, alienation, memory and forgetting, the Vorwelt, myth) and narratives (*The Good Soldier Schweik*, *Peter Schlemihl*, one of Benjamin's stories, and several texts by Kafka like *The Wish to be a Red Indian*). In trying to decipher our quote within its context, questions arise about how to pick out the most valuable of these numerous avenues, and where to draw the line. These are questions with which the reader of *the Kafka* is constantly confronted, although this particular paragraph is an extreme example. Admittedly, one can read *the Kafka* as one reads a stream of consciousness novel, as one may read Woolf or Proust. But the intellectual effort of decipherment must break with the enchantment of reading, must stop and decide, draw lines where there are initially only waves of overflowing words.

There is perhaps no better way to demonstrate the hermeneutic challenge posed by the text than to present the paragraph here in full. Here it is:

> Kafka does not grow tired of making the *gestus* present in this fashion, but he invariably does so with astonishment. K. has rightly been compared with the Good Soldier Schweik: the one is astonished at everything; the other, at nothing. The invention of motion pictures and the phonograph came in an age of maximum alienation of men from one another, of unpredictably intervening relationships which have become their only ones. Experiments have proved that a man does not recognize his own gait on film or his own voice on the phonograph. The situation of the subject in such experiments is Kafka's situation; this is what leads him to study, where he may encounter fragments of his own existence—fragments that are still within the context of the role. He might catch hold of the lost *gestus* the way Peter Schlemihl caught hold of the

shadow he had sold. He might understand himself, but what an enormous effort would be required! It is a tempest [*Sturm*] that blows from forgetting, and study is a cavalry attack against it. Thus, the beggar on the corner bench rides toward his past in order to catch hold of himself in the figure of the fleeing king. This ride, which is long enough for a life, corresponds to life, which is too short for a ride "until one shed one's spurs (for there were no spurs), threw away the reins (for there were no reins), and barely saw the land before one as a smoothly mown plain, with the horse's neck and head already gone." This is the fulfillment of the fantasy about the blessed horseman who rushes toward the past on an untrammeled, happy journey, no longer a burden on his galloping horse. But accursed is the rider who is chained to his nag because he has set himself a future goal, even though it is as close as the coal cellar—accursed is his animal, accursed are both of them: bucket and rider. "Seated on the bucket, my hands up on the handle, with the simplest kind of bridle, I propel myself with difficulty down the stairs. But once I am down below, my bucket ascends, superbly, superbly; camels lying flat on the ground do not rise any more handsomely as they shake themselves under the sticks of their drivers". There is no more hopeless vista than that of "the regions of ice mountains" in which the bucket rider drops out of sight forever. From the "nethermost regions of death" blows the wind that is favorable to him—the same wind which so often blows from the prehistoric world in Kafka's works, and which also propels the boat of the hunter Gracchus. "At mysteries and sacrifices, among Greeks as well as barbarians," writes Plutarch, "it is taught that there must be two primary essences and two opposing forces, one of which points to the right and straight ahead, whereas the other turns around and drives back." Reversal is the direction of study which transforms existence into script. Its teacher is Bucephalus, "the new advocate," who takes the road back without the powerful Alexander—which means, rid of the onrushing conqueror. "His flanks free and unhampered by the thighs of a rider, under a quiet lamp far from the din of Alexander's battles, he reads and turns the pages of our old books."—Werner Kraft once wrote an interpretation of this story. After giving careful attention to every detail of the text, Kraft notes: "Nowhere else in literature is there such a powerful and penetrating criticism of myth in its full scope." According to Kraft, Kafka does not use the word "justice," yet it is justice which serves as the point of departure for his critique of myth.—But once we have reached this point, we are in danger of missing Kafka by stopping here. Is it really the law which could thus be invoked against myth in the name of justice? No, as a legal scholar Bucephalus remains true to his origins, except that he does not seem to be practicing law—and this is probably

something new, in Kafka's sense, for both Bucephalus and the bar. The law which is studied but no longer practiced is the gate to justice.[442]

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[442] SW 2:2: 814–15.

"Den Gestus derart zu vergegenwärtigen ist Kafka unermüdlich. Aber das geschieht nie anders als mit Staunen. Man hat K. mit Recht dem Schweyk verglichen; den einen wundert alles, den andern nichts. Im Zeitalter der aufs Höchste gesteigerten Entfremdung der Menschen voneinander, der unabsehbar vermittelten Beziehungen, die ihre einzigen wurden, sind Film und Grammophon erfunden worden. Im Film erkennt der Mensch den eigenen Gang nicht, im Grammophon nicht die eigene Stimme. Experimente beweisen das. Die Lage der Versuchsperson in diesen Experimenten ist Kafkas Lage. Sie ist es, die ihn auf das Studium anweist. Vielleicht stößt er dabei auf Fragmente des eigenen Daseins, welche noch im Zusammenhang der Rolle stehen. Er würde den verlorenen Gestus zu fassen bekommen wie Peter Schlemihl seinen verkauften Schatten. Er würde sich verstehen, aber wie riesenhaft wäre die Anstrengung! Denn es ist ja ein Sturm, der aus dem Vergessen herweht. Und das Studium ein Ritt, der dagegen angeht. So reitet auf der Ofenbank der Bettler seiner Vergangenheit entgegen, um in der Gestalt des fliehenden Königs seiner selbst habhaft zu werden. Dem Leben, das für einen Ritt zu kurz ist, entspricht dieser Ritt, der lang genug für das Leben ist, '... bis man die Sporen ließ, denn es gab keine Sporen, bis man die Zügel wegwarf, denn es gab keine Zügel, und kaum das Land vor sich als glatt gemähte Heide sah, schon ohne Pferdehals und Pferdekopf.' So geht die Phantasie vom seligen Reiter in Erfüllung, der der Vergangenheit auf leerer, fröhlicher Reise entgegenbraust und seinem Renner keine Last mehr ist. Unselig aber der Reiter, der an seine Mähre gekettet ist, weil er das Zukunftsziel sich vorgesetzt hat—und sei es auch das nächste: der Kohlenkeller. Unselig auch sein Tier, unselig beide: der Kübel und der Reiter. 'Als Kübelreiter, die Hand oben am Griff, dem einfachsten Zaumzeug, drehe ich mich beschwerlich die Treppe hinab; unten aber steigt mein Kübel auf, prächtig, prächtig; Kamele, niedrig am Boden hingelagert, steigen, sich schüttelnd unter dem Stock des Führers, nicht schöner auf.' Hoffnungsloser öffnet sich keine Gegend als 'die Regionen der Eisgebirge', in denen der Kübelreiter sich auf Nimmerwiedersehen verliert. Aus 'den untersten Regionen des Todes' bläst der Wind, der ihm günstig ist—derselbe, der bei Kafka so oft aus der Vorwelt weht, und von dem auch der Kahn des Jägers Gracchus sich treiben läßt. 'Überall', sagt Plutarch, 'wird bei Mysterien und Opfern, sowohl unter Griechen als unter Barbaren, gelehrt, … daß es zwei besondere Grundwesen und einander entgegengesetzte Kräfte geben müsse, von denen das eine rechter Hand und geradeaus führt, das andere aber umlenkt und wieder zurücktreibt.' Umkehr ist die Richtung des Studiums, die das Dasein in Schrift verwandelt. Ihr Lehrmeister ist jener Bucephalus, der 'neue Advokat', der ohne den gewaltigen Alexander—und das heißt: des vorwärtsstürmenden Eroberers ledig—den Weg zurück nimmt. 'Frei, unbedrückt die Seiten von den Lenden des Reiters, bei stiller Lampe, fern dem Getöse der Alexanderschlacht, liest und wendet er die Blätter unserer alten Bücher.'—Diese Geschichte ist vor einiger Zeit durch Werner Kraft zum Gegenstand der Deutung gemacht worden. Nachdem der Interpret mit Sorgfalt jeder Einzelheit des Textes sich gewidmet hat, bemerkt er: 'Nirgendwo in der Literatur gibt es eine so gewaltige, so durchschlagende Kritik des Mythos in seinem ganzen Umfang, wie hier.' Das Wort 'Gerechtigkeit'—so meint der Ausleger—braucht

The decision to present such a long and dense quote in full is questionable. It is questionable because it breaks with an implicit premise of the academic text, a secret agreement between reader and writer: namely, the promise of the writer, the interpreter of the original text, to the reader—I can handle the text in question, I am up to the task. But such a long, dense, untameable quote reveals the fiction of the promise. The text will necessarily surpass any interpretation. Benjamin's text, like Kafka's, might be courteous enough to crouch quietly as the writer-interpreter advances her modest ideas, yet its heavy, rhythmic breathing betrays a simple truth: it has enough life in it to blow such ideas into the wind.

And yet this should not discourage us (readers, writers, interpreters) from doing precisely this. Gershom Scholem once characterised Kafka's work as canonical, defining canonicity as "open[ness] to infinite interpretation".[443] It is precisely this openness to *infinite* interpretation that renders every single attempt at interpretation fragmentary, provisional, even speculative in nature. In a similar vein, Benjamin, dismissing interpretations of Kafka's work that subsume it under a particular system,[444] offered his own interpretation in the form of a fragmentary, circuitous commentary. Focusing on the text of Benjamin's *Kafka*, I offer my own reading as just such a non-exhaustive commentary, a commentary on a commentary, if you will.

Earlier, we mentioned Daniel Boyarin's tentative characterisation of midrash as "a radical intertextual reading of the canon, in which potentially every part refers to and is interpretable by every other".[445] My reading is premised on a similar "radical intertextual" approach towards Benjamin's *Kafka*. While in the case of

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Kafka nicht; trotzdem sei es die Gerechtigkeit, von der aus die Kritik am Mythos statt hat. — Sind wir aber so weit einmal gegangen, so geraten wir in Gefahr, Kafka zu verfehlen, indem wir hier haltmachen. Ist es denn wirklich das Recht, das so, im Namen der Gerechtigkeit, gegen den Mythos aufgeboten werden könnte? Nein, als Rechtsgelehrter bleibt der Bucephalus seinem Ursprung treu. Nur scheint er—darin dürfte im Sinne Kafkas das Neue für den Bucephalus und für die Advokatur liegen—nicht zu praktizieren. Das Recht, das nicht mehr praktiziert und nur studiert wird, das ist die Pforte der Gerechtigkeit." GS 2:2, 435-7.

[443] Gershom Scholem, quoted in Alter, *Necessary Angels*, 69.

[444] GS 2:2, 425 / SW 2:2, 806.

[445] Boyarin, *Intertextuality*, 16.

midrash, the canon is quite well defined (as the Hebrew Bible, or a substantial part of it known in rabbinic terminology as *mikra*), in the case of our text, the "canon", the realm of intertextuality, constantly grows. If we take this paragraph alone, we immediately find that the intertext includes, apart from Kafka's writings,[446] Jaroslav Hašek's *The Good Soldier Schweik*, Adelbert von Chamisso's *Peter Schlemihl*, Plutarch's *On Isis and Osiris* as quoted in Bachofen's *Urreligion und antike Symbole*,[447] and Werner Kraft's *Franz Kafka: Durchdringung und Geheimnis*. On closer examination, we may find links to earlier parts of the same text (the 1934 Kafka essay) or to other texts by Benjamin. Thus, "the beggar on the corner bench" is the hero of the story which opens the last section of the same essay, and the "tempest [*Sturm*] that blows from forgetting" might be the same one that " is blowing from Paradise and has got caught in [the] wings" of the angel of history.[448] This richness of intertexts makes reading a delightful endeavour, but it also makes the task of decipherment inexhaustible; one can try to follow the threads, but the further one goes, the greater the task becomes, as the (inter)text grows exponentially.

In this reading, I treat the long list of explicit and implicit intertexts as a repository; part of the task is the selection of which texts to follow. What rules should one follow in the selection process? One way to go could be to start with what is closest to our sentence in the text; to follow the rule of proximity. In the paragraph quoted, the story that immediately leads to "the law studied but no longer practiced" is the short story by Kafka named *The New Advocate*. Here is an abbreviated version of the peculiar anecdote:

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[446] The paragraph mentions or alludes to six different texts by Kafka: *The Trial*, *The Next Village*, *The Wish to be a Red Indian*, *The Bucket Rider*, *The Hunter Gracchus*, and *The New Advocate*. Additionally, the "encounter [of] fragments of [one's] own existence […] that are still within the context of the role" may be a reference to the Nature Theatre of Oklahoma in Kafka's novel *Amerika*.

[447] According to the SW editors. *See* SW 2:2: 818n38.

[448] SW 4: 392. This quote comes from Benjamin's theses "On the Concept of History", a text to which I refer later in this chapter.

> We have a new advocate, Dr. Bucephalus. There is little in his appearance to remind you that he was once Alexander of Macedon's battle charger. […] Nowadays—it cannot be denied—there is no Alexander the Great. […] Today the gates have receded to remoter and loftier places; no one points the way; many carry swords, but only to brandish them, and the eye that tries to follow them is confused.
>
> So, perhaps it is really best to do as Bucephalus has done and absorb oneself in law books. In the quiet lamplight, his flanks unhampered by the thighs of a rider, free and far from the clamor of battle, he reads and turns the pages of our ancient tomes.[449]

The battle horse turned into a lawyer inspires, or at least serves as Benjamin's lead to his comment on the law studied but no longer practiced. The famous horse likely got his name from an ox-head-shaped mark on his skin.[450] According to the legend, the horse—owned by Alexander's father—seemed untameable at first. Young Alexander won the horse after he managed to tame the uncontrollable creature by turning his head toward the sun, thereby hiding his shadow from him.[451] The source of this Peter Schlemihl-like myth is Plutarch; and the reference to this short story by Kafka on a horse who, much like the horse in *The Wish to be a Red Indian*, is no longer really a horse (he is, after all, a horse named after an ox who works as a lawyer), threatens to burst out of intertextual potential. I do not know whether Benjamin carefully put all of these cross-references together,

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[449] Kafka, *The Complete Stories*, 445.

"Wir haben einen neuen Advokaten, den Dr. Bucephalus. In seinem Äußern erinnert wenig an die Zeit, da er noch Streitroß Alexanders von Mazedonien war. […] Heute – das kann niemand leugnen – gibt es keinen großen Alexander. […] Heute sind die Tore ganz anderswohin und weiter und höher vertragen; niemand zeigt die Richtung; viele halten Schwerter, aber nur, um mit ihnen zu fuchteln, und der Blick, der ihnen folgen will, verwirrt sich.

Vielleicht ist es deshalb wirklich das beste, sich, wie es Bucephalus getan hat, in die Gesetzbücher zu versenken. Frei, unbedrückt die Seiten von den Lenden des Reiters, bei stiller Lampe, fern dem Getöse der Alexanderschlacht, liest und wendet er die Blätter unserer alten Bücher." Kafka, *Gesammelte Werke* 4, 111.

[450] Andrew Runni Anderson, "Bucephalus and His Legend", *The American Journal of Philology* 51, no. 1 (1930): 3.

[451] Anderson, *Bucephalus*, 2.

but the links are so oddly intertwined that one finds oneself more puzzled by every new finding.

But we may follow another rule of selection, another kind of proximity. We may begin with what is close at hand and remain within the boundaries of our essay. We mentioned one such reference, the one to "the beggar on the corner bench [who] rides toward his past in order to catch hold of himself in the figure of the fleeing king". The last section of the 1934 essay, titled *Sancho Panza*, opens with the following story:

> In a Hasidic village, so the story goes, Jews were sitting together in a shabby inn one Sabbath evening. They were all local people, with the exception of one person no one knew, a very poor, ragged man who was squatting in a dark corner at the back of the room. All sorts of things were discussed, and then it was suggested that everyone should tell what wish he would make if one were granted him. One man wanted money; another wished for a son-in-law; a third dreamed of a new carpenter's bench; and so everyone spoke in turn. After they had finished, only the beggar in his dark corner was left. Reluctantly and hesitantly he answered the question. "l wish I were a powerful king reigning over a big country. Then, some night while I was asleep in my palace, an enemy would invade my country, and by dawn his horsemen would penetrate to my castle and meet with no resistance. Roused from my sleep, I wouldn't have time even to dress and I would have to flee in my shirt. Rushing over hill and dale and through forests day and night, I would finally arrive safely right here at the bench in this corner. This is my wish." The others exchanged uncomprehending glances. "And what good would this wish have done you?" someone asked. "I'd have a shirt," was the answer.[452]

This mysterious tale, taking place in a "Hasidic village", was published earlier in the same year in the daily newspaper *Prager Tagblatt*, where it appeared under the title *Der Wunsch* (*The Wish*) as one of four stories by author Walter Benjamin.[453] Its origin, though, appears to be shrouded in mystery.[454] The story takes place in a Hasidic village on a Saturday evening (*Sabbath Ausgang*), the evening after the shabbat has ended, possibly right after the evening prayer that separates the holy day

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452 SW 2:2: 812.

453 Benjamin, "Vier Geschichten".

454 Rokem, "Let me tell you a story", 344.

from the profane evening that follows. The story tells of Jews, Hasidic Jews, and yet nothing in this tale refers to their religion: they sit in a "shabby inn" not a synagogue, they make wishes rather than engaging in prayer, and the things they ask for are, indeed, of worldly value. It is a tale of Hasidic Jews in their profane state. Jews as folk. Jews whose Jewishness is so obvious that they need do nothing special to prove it; they embody their Jewishness simply and naturally. In their bodies, in their language—probably Yiddish—they resemble the actors of the Yiddish Theatre that fascinated Kafka in his early years. Their harmonious simplicity is disturbed not by a gentile antagonist, but by a foreigner (Jewish, one may fairly assume) of modest stature. If there is anything Jewish in the story—"Jewish" as Benjamin understands it—it is this foreigner, this beggar with his strange wish.

While all the locals in the shabby inn wish for some future goods, the beggar asks to change his past, and to change it such that his present, so far as we can tell, is hardly changed. Together with the local who asked, one is bound to wonder: What good would that be? The beggar's wish is confusing because it is directed at his past, because one can only make such a wish on the premise that the past, just like the future, is open: a realm of possibilities, not actualities. Such a premise, however, seems untenable. One could believe that the future is open, but the past is surely closed. Or is it? What keeps the past sealed, Benjamin appears to insinuate, is nothing but remembrance. Yet memory is misleading, and the image that comes from remembrance may be distorted. Thus, his next reference ("This ride, which is long enough for a life, corresponds to life, which is too short for a ride.") is to Kafka's micro-story "The Next Village" (*Das nächste Dorf*):

> My grandfather used to say: "Life is astoundingly short. To me, looking back over it, life seems so foreshortened that I scarcely understand, for instance, how a young man can decide to ride over to the next village without being afraid that—not to mention accidents—even the span of a normal happy life may fall far short of the time needed for such a journey."[455]

This text was the subject of a dialogue between Benjamin and his friend, the famous playwright Bertolt Brecht. In the summer of 1934, Benjamin went to visit

[455] Kafka, *The Complete Stories*, 434.

Brecht in the town of Svendborg, on the Danish island of Fyn. At the time, Benjamin was revising the major Kafka essay (published in December of the same year), and some of the extensive conservations of the two friends found their way into the essay.[456] In a note dated 5 August Benjamin writes:

> Three weeks ago I gave Brecht my essay on Kafka to read. He doubtless read it, but did not allude to it of his own accord; and on the two occasions when I brought the subject up, he responded evasively. Finally, I took the manuscript back without comment. Yesterday, he suddenly referred to the essay. With a somewhat abrupt and forced transition in the conversation, he remarked that I, too, could not entirely escape the charge of writing in diary form, in the style of Nietzsche. My Kafka essay, for example. […] I could not refute the criticism that it was a diary-like set of notes.[457]

In the same entry, he cites Brecht pondering over the value of Kafka's work:

> "You will find a number of very useful things [in Kafka's writings]. The images are good. The rest is just mystery-mongering. It is nonsense. You must ignore it. You cannot make progress with depth. Depth is simply a dimension; it is just depth—in which nothing can be seen."[458]

He continues with the following suggestion:

> Brecht's judgment would have to be tested on particular works. I suggested *Das nächste Dorf*. I saw right away the conflict that this suggestion produced in Brecht. He flatly rejected Hanns Eisler's assertion that this story was "worthless." On the other hand, he was quite unable to define its value. "It has to be studied closely," he said. The discussion broke off at this point. It was ten o'clock—time for the news from Vienna on the radio.[459]

Benjamin and Brecht eventually returned to this text, "The Next Village"; in the entry dated 31 August we read:

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[456] Eiland and Jennings, *Walter Benjamin*, 451–53.

[457] SW 2:2, 785–86.

[458] SW 2:2, 786.

[459] SW 2:2, 787.

> The discussion kept coming back to "Das nächste Dorf". Brecht said it was a companion piece to the story of Achilles and the tortoise. A rider can never reach the next village if he divides the journey up into its smallest components—even aside from any incidents en route. Because life is too short for such a journey. But the error lies in the concept of "a rider." For you have to divide up the traveler, as well as the journey. And since in doing this you abolish the unity of life, you likewise do away with its brevity. However short it may be. This doesn't matter, because the man who started out on his journey is different from the man who arrives.—For my part, I proposed the following interpretation: the true measure of life is memory. Looking back, it runs through life like lightning. The speed with which you can turn back a few pages is the same as the speed with which memory flies from the next village back to the place from which the rider decided to leave. Whoever, [like old people,] has seen his life transformed into writing, let him read this writing backward. Only in this way will he encounter himself, and only in this way—in full flight from the present—will he be able to understand it.[460]

It is fascinating to see how each of these two thinkers tackled the story from such a different perspective. Brecht reads Kafka's text in light of the famous paradox attributed to Zeno. The version of the paradox Brecht refers to appears to be not the story of Achilles and the tortoise, but what is known as the dichotomy paradox: in order to travel some distance, say one kilometre, a person must first get to its half-point, but before she gets there, she has to reach half of the half-way, that is, the quarter-point. One can continue dividing the distance *ad*

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[460] SW 2:2, 788. In the second-to-last sentence, the original "wie den Alten" was translated as "like the Ancients" in the SW. I understand "den Alten" here to mean "old people", which seems more fitting in the context of Kafka's story.

"Das Gespräch konzentrierte sich streckenweise auf die Geschichte *Das nächste Dorf*. Brecht erklärt: sie ist ein Gegenstück zu der Geschichte von Achill und der Schildkröte. Zum nächsten Dorf kommt einer nie, wenn er den Ritt aus seinen kleinsten Teilen—die Zwischenfälle nicht gerechnet—zusammensetzt. Dann ist das Leben für diesen Ritt zu kurz. Aber der Fehler steckt hier im "einer". Denn wie der Ritt zerlegt wird, so auch der Reitende. Und wie nun die Einheit des Lebens dahin ist, so ist es auch seine Kürze. Mag es so kurz sein, wie es will. Das macht nichts, weil ein anderer als der, der ausritt, im Dorfe ankommt.—Ich für mein Teil gebe folgende Auslegung: das wahre Maß des Lebens ist die Erinnerung. Sie durchläuft, rückschauend, das Leben blitzartig. So schnell wie man ein paar Seiten zurückblättert ist sie vom nächsten Dorfe an die Stelle gelangt, an der der Reiter den Entschluß zum Aufbruch faßte. Wem sich das Leben in Schrift verwandelt hat, wie den Alten, die mögen diese Schrift nur rückwärts lesen. Nur so begegnen sie sich selbst und nur so—auf der Flucht vor der Gegenwart—können sie es verstehen." GS 6, 529–30.

infinitum, and since every journey, as small as it may be, takes a certain amount of time, and since there are infinite journeys to make, we may conclude that the person will never be able to complete the whole one-kilometre journey. Brecht's solution to the paradox is to deny the unity of the person making the journey. According to this reading, the old man reflecting back on his life is indeed not the same as the young man who may have decided to go on a journey to the next village. When the unity of life is rejected, life becomes perceivable only within the scope of an instant, and it becomes, indeed, much too short for a ride.

Benjamin's reading is quite different. The logical paradox gives way to a mental representation of time in memory, and to textual representation in a written memoir. The past, as remembered life, is fast-forwarded to "[t]he speed with which you can turn back a few pages" in a diary. What is special about the old man is not that he is no longer the same young man who went on a journey, but that the greater part of his life is now transformed into memory, into writing. But what does Benjamin mean by reading this written memory backwards, such that one is "in full flight from the present"?

The story of the beggar's wish might be helpful here. His wish is a wish read backwards: if a normal wish departs from the present in order to activate some latent possibilities of the future, the beggar's wish departs from the present (which it does not seek to change) in order to activate some latent possibilities of his past. The strangeness of the wish lies, of course, precisely in the assumption that there are latent possibilities in the past which could be thus activated. Is that what Benjamin means by reading backwards, such that one is "in full flight from the present"? And is the reading backwards of a written memory some kind of forgetting?

> It is a tempest [*Sturm*] that blows from forgetting, and study is a cavalry attack against it. Thus, the beggar on the corner bench rides toward his past in order to catch hold of himself in the figure of the fleeing king. This ride, which is long enough for a life, corresponds to life, which is too short for a ride[.][461]

As mentioned above, this tempest—this storm—brings to mind another storm, which is part of one of Benjamin's most famous images: the angel of history. This

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[461] SW 2:2, 814.

image, based on an actual image—a painting by Paul Klee titled *Angelus Novus*—appears in a collection of short theses titled "On the Concept of History". The text, Benjamin's last essay before his tragic death at the Spanish border, is an exposition of Benjamin's messianic theory of time through a discussion of historicism and historical materialism. Thesis IX reads:

> There is a picture by Klee called *Angelus Novus*. It shows an angel who seems about to move away from something he stares at. His eyes are wide, his mouth is open, his wings are spread. This is how the angel of history must look. His face is turned toward the past. Where a chain of events appears before *us*, *he* sees one single catastrophe, which keeps piling wreckage upon wreckage and hurls it at his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm [*Sturm*] is blowing from Paradise and has got caught in his wings; it is so strong that the angel can no longer close them. This storm drives him irresistibly into the future, to which his back is turned, while the pile of debris before him grows toward the sky. What we call progress is *this* storm.[462]

Benjamin's image condenses the entire historical past into a single point, "one single catastrophe", foreshortening the past much like the reminiscent grandfather in "The Next Village". Now, the question shall be asked: Is the storm that blows "from forgetting" and resisted by study (in *the Kafka*) the same storm that blows from Paradise, the one we call "progress" (in the theses "On the Concept of History")? In the Wunderblume chapter we saw that forgetting was intimately linked, in Benjamin's thought, to an age of innocence; we might say: to the paradise of childhood. The angel of history who looks at the past cannot see the sequence of past events, it all piles up into a single "catastrophe"; he wants to redeem the past, to "awaken the dead", but he fails; the storm is too powerful, it defeats him. The beggar also attempts "a cavalry attack" against the past; but unlike the angel of history, he succeeds, or so it seems: "It is a tempest that blows from forgetting, and study is a cavalry attack against it."[463]

The cavalry attack against the blowing storm takes us into the world of Don Quixote who appears in the next (and last) passage of the essay, through another

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[462] SW 4, 392 (emphasis in original).

[463] SW 2:2, 814.

of Kafka's micro-stories. The text, titled *Sancho Panza*, is dubbed by Benjamin as Kafka's "most perfect creation".[464] I will not present it here, but take this opportunity to reflect on the significance of *Don Quixote* as a literary work and as a unique literary figure.

In his essay *Epic and Novel*, literary theorist Mikhail Bakhtin contrasted the two literary genres of the epic and the novel, the former corresponding to the ancient past and the latter to the contemporary world.[465] Unlike the epic, which departs from the contemporary value plane of its audience and draws its resources from an epic past, the novel speaks as, about, and to its contemporaries.[466] Not only that but, according to Bakhtin, the two are premised on distinct perceptions of time. As a "genre-in-the-making",[467] the novel is characterised by "an eternal re-thinking and re-evaluating. That center of activity that ponders and justifies the past is transferred to the future".[468] Another feature of the novel is that, unlike the epic or tragic hero, the hero of the novel never coincides with her fate or condition:

> One of the basic internal themes of the novel is precisely the theme of the inadequacy of a hero's fate and situation to the hero himself. The individual is either greater than his fate, or less than his condition as a man. He cannot become once and for all a clerk, a landowner, a merchant, a fiance, a jealous lover, a father and so forth.[469]

Bakhtin designates Cervantes' *Don Quixote* "the classic and purest model of the novel as genre".[470] His reasoning is a bit technical,[471] so let us take it from

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[464] SW 2:2, 815.

[465] Mikhail Bakhtin, *The Dialogic Imagination: Four Essays* (University of Texas Press, 2010), 10.

[466] Bakhtin, *Dialogic Imagination*, 13–14.

[467] Bakhtin, *Dialogic Imagination*, 11.

[468] Bakhtin, *Dialogic Imagination*, 31.

[469] Bakhtin, *Dialogic Imagination*, 37.

[470] Bakhtin, *Dialogic Imagination*, 324.

[471] Cervantes' novel, says Bakhtin, exploits the artistic possibilities of heteroglossia, a concept for which Bakhtin provides a sort of definition: "Heteroglossia […] is *another's speech* in *another's language*, serving to express authorial intentions but in a refracted way." Bakhtin, *Dialogic Imagination*, 324 (emphasis in original).

elsewhere. In his book on Kafka, Günther Anders conveys a similar idea in his lucid style:

> Cervantes […,] by writing a novel in the chivalresque style to describe an age no longer bound by the code of chivalry, […] reduced the age itself to absurdity; and more important still, by representing this kind of divergence, this tension between man and the world, he sounded for the first time the theme of the modern novel.[472]

As a prime example of the novel hero, Don Quixote is "a hero without a world".[473] His actions are answers to commands no longer in force, commands of an obsolete order of things. His convictions of this order are so firm that nothing can disillusion him; he repeatedly fails but never learns from his failures. He is an overly active hero who cannot learn. Kafka's heroes, says Anders, are equally cut off from the world, but whereas Don Quixote offers answers to unasked questions, Kafka's protagonists pose questions to which no answers are given.[474] These protagonists—especially Josef K. in *The Trial* and the land surveyor in *The Castle*[475]—are overly inquisitive but cannot seem to act. Kafka's heroes, says Benjamin, attack the storm of forgetting through study.[476] We shall say a word on the nature of this study later, towards the end of the chapter. Our next step takes us to the object of this study: the law which is studied but no longer practiced.

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[472] Anders, *Franz Kafka*, 25.

[473] Anders, *Franz Kafka*, 25. Years later, Anders would publish a collection of essays, including his Kafka text, titled *Mensch ohne Welt*.

[474] Anders, *Franz Kafka*, 26.

[475] Protagonists of shorter stories—like the mole in *The Burrow* or the dog in *Investigations of a Dog*—also display this mixture of over-inquisitiveness and impotence.

[476] SW 2:2, 814.

The Law

> The law which is studied but no longer practiced is the gate to justice.[477]

Up to now, we have been exploring the intertext of the quote above, an exploration launched from the weighty paragraph from which it is taken. Now it is time to ask the obvious question: What law is Benjamin talking about when he speaks of "the law which is studied but no longer practiced"? In *the Kafka*, the quote above is followed by this statement:

> The gate to justice is study. Yet Kafka doesn't dare attach to this study the promises which tradition has attached to the study of Torah.[478]

Here, Benjamin makes a direct analogy between the study of the law and the study of torah, the traditional practice of studying the Talmud along with established interpretations. While the analogy serves to highlight an important difference concerning the promises associated with the study, it remains an analogy and indicates a close resemblance. The law, which is studied but no longer practiced, therefore, is modelled on rabbinic law, that is, on Jewish halakhic law. In the previous chapter, when we discussed Robert Cover's "Nomos and Narrative", we mentioned his distinction between two ideal types of law: the paideic type and the imperial type. The former is a law of unity, prioritising meaning-making in communal life; the latter is one of diversity, focused on maintaining order in coexistence. The paideic type of law is modelled, in Cover's analysis, on rabbinic law. Cover invokes a saying from the Mishnah—"Upon three things the world stands: upon Torah; upon the temple worship service; and upon deeds of kindness."[479]—and derives a general rule for paideic law. The nomos, the normative world, of paideic law, has three main components: "Torah", that is, the study and interpretation of canonical texts; "temple worship service", that is, the

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[477] SW 2:2, 815 / GS 2:2, 437.

[478] SW 2:2, 815 / GS 2:2, 437.

[479] Mishnah Avot 1:2.

ritual practice of the law; and "deeds of kindness", that is, interpersonal commitments within the community.

When Benjamin speaks about law in *the Kafka*, he thinks of paideic law as modelled on rabbinic law. The law studied but no longer practiced is paideic law, with "Torah" but without "temple worship service". For the sake of brevity, in the present discussion I treat the law in *the Kafka* as if it refers to rabbinic law and is not just modelled on it. My claim, however, is not that Benjamin is interested in rabbinic law in particular but that he uses the particularity of rabbinic law to reflect on law as a metaphysical category.

The law studied but not practiced is rabbinic, halakhic law. But such an idea presents us with an immediate difficulty: those who study this law are typically also practitioners of the law. Rabbinic law is mainly studied in traditional Jewish academies, in *yeshivot*, where it is doubtful whether one could even divorce the study of the law from its practice. One way to resolve this difficulty is to look into the nature of rabbinic law and the traditional way of studying it. As we have mentioned earlier, in rabbinic literature the law is often discussed in unusual ways. For once, feasibility or applicability are hardly significant criteria when it comes to the choice of topics for legal discussions in the Talmud. We may recall Adin Steinsaltz's characterisation of talmudic discourse as scientific experimentation, wherein every argumentational exchange resembles an experiment and every halakhah resembles an empirical fact. By producing artificial, sometimes bizarre, conditions, the Talmud creates a halakhic laboratory in order to pierce into the core of (halakhic) reality.[480] In this sense, we might say that the law of the Talmud is studied for the sake of study, regardless of whether it is actually practiced or even practicable. In other words, it could be argued that it belongs to the essence of rabbinic law that it is studied; by contrast, whether it is practiced or not does pertain to its essence.

Even if we find this reasoning satisfactory, another question arises: namely, why is this law, in Benjamin's words, "no longer" practiced? It must be that this law used to be practiced but fell out of practice for some reason; and it fell out of

[480] Steinsaltz, *The Essential Talmud*, 230–33. Interestingly, Günther Anders expresses a similar idea in regard to Kafka's work. See: Anders, *Franz Kafka*, 9–10.

practice, we should note, for a group of people who are still engaged in its study. There are several ways to approach this question. One way is to suggest that this phrase is prescriptive not descriptive: rabbinic law, according to Benjamin, *ought* to be studied but no longer practiced. Another is simply to note that some people do, in fact, study the law without practicing it—for example, in academic settings.[481] A third approach would be to qualify this answer further.

There is sufficient reason to suspect that Benjamin had in mind not rabbinic law as such but a particular set of laws within it as a model for his "law which is studied but no longer practiced". In the next two subsections, I propose two possible answers to the question of what such a set might be. In the first, following a comment in Benjamin's *Kafka* and in dialogue with Vivian Liska and Brendan Moran, I suggest that by the law studied but no longer practiced Benjamin refers to the halakhic dietary and ritual purity laws. In the second, which draws substantially on the text of the *Critique*, I follow Daniel Weiss's reading of Benjamin's earlier text to suggest that by the law studied but no longer practiced Benjamin refers to the rabbinic laws dealing with the death penalty.

Ritual Purity and Dietary Laws

In the Mighty Paw chapter, we saw that Benjamin identified Kafka's narrative world with a pre-mythical Vorwelt. To this Vorwelt Benjamin opposes the world of torah, and I have argued that the world of torah, whose mythical birth is narrated in the Genesis creation story, introduces two kinds of order into the hitherto chaotic existence: a material order, and a legal-moral order. In a preparatory note from 1931, titled *Versuch eines Schemas zu Kafka*, wherein Benjamin contrasts Kafka's Vorwelt with the world of torah, he refers to two kinds of law in particular:

> It is as if Kafka wanted to prove experimentally the much greater aptness of the torah to a prehistoric stage of humanity which, however, gets lost in it. But this stage does not completely get lost even in the torah. The ritual purity and dietary

[481] Benjamin must have been familiar with such people, not the least of whom was his close friend Gershom Scholem.

laws refer to a Vorwelt, of which nothing has been preserved except for these countermeasures against it. Put differently: only the halakhah still contains traces of this remotest state of humanity. Kafka's books contain the missing haggadah to this halakhah.[482]

The ritual purity (*taharah*) and dietary (*kashrut*) laws, as countermeasures to the prehistoric Vorwelt, are the only remnants of this distant stage of humanity. Why are these laws in particular the countermeasures to the prehistoric stage? Among the two kinds of order the torah introduces—the material and the moral—the former appears more applicable here. It can be argued that the halakhic laws of diet and ritual purity—which include prohibitions on the consumption of certain types of animals and the need for ritual purification after being in contact with impure things (e.g., corpses, carcasses, certain bodily fluids like menstrual blood)—are premised on a notion of spiritual and material interconnectivity. Chapter 11 in Leviticus lists some of the rules and regulations regarding ritual purity and dietary laws; in particular, it provides an extensive list of rules for determining whether an animal (a beast, a bird, a fish) may be eaten. As illustrated in various commentaries,[483] the eating of impure animals was thought to affect one's spirit adversely, such that when a person eats a creature she acquires, to a certain extent, the creature's attributes. Through the body her spirit partakes in the inner life of the eaten creature, an idea expressed in the biblical text that states:

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[482] Benjamin, *Benjamin über Kafka*, 116 (my translation).

"Es ist als wenn Kafka experimentell die sehr viel größere Angemessenheit der Thora an eine, obzwar in ihr verschollene, prähistorische Stufe der Menschheit erweisen wollte. Aber ganz verschollen ist diese Stufe auch in der Thora nicht. Die Reinigungs- und Speisegesetze beziehen sich auf eine Vorwelt, von der nichts mehr erhalten ist als diese Abwehrmaßnahmen gegen sie. Mit andern Worten: nur die Halacha enthält noch Spuren dieser fernsten Daseinsart der Menschheit. Kafkas Bücher enthalten die fehlende Hagada zu dieser Halacha."

[483] Some examples: Rashi interprets the verse from Leviticus 11:43 thus: "If you become defiled thereby on earth I will treat you as defiled in the world-to-come and in the heavenly academy." Bavli Yoma 39a replaces "unclean" in the same verse with "stupefied". Ramban (Nachmanides) in his sermon *Torat Hashem Temima* says that non-kosher animals not only stupefy one's heart but also brutalise one's spirit.

"Only be strong not to eat the blood, for the blood is the life and you shall not eat the life with the meat."[484]

Earlier, we characterised the state of the Vorwelt as a dream-like melting of one thing into another, where creatures are in a perpetual state of becoming, where "[n]one has a firm place in the world, or firm, inalienable outlines […,] none that is not trading qualities with its enemy or neighbor, none that has not completed its period of time and yet is unripe".[485] Against this potential intrusion, the potential contamination of the human spirit by its lower co-creatures, the torah sets in place measures which regulate the consumption of such creatures so that a human being will not become, to a certain extent, a beast or vermin. In the works of nineteenth-century rabbi Samson Raphael Hirsch we find a similar idea; Hirsch explains the prohibition on eating certain carnivorous animals as a measure to prevent partaking in their lustful vitality, and the prohibition on eating worms and insects as one that avoids integrating their weak, lowly nature.[486]

If we take, accordingly, the law studied but no longer practiced as the ritual purity and dietary laws, we may ask: Why are these laws in particular "the gate to justice"? According to our reading, an answer to this question must take into account these laws' relation to the Vorwelt and its material fluidity. In the previous chapter, where I discussed the Vorwelt in connection to the Mighty Paw image, I contrasted the works of Vivian Liska and Brendan Moran and their interpretation of Benjamin's standpoint. In what follows, I propose three different answers to the question of why the laws of diet and ritual purity can be seen as "the gate to justice": one that aligns with Liska's reading, one that aligns with Moran's, and one that departs from both.

According to Liska's reading, Benjamin's stance on Jewish law—and in particular, the Jewish dietary and ritual purity laws—is positive. The Vorwelt represents a reality of chaos and immorality to which the torah comes as a welcome corrective. If we take the moral world of the torah and halakhah as one promoting justice, we may be able to explain the claim that the Jewish dietary and

[484] Deut. 12:23.

[485] SW 2:2, 799.

[486] רפאל שמשון הירש, *חורב* (וילנה, 1895), תנ״ד. https://www.sefaria.org.il/Horeb.454.2?lang=he.

ritual purity laws are the gate to justice. While these particular laws do not offer moral correctives, they offer material correctives to the chaotic state of the Vorwelt. Accordingly, one could argue that they express a deep understanding of the inner constitution of reality, the intertwinement of these two orders—the moral and the material—an understanding unique to Jewish thought,[487] without which no movement toward justice is even possible. And yet, why would these laws need to be studied but no longer practiced, in order to make way for justice? One could argue that it is not the case that these laws *should not* be practiced, but that they *are no longer* practiced as a fact; this, however, pertains only to the laws of ritual purity (not in effect in the absence of a temple) but not to the dietary laws (practiced by observant Jews to this day).

Another possibility comes from Moran's reading, according to which the Vorwelt is not a sphere of corruption and immorality but a fluid space of possibility. As I mentioned earlier, this reading finds support in Benjamin's theses "On the Concept of History", in which he sees the task of history as opening the unfulfilled possibilities of the past. Along with this interpretation, the Jewish dietary and ritual purity laws are part of an oppressive practice of closing (or even denying) such a space of possibility. It makes sense, therefore, that one would recommend "no longer practicing" such laws. But in that case, why study them? Perhaps so we can be reminded of the existence of such a space to begin with? It is possible, yet I would like to propose a third reading, one that departs both from Liska's affirmation of the rabbinic law and Moran's rejection of it.

In my reading, Benjamin's stance on Jewish law, and the Vorwelt as well, is ambivalent. The vital, fluid potential of the Vorwelt is not strictly negative, but neither is it a strictly positive thing to be celebrated. If the former were the case, the laws against it should be practiced; if the latter were the case, there would be no point in studying the laws against it; instead, we should be trying to retrieve it. But the vital potential of the Vorwelt—like nature, like a powerful domesticated beast—needs to be appreciated yet treated with respect. In my reading of Benjamin, the dietary laws and the laws of ritual purity have become obsolete;

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[487] "[O]nly the halakhah still contains traces of this remotest state of humanity." Benjamin, *Benjamin über Kafka*, 116 (my translation).

they have lost their practical relevance. But their deeper logic is still relevant today, and it expresses an ancient wisdom not found, according to Benjamin, anywhere else. Therefore, one should still study these laws, study for the sake of remembering this Vorwelt and its vital, chaotic, swamp-like existence. By studying, one acknowledges its forces, which shall not be celebrated but revered: forces that have been generally tamed in the modern world and yet may, occasionally, raise a mighty paw against it.

And yet, is it not an overstatement to claim that such study is no less than "the gate to justice"? This difficulty leads us to examine yet another possible answer to the question of what is the law studied but no longer practiced.

The Death Penalty in Rabbinic Law

In the preparatory chapter on law, we discussed Benjamin's earlier essay "Toward the Critique of Violence". Through three readings of the *Critique*—by Butler, Derrida, and Agamben—we saw how law emerges in Benjamin's essay as a strongly negative notion: oppressive, opposed to justice, and inimical to life. In the *Critique*, and, concomitantly, in each of the three readings, the concept of life and the death penalty played an important role. In particular, Derrida stressed that the death penalty is not just one form of punishment but the ultimate manifestation of legal authority. As Benjamin puts it, the death penalty reveals the "rotten" core of the law. Accordingly, to oppose the death penalty is to oppose law as such.[488]

In a recent book titled *Modern Jewish Philosophy and the Politics of Divine Violence*, Daniel H. Weiss dedicates a chapter to discussing Benjamin's "Toward the Critique of Violence". Noting Benjamin's condemnation of law, Weiss puts forward the daring thesis according to which Benjamin's position in the *Critique* aligns with certain rabbinic views of the law. In this subsection, I follow Weiss' thesis, drawing on it to propose another qualification of the law which is studied but no longer practiced.

[488] Derrida, "Force of Law", 39–42.

Weiss points out that Benjamin's antinomian approach in the *Critique* has been linked to Jewish thought through antinomian figures like Paul, Shabbetai Tzvi, and Jacob Frank. As we have seen in the introductory chapter, Benjamin's depiction of law in the *Critique* gives rise to a negative notion, contrasted with justice and closely linked with violence. We mentioned how, by reversing the categories of violence—lawmaking violence, law-preserving violence, and law-destroying, divine violence—we could see that law was that which was established and maintained through legal (either lawmaking or law-preserving) violence, and destroyed by divine violence. Benjamin's strictly negative view of law and his endorsement of the suspension of law is labelled by Weiss "Benjamin's antinomianism", a term I use here in line with Weiss' usage.[489] As Weiss rightly stresses, Benjamin's *Critique* is not directed against this or that legal system, but against law and legal systems as such. As opposed to the familiar course of history, where one legal system takes over and replaces another, Benjamin believes law itself is to be suspended. It is in this strong sense that his view could be called "antinomian". Benjamin's contrasting of the present epoch with the new epoch, according to Weiss, resonates with the Jewish distinction between the present world and the world to come, where the latter—the messianic era—is both accompanied by and engendered by the suspension of law (at least, of law as we know it).[490]

Weiss begins by presenting and rejecting two avenues through which Benjamin's antinomianism has been linked with Jewish thought. The first, taken, for example, by Agamben in *The Time that Remains*, connects Benjamin's antinomianism to Paulinian rejection of Mosaic law in the messianic era after Christ. The second links Benjamin to figures like Shabbetai Tzvi and Jacob Frank, according to whom transgression of the law is a tool for bringing about the messianic era (in Scholem's formulation, "redemption through sin"). Seen as either rejecting law *as a result* of the beginning of a new epoch or *as a method* of effectuating a new epoch, each view can be aligned with Benjamin's stance (Sabbatean antinomianism comes close to Benjamin's endorsement of the proletarian general strike). Weiss, however, points out the limit of such analogies

[489] Weiss, *Modern Jewish Philosophy*, 236.

[490] Weiss, *Modern Jewish Philosophy*, 236–37.

since, unlike Benjamin's utter rejection of law, both Paulinian and Sabbatean antinomianism endorse an alternative law in place of the one subverted. Both replace a this-worldly law with a messianic law. In the case of Paul, it is the law of Christ that replaces Mosaic law; in the case of the Sabbateans, the torah of creation is replaced by the torah of emanation.[491]

As Weiss rightly points out, even upon rejecting the analogies between Benjamin's *Critique* and either Paulinian or Sabbatean antinomianism, one is not likely to turn to rabbinic thought, with its affirmation of law and legal violence. Yet Weiss does precisely this, making the case that there are important parallels between Benjamin's antinomianism and certain aspects of rabbinic legal thought. He begins by pointing out that Benjamin's *Critique*, if anything, expresses a positive approach towards Jewish (either Mosaic or rabbinic) law on the two occasions when it refers to it. First, as we mentioned above, the paradigmatic narrative for divine violence Benjamin chooses to cite is the story of Korah, wherein God's punishment expressed an affirmation of Moses' authority. Second, Benjamin mentions positively the biblical commandment "thou shall not kill" and its rabbinic exception in the case of self-defence. Given these positive mentions of Jewish law and the lack of negative ones, Weiss contends, it may seem not far-fetched to argue that it was not rabbinic law that Benjamin had in mind when he condemned law.[492]

Weiss draws on some other positive references to Jewish law by Benjamin from the same period, and offers an overview that suggests that Benjamin was more closely familiar with Jewish texts than is commonly assumed.[493] Weiss concludes:

> Thus, an overall picture emerges of Benjamin as a thinker who, despite not engaging rabbinic texts in the original Hebrew or Aramaic, is nevertheless someone

[491] Weiss, *Modern Jewish Philosophy*, 237–39.

[492] Weiss, *Modern Jewish Philosophy*, 239–41.

[493] Among the texts Weiss mentions are a (German-language) collection of midrashim, a book on Hassidism, and texts by Raphael Samson Hirsch and Martin Buber. Weiss suggests that it was Benjamin's lack of knowledge of Hebrew and Aramaic combined with Scholem's (possibly interested) portrayal of him as largely ignorant in Jewish matters that led to this image of Benjamin. *See* Weiss, *Modern Jewish Philosophy*, 244–46.

> with a strong intellectual interest in classical Jewish understandings of God, law, revelation, and justice, who saw these themes and traditions as highly relevant to his own work and thought, and who pursued various aspects of these connections in both his readings and his conversations.[494]

After establishing the foundational evidence for the possibility of such a connection, Weiss goes on to propose a comparative analysis of Benjamin's rejection of legal violence and the rabbinic conditioning of the death penalty on divine presence (in the temple).[495] Weiss shows that within the rabbinic legal system, the decision on the death penalty requires divine authorisation, represented by the presence of an altar or functioning priesthood. One could claim that this requirement is one particular expression of the distinction, foundational in any legal system, between legitimate and illegitimate violence. But Weiss stresses that this is not the case here: a crucial aspect of this requirement is that it appears in rabbinic texts produced in a time when there was no temple—hence, no legitimate altar or functioning priesthood. Thus, at the time they were produced, these rabbinic texts did not legitimise any contemporaneous regime but instead rejected the practice of legal killing as long as there was no temple. Without God's presence in the temple, says Weiss, any lethal violence is automatically rendered an unjust manifestation of power.[496]

According to Weiss, Benjamin's *Critique* and rabbinic thought share a common understanding—which comes as a consequence in the *Critique*, and as a postulate in rabbinic thought—according to which human rationality does not have the authority to make decisions over life and death. In Benjamin's case, this is only the extreme case of a general rule: legal violence is not justifiable on human grounds. Both cede the authority over legal violence (in Benjamin's case) or the death penalty (in the case of the rabbis) to the divine sphere.[497]

It is significant that neither Benjamin nor the rabbis reject violence or the death penalty altogether on philosophical-theoretical grounds; rather, in both cases, it is

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[494] Weiss, *Modern Jewish Philosophy*, 245–46.

[495] Weiss, *Modern Jewish Philosophy*, 247.

[496] Weiss, *Modern Jewish Philosophy*, 248–50.

[497] Weiss, *Modern Jewish Philosophy*, 250–51.

indefinitely suspended. In the rabbinic worldview, the absence of the temple is not merely a historical fact; the rebuilding of the temple is concomitant with the coming of the messiah. When this time comes, the death penalty will again be in force.[498] Weiss quotes the following passage from the Babylonian Talmud:

> Rav Joseph said [in response to discussion of laws of the death penalty]: Why are we fixing a halakhah for [the days of] the messiah?! Abaye said to him: If so, we should not study the laws of sacrifices, since they are also only for the messianic era. But we say: study and receive reward; so in this case too, study and receive reward.[499]

Could "[t]he law which is studied but no longer practiced", therefore, refer to the rabbinic laws of the death penalty, which are studied to "receive reward" but are suspended until the days of the messiah? This state of affairs—especially if we take the death penalty as the representative of the law as such—can be aligned with what Cover depicts as a utopian state, where the coercive impulse is overcome by the hermeneutic impulse. To put it in Berkowitz's terms: the courthouse, when severed from the stoning house, becomes a house of scholars.

In the present and previous subsections, I presented two possible ways of qualifying the law studied but no longer practiced. The two are reversed in their temporalities: the first, referring to the ritual purity and dietary laws, invokes a form of existence that belongs to the *prehistoric past*; the second, referring to the death penalty, which is only authorised by divine presence, points toward a *messianic future*.[500] Noting this, we may formulate an observation that became

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[498] Weiss, *Modern Jewish Philosophy*, 251–52.

[499] Bavli Sanhedrin 51b, quoted in Weiss, 252.

[500] "But do we have the teachings [Lehre] which Kafka's parables accompany and which K.'s postures and the gestures of his animals clarify? It does not exist; all we can say is that here and there we have an allusion to it. Kafka might have said that these are relics transmitting the teachings [Lehre], although we could just as well regard them as precursors preparing the teachings [Lehre]." SW 2:2, 803.

"Besitzen wir die Lehre aber, die von Kafkas Gleichnissen begleitet und in den Gesten K.'s und den Gebärden seiner Tiere erläutert wird? Sie ist nicht da; wir können höchstens sagen, daß dies und jenes auf sie anspielt. Kafka hätte vielleicht gesagt: als ihr Relikt sie überliefert; wir aber können ebensowohl sagen: sie als ihr Vorläufer vorbereitet." GS 2:2, 420.

gradually clearer throughout our inquiry: Benjamin's discussion of law in *the Kafka* is closely intertwined with his theory of time. But, as with his interpretation of the micro-story "The Next Village", Benjamin reads time through its mental and textual representation: that is, time as memory and time transformed into text. The two—memory and text, memorisation and writing—intersect in the practice of study.

In the next section, we focus on the image of the gate, exploring it along with two other texts: Kafka's "Before the Law" and Benjamin's theses "On the Concept of History". As we shall see, these paths ultimately take us into the notion of study.

The Gate

> The law which is studied but no longer practiced is the gate to justice.[501]

In the first section of the chapter, we explored some intertextual avenues pertaining to this statement, while in the second section, we focused on the content of "the law" which it mentions. In this third and last section, I focus on the image of the gate which occupies an inconspicuous yet significant place in it. The law studied but no longer practiced is *the gate* to justice. Benjamin's choice of words brings to mind an array of questions. What happens at this gate? Is one allowed to go through it? Is it open or closed? Is it guarded, like the gate from Kafka's famous parable?[502] Is it too small to pass through, like the gate to the kingdom of God? One cannot answer these questions at the outset. But we will follow the image, looking into gates in two closely related texts.

[501] SW 2:2, 815 / GS 2:2, 437.

[502] We should note that it is not the same German word which appears in Benjamin's *Kafka* and in Kafka's parable "Before the Law"; in the former it is *Pforte*, in the latter *Tor*. The difference in size, grandeur, and symbolic significance notwithstanding, the images come close enough to allow for an analogy.

The Gate in Kafka's "Before the Law"

When it comes to Kafka, there is one gate that immediately comes to mind. We mentioned earlier that Benjamin's first encounter with Kafka was through the parable—which is likely Kafka's most famous and most read text—"Before the Law". Let us recall its beginning:

> [B]efore the Law stands a doorkeeper. To this doorkeeper there comes a man from the country and prays for admittance to the Law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and then asks if he will be allowed in later. "It is possible," says the doorkeeper, "but not at the moment." Since the gate stands open, as usual, and the doorkeeper steps to one side, the man stoops to peer through the gateway into the interior.[503]

The whole narrative, which spans the course of the man's life, takes place in front of this gate, at the threshold of the law. One could ask whether this is a story of a man seeking access to the law, a story of a doorkeeper guarding the law, a story about law, or, perhaps, a story about a gate. Either way, setting the two human protagonists aside, we may formulate the question thus: What is the relationship between the law and the gate?

Several answers have been offered to this question (although not necessarily formulated as such). Thus, for example, in Derrida's reading of the parable, the gate represents the inaccessibility of the origin of law in narrative, in literature. The prohibitive function of the law, which takes shape through the gate, is *différance*, that is, indefinite deferral; like the doorkeeper, it does not say "no" but only "not yet".[504] In Agamben's interpretation of the parable, the gate represents a threshold between the eon of Law and messianic time. In his reading, the man

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[503] Kafka, *The Complete Stories*, 3.

"Vor dem Gesetz steht ein Türhüter. Zu diesem Türhüter kommt ein Mann vom Lande und bittet um Eintritt in das Gesetz. Aber der Türhüter sagt, daß er ihm jetzt den Eintritt nicht gewähren könne. Der Mann überlegt und fragt dann, ob er also später werde eintreten dürfen. „Es ist möglich", sagt der Türhüter, „jetzt aber nicht." Da das Tor zum Gesetz offensteht wie immer und der Türhüter beiseite tritt, bückt sich der Mann, um durch das Tor in das Innere zu sehen." Kafka, *Gesammelte Werke*, 120.

[504] Derrida, "Before the Law", 204–5.

from the country strategically prevents the law being enforced. By waiting outside until, eventually, the gate to the law is shut, the man fulfils the messianic task of nullifying the law's significance.[505]

In addition to these two famous readings of "Before the Law", I here briefly present two additional readings by Vivian Liska and Eli Schonfled. In their interpretation of the narrative, both Liska and Schonfeld refer to two rabbinic categories—two types of people characterised by their relation to the study of rabbinic law.

I begin with Vivian Liska's article "'Before the Law stands a doorkeeper. To this doorkeeper comes a man…': Kafka, Narrative, and the Law". In Liska's reading, the man from the country represents the material, this-worldly element, and the law represents an abstract, absolute, and inaccessible realm.[506] The gate, as the border between the man and the law, represents the split between the concrete and the abstract, the real and the ideal. As Liska points out, "man from the country" (*Mann vom Lande*) is a translation of the Hebrew term *am ha'aretz*, which refers to a person ignorant of the halakhic law. This category of the ignorant *am ha'aretz* is contrasted with the *talmid chacham*, the rabbinic scholar (literally a student of sages) who is immersed in the study of law. As a guard and representative of the law, the doorkeeper is identified as a *talmid chacham*, and the man as an ignorant *am ha'aretz*. This double identification, as we shall shortly see, is taken up by Schonfeld as well.

Liska proposes a Benjaminian reading of the parable. Benjamin himself, as she points out, does not offer his own interpretation of it; instead, Liska draws on Benjamin's use of the categories of halakhah and haggadah in his reading of Kafka to suggest an inspired interpretation of "Before the Law". In particular, she draws on her reading of the Mighty Paw passage (presented in the previous chapter), where the beast-like haggadah serves as the representative and guardian of creaturely life, protecting it against the potential tyranny of the law. In Liska's reading of the parable, the man from the country symbolises creaturely life—he

[505] Giorgio Agamben, "The Messiah and the Sovereign: The Problem of Law in Walter Benjamin", in *Potentialities: Collected Essays in Philosophy* (Stanford University Press, 1999), 172–74.

[506] Liska, "Before the Law stands a doorkeeper", 176.

takes on the role of narrative, of haggadah. The doorkeeper, as the student and representative of the law, symbolises the halakhic order. Accordingly, like the rabbinic dialectics of halakhah and haggadah, the negotiation of the man and the doorkeeper in itself constitutes the law. The gate, in this case, is the interface, the place of encounter by which the law is negotiated and (re)created. It is this very encounter, says Liska, "marking the necessary complementarity of law and narrative",[507] that constitutes the Jewish idea of justice, which cannot be attained but only striven for. Within the confines of the created, creaturely world, striving for justice consists precisely of negotiating the balance between justice and the world. In support of the last claim, she quotes from Bereshit Rabbah: "If it is a world you want, then strict justice is impossible. And if it is strict justice you want, then a world is impossible."[508] We may recall another passage from Bereshit Rabbah mentioned earlier. In the preparatory chapter On Law, we discussed Christine Hayes' categorisation of different legal discourses. Hayes characterises the rabbinic conception of law through a midrashic narrative that portrays human existence as being in constant tension with truth and justice. The implication is clear: for the rabbis, a sustainable law—one not inimical to human life—requires a certain restraint of truth and strict justice.

Similar to Liska, Eli Schonfeld, in his book *The Remnant: Franz Kafka's Letter*, identifies the man from the country as an *am ha'aretz* and the doorkeeper as a *talmid chacham*. But Schonfeld makes another claim in this regard; Kafka himself, he says, is an *am ha'aretz*, that is, ignorant of the rabbinic legal system and the thought that corresponds to it. Since Kafka is aware of his own ignorance, however, he is not a simple fool but a kind of Socrates. His ignorance is the content of his knowledge; like Socrates, he knows that he does not know, and this is the source of his wisdom.[509] Schonfeld makes another innovative claim, this time about the *talmid chacham*, the rabbinic scholar. Normally, a *talmid chacham* is expected to be versed in the talmudic text, familiar with halakhic rules, skilled in the reading of

[507] Liska, "Before the Law stands a doorkeeper", 193.

[508] Bereshit Rabbah 49:9, quoted in Liska, "Before the Law stands a doorkeeper", 193.

"אִם עוֹלָם אַתָּה מְבַקֵּשׁ אֵין דִּין, וְאִם דִּין אַתָּה מְבַקֵּשׁ לֵית עוֹלָם"

[509] Schonfeld, *The Remnant*, 13–16.

argumentational exchanges and capable of resolving legal and textual difficulties. But, according to Schonfeld, the essential knowledge of the *talmid chacham* is "the knowledge of the difference between law and Torah (teaching), between a formal legal system, which creates order by disciplining its subjects through coercion and power, and a teaching through which the world makes sense".[510]

Although Benjamin's work is not as central to Schonfeld's reading as it is to Liska's, Schonfeld also refers to it on several points. In particular, he quotes Benjamin's statement that Kafka "sacrificed truth for the sake of clinging to transmissibility",[511] interpreting it as follows: in the present crisis of tradition, transmissibility is only possible in the absence of Lehre. Kafka's parables are up to the task of transmissibility in their form, but only at the price of losing their content. Due to this peculiar state of affairs, Lehre can only be communicated *in absentia*; seen from the perspective of the receiver, it can only be communicated *in ignorance*.[512]

The man from the country who comes to the law, says Schonfeld, begins with a misconception about it; he believes that the law is universal and objective, equal and open to all. But the law he approaches is revealed, by the end of the parable, as intended for him alone, as a singular law: "this gate was made only for you".[513] And like the gate, the doorkeeper has been waiting for this particular man alone. The knowledge of the doorkeeper, says Schonfeld, is the knowledge of the appropriate moment; his fundamental saying is "not at this moment". Schonfeld curiously suggests that the man from the country is a Socrates and the doorkeeper his *daimon*:

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[510] Schonfeld, *The Remnant*, 17.

This idea comes close to Cover's distinction between imperial and paideic types of law, as well as between the coercive and the hermeneutic impulses.

[511] CB, 565.

[512] Schonfeld, *The Remnant*, 22–24.

I could find in neither Benjamin nor Schonfeld a clear explanation for why this would be the case, that is, why it is necessary to sacrifice truth for the sake of retaining transmissibility. An idea by Agata Bielik-Robson may be adapted to provide an explanation: as part of the talmudic method of disagreement, a stable product of truth is rejected for the sake of an ongoing process ("game") of interpretation. *See* Bielik-Robson, "To Refute God Himself", 27–30.

[513] Kafka, *The Complete Stories*, 4.

> Like Socrates's *daimon*, this half-human, half-divine creature, Kafka's doorkeeper possesses the wisdom of the appropriate moment (*kairos*, in Greek). The *daimon* restrains Socrates; he does not allow him to follow his inclinations (for instance, to address Alcibiades) until the moment is ripe. His main function is to say: not now. And like Socrates's *daimon*, who cares only for one soul (that of Socrates), the doorkeeper likewise cares for only one soul: the soul of the *am ha'aretz*.[514]

The essential knowledge of the doorkeeper, the knowledge of the appropriate moment, says Schonfeld, "is the science of the singular".[515] "The final words of the doorkeeper", conveying, against the man's original misconception, that the law is singular, "are this teaching that the countryman, *without knowing*, waited for all his life."[516] At the end of his life, the man from the country is freed from his ignorance; he learns that the law is singular, is his own law, and is therefore not a law but Lehre.[517] The gate, in Schonfeld's reading, is the appropriate place from which to approach the law;[518] only by standing in front of the gate may one hear the Lehre.

The Gate in Benjamin's Theses on History

The gate in Benjamin's *Kafka* was likely inspired by the gate in Kafka's "Before the Law". But there is another gate in Benjamin's own *oeuvre* which might be closely related to the gate in *the Kafka*. In his collection of theses titled "On the Concept of History", a text discussed earlier in this chapter, we find another gate. Benjamin's text addresses theology, historical materialism, Marxism, and class struggle, but only in the last thesis[519] invokes the Jewish Lehre—the torah:

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[514] Schonfeld, *The Remnant*, 25.

[515] Schonfeld, *The Remnant*, 26.

[516] Schonfeld, *The Remnant*, 27.

[517] Schonfeld, *The Remnant*, 32–34.

[518] In an anti-Paulinian polemics, Schonfeld claims that to enter the law is to violate it.

[519] This was omitted by Benjamin in later drafts but retained in the GS and SW.

> The soothsayers who queried time and learned what it had in store certainly did not experience it as either homogeneous or empty. Whoever keeps this in mind will perhaps get an idea of how past times were experienced in remembrance—namely, in just this way. We know that the Jews were prohibited from inquiring into the future: the Torah and the prayers instructed them in remembrance. This disenchanted the future, which holds sway over all those who turn to soothsayers for enlightenment. This does not imply, however, that for the Jews the future became homogeneous, empty time. For every second was the small gateway [*die kleine Pforte*] in time through which the Messiah might enter.[520]

This is quite a dense paragraph, and I will not attempt to unpack it fully. It brings together several themes we have already mentioned: remembrance, the relation to past and future, and the interdependence of time and text. Soothsayers are those who see the future in the same way an old man might remember his past. Turned into text, time becomes a book one can leaf through in either direction. The beggar on the corner bench knows this, and so he seeks to blot out and rewrite the pages of his past, to play with remembrance. His actions are opposed to the ones of "those who turn to soothsayers for enlightenment", because unlike the latter, who ask to close off the future and its possibilities, the beggar opens up the solidified past. If the past lives only in remembrance, then unlocking its possibilities works through forgetting. "Don't forget the best!" writes Benjamin, supposedly echoing a familiar saying. "But forgetting always involves the best, for it involves the possibility of redemption."[521]

If we listen carefully to this last phrase, we may note that the "best", according to Benjamin, is not redemption but the *possibility of redemption*. By resisting the

[520] SW 4, 397.

"Sicher wurde die Zeit von den Wahrsagern, die ihr abfragten, was sie in ihrem Schoße birgt, weder als homogen noch als leer erfahren. Wer sich das vor Augen hält, kommt vielleicht zu einem Begriff davon, wie im Eingedenken die vergangene Zeit ist erfahren worden: nämlich ebenso. Bekanntlich war es den Juden untersagt, der Zukunft nachzuforschen. Die Thora und das Gebet unterweisen sie dagegen im Eingedenken. Dieses entzauberte ihnen die Zukunft, der die verfallen sind, die sich bei den Wahrsagern Auskunft holen. Den Juden wurde die Zukunft aber darum doch nicht zur homogenen und leeren Zeit: Denn in ihr war jede Sekunde die kleine Pforte, durch die der Messias treten konnte." GS 1, 704.

[521] SW 2:2, 813 / GS 2:2, 434.

temptation of soothsayers [*Wahrsager*]—which means literally, both in English and German, truth-tellers—by resisting the temptation of knowing, of possessing truth, Benjamin's "Jews" open up the possibility of redemption. One might even dare to suggest: opening up possibilities *is* redemption.

In the previous subsection we read two interpretations of Kafka's parable "Before the Law", which build on an opposition between the *talmid chacham* and the *am ha'aretz*, between the student and the ignorant. The value of these readings notwithstanding, Benjamin's *Kafka* may suggest that in his reading, the distinction between the two categories collapses, and the two merge into one.

> Among Kafka's creations, there is a clan which reckons with the brevity of life in a peculiar way. It comes from the "city in the south . . . of which it was said: 'People live there who—imagine!—don't sleep!' 'And why not ?' 'Because they don't get tired.' 'Why don't they?' 'Because they are fools.' 'Don't fools get tired ?' 'How could fools get tired ?'". One can see that the fools are akin to the indefatigable assistants. But there is more to this clan. It is casually remarked of the assistants' faces that they seem to be those of "grown-ups, perhaps even students". Actually, the students who appear in the strangest places in Kafka's works are the spokesmen for and leaders of this clan. '"But when do you sleep?' asked Karl, looking at the student in surprise. 'Oh, sleep!' said the student. 'I'll get some sleep when I'm finished with my studies.'" This reminds one of the reluctance with which children go to bed; after all, while they are asleep, something might happen that concerns them.[522]

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[522] SW 2:2, 813.

"Es gibt nun unter den Geschöpfen Kafkas eine Sippe, die auf eigentümliche Weise mit der Kürze des Lebens rechnet. Sie stammt aus der "Stadt im Süden ... , von der es ... hieß: — 'Dort sind Leute! Denkt Euch, die schlafen nicht!' — 'Und warum denn nicht?' — 'Weil sie nicht müde werden.' — 'Und warum denn nicht?' — 'Weil sie Narren sind.' — 'Werden denn Narren nicht müde?' — 'Wie könnten Narren müde werden!'" Man sieht, die Narren sind mit den nimmermüden Gehilfen verwandt. Es geht aber mit dieser Sippe noch höher hinaus. Beiläufig hörte man von den Gesichtern der Gehilfen, sie ließen "'auf Erwachsene, ja fast auf Studenten schließen'". Und in der Tat sind die Studenten, die bei Kafka an den sonderbarsten Stellen zum Vorschein kommen, die Wortführer und Regenten dieses Geschlechts. "'Aber wann schlafen Sie?' fragte Karl und sah den Studenten verwundert an. — 'Ja, schlafen!' sagte der Student. 'Schlafen werde ich, wenn ich mit meinem Studium fertig bin.'" Man muß an die Kinder denken: wie ungern gehen sie zu Bett! während sie schlafen, könnte doch etwas vorkommen, was sie beansprucht." GS 2:2, 434.

Benjamin's quotes shift from Kafka's short story *Children on a Country Road*, through Kafka's novel *The Castle*, and to another of his novels, namely, *Amerika*. But what is important for our purpose is that he puts fools, assistants, and students in one basket, as belonging to one "clan" in Kafka's world.[523] Both fools and students never sleep, and by so doing they fulfil the wish of children to delay their going to bed indefinitely. Elsewhere Benjamin writes the following on the difference between adults and children: "An adult relieves his heart from its terrors and doubles happiness by turning it into a story. A child creates the entire event anew and starts again right from the beginning."[524] Like children, like fools, Kafka's students do not busy themselves with the acquisition of knowledge. Their study is not a countermeasure to ignorance; quite the opposite, it is a practice of maintaining ignorance. They are students because they do not know, because they never grow tired of repeating the same thing over and over again, without sleep, since at every such moment something might happen that concerns them, every such moment might be the gate through which the messiah might enter.

* * *

In this chapter, we started with Benjamin's quote on the law studied but not practiced which is the gate to justice. After exploring some of the intertext of this quote, we focused on two main components: the notion of law and the image of the gate. In the section on law we asked what serves as a model for Benjamin's "law which is studied but no longer practiced", to which we proposed two answers. The first, based on a comment by Benjamin, pointed to the halakhic laws

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[523] Elsewhere in *the Kafka* Benjamin writes: "Folly lies at the heart of Kafka's favorites—from Don Quixote via the assistants to the animals." CB, 565.

"Die Torheit ist das Wesen der Kafkaschen Lieblinge; von Don Quijote über die Gehilfen bis zu den Tieren." BR, 763.

[524] SW 2:1, 120.

"Der Erwachsene entlastet sein Herz von Schrecken, genießt ein Glück verdoppelt, indem er's erzählt. Das Kind schafft sich die ganze Sache von neuern, fängt noch einmal von vorn an." GS 3, 131.

of diet and ritual purity. This suggestion was closely related to the characterisation of Kafka's world, discussed in depth in the previous chapter, as a Vorwelt, and to the depiction of his stories as a mighty creature. The second, relating back to Benjamin's essay "Toward the Critique of Violence", referred to the rabbinic refusal to carry out the death penalty. In the section on the gate, we connected the gate in the quote to two gates, one from Kafka's work and one from Benjamin's. In our discussion of the first narrative—Kafka's parable "Before the Law"—we invoked the two rabbinic terms for the student or scholar (*talmid chacham*) and the ignorant (*am ha'aretz*). The gate served as the intersection of law and justice, understood either as negotiation or as Lehre. In the second text—Benjamin's theses on history—the gate related to the openness of the future, and our discussion eventually led to the collapse of the distinction between the student and the ignorant.

Conclusion

Engaging the timeless question of law, Benjamin's "Toward the Critique of Violence" occupies a prominent place not only within Benjamin scholarship but also across broader debates in political philosophy. As this study has argued, the project initiated in the *Critique* continues in Benjamin's later, more literary essays on Kafka, and a conceptual reading must be supplemented by a careful hermeneutic. By developing the methodology of talmudic reading in relation to Benjamin's *Kafka*, this study has sought to contribute to the fields of literary studies and the philosophy of religion by proposing talmud as an interpretive framework. At the same time, within Jewish studies, it has aimed to expand the possibilities for engaging with talmudic discourse by approaching the Talmud not only as a conceptual resource but also as a hermeneutical tool.

I have argued that in the *Critique* Benjamin does not succeed in articulating an alternative to mythical law, the oppressive and inherently unjust form of law. In *the Kafka*, he returns to the search for a just law, although in a transformed mode of inquiry. The study has been guided by two central, interrelated questions: one concerning the notion of law in Benjamin's *Kafka*, the other concerning the distinctive style of Benjamin's text. As I have sought to show, these two questions—the conceptual and the formal—are inseparable, for Benjamin's text does not merely articulate a notion of law but actively shapes it through its mode of writing. This argument was developed in dialogue with the textual tradition of rabbinic literature, in particular the interplay between its two central categories: halakhah and haggadah. To address the two intertwined questions regarding Benjamin's text, I developed a method of reading that draws on central features of talmudic hermeneutics. This method, which I have termed talmudic reading, attends closely to intertextual connections and to the role of images and narratives, unpacking the text without reducing it to a single determinate meaning.

Towards Another Notion of Law

The model of law depicted in the *Critique* can be described as mythical law. Such law—established and sustained through violence—emerges as a manifestation of power, the arbitrary work of fate personified by the Greek gods. In *the Kafka*, Benjamin juxtaposes the oppressive law characterising the Vorwelt—a swamp-like realm identified with Kafka's world—with the legal world of torah. The biblical creation myth—the formation narrative of the world of torah—imposes both material form and legal order upon chaos. While Benjamin does not identify the world of torah with that of myth, or biblical law with mythical law, nor does he sustain the sharp opposition between them that characterises the *Critique*. Rather, myth—whether Greek or biblical—serves to introduce narrative into the void of the Vorwelt.

Existence in the Vorwelt is meaningless; myth seeks to make meaning. It imposes order on chaos (as in the creation narrative of Genesis) and gives form to formless powers (as with the Greek gods). Yet in doing so, myth accomplishes little more than naming existing forces and legitimising their oppressive power as law. Nonetheless, this remains a step forward, since—as Cover reminds us—meaninglessness itself can be a mode of oppression, and the act of making-meaning, with its destabilising force, can already serve as a form of resistance to the violence of law. For Benjamin, then, the world of torah offers a countermeasure to the Vorwelt not because its laws are just in themselves, but because, as a text, it lends itself to endless interpretation and ongoing meaning-making. Justice is thus not located in the enforcement of law, but in its study: in sustained engagement with the production of meaning.

What Benjamin could not yet grasp in the *Critique* is that the tradition of torah, of rabbinic reading, offers not just law in the form of norms or commands, but a textual and interpretive model for negotiating the violence of the law. What he could not name in the *Critique*, Benjamin discovered in *the Kafka*: a law that operates not through enforcement, but through hermeneutics. Since the nature of this law resists formulation, Benjamin does not present it as a philosophical thesis; instead, he stages it through the form of *the Kafka* itself. Not unlike talmudic texts, *the Kafka* performs interpretation rather than arguing for it. In light of

Boyarin's dictum that all exemplary is fiction, Benjamin's choice to focus on Kafka—a writer of fiction—seems far from incidental. And it is not only the subject matter of Benjamin's essay that is fictional, his mode of presentation often adopts fictional forms as well.

Even so, Benjamin remains acutely aware of the limitations of Kafka's work, and by extension, of his own project:

> The gate to justice is study. Yet Kafka doesn't dare attach to this study the promises which tradition has attached to the study of the Torah. His assistants are sextons who have lost their house of prayer; his students are pupils who have lost the Holy Writ.[525]

Through Kafka, Benjamin acknowledges the inaccessibility of tradition, whose key has long been lost, rendering it meaningless and offering no more than the possibility of contentless transmission. His embrace of forgetting, his caution with regard to truth, his cultivation of ignorance—all suggest a recognition that the hermeneutic project he champions may itself be doomed to failure.

Making the Cloud Rain

This study began with the opening lines of Kafka's parable "Before the Law". The parable of the man from the country (*Mann von Lande*, *am ha-aretz*) who spends his whole life before the gate of the law served to break into the enigmas that set this study in motion. There, I drew an analogy between the cloudiness in and of the parable, and the enigma in and of Benjamin's *Kafka*. The cloudiness in Kafka's parable referred to the inaccessibility of the law in the narrative; the cloudiness of the parable referred to its opacity of meaning. Similarly, the enigma in Benjamin's *Kafka* concerned the nature of law in the narrative, and the enigma of *the Kafka* concerned its cryptic way of meaning-making. As we approach the conclusion of the study, we may now present the parable's ending:

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[525] SW 2:2, 815.

> At length his eyesight begins to fail, and he does not know whether the world is really darker or whether his eyes are only deceiving him. Yet in his darkness he is now aware of a radiance that streams inextinguishably from the gate of the law. Now he has not very long to live. Before he dies, all his experiences in these long years gather themselves in his head to one point, a question he has not yet asked the doorkeeper. He waves him nearer, since he can no longer raise his stiffening body. The doorkeeper has to bend low toward him, for the difference in height between them has altered much to the man's disadvantage. "What do you want to know now?" asks the doorkeeper; "you are insatiable." "Everyone strives to reach the law," says the man, "so how does it happen that for all these many years no one but myself has ever begged for admittance?" The doorkeeper recognises that the man has reached his end, and, to let his failing senses catch the words, roars in his ear: "No one else could even be admitted here, since this gate was made only for you. I am now going to shut it."[526]

The two interpretations of the parable I have discussed—by Vivian Liska and Eli Schonfeld—both compared the man from the country to the rabbinic ignorant (*am ha-'aretz*) and the doorkeeper to the rabbinic scholar (*talmid chacham*), while each offered a different explanation for the symbolism of the gate. In Schonfeld's reading, the gate is a place of study. It is the place from which one can hear the teaching, the Lehre, whose content is that there is no law—at least not a universal, objective law that applies to all. In Liska's reading, the gate is a site where the law—represented by the doorkeeper, is negotiated with creaturely life—

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[526] Kafka, *The Complete Stories*, 4.

"Schließlich wird sein Augenlicht schwach, und er weiß nicht, ob es um ihn wirklich dunkler wird, oder ob ihn nur seine Augen täuschen. Wohl aber erkennt er jetzt im Dunkel einen Glanz, der unverlöschlich aus der Türe des Gesetzes bricht. Nun lebt er nicht mehr lange. Vor seinem Tode sammeln sich in seinem Kopfe alle Erfahrungen der ganzen Zeit zu einer Frage, die er bisher an den Türhüter noch nicht gestellt hat. Er winkt ihm zu, da er seinen erstarrenden Körper nicht mehr aufrichten kann. Der Türhüter muß sich tief zu ihm hinunterneigen, denn der Größenunterschied hat sich sehr zuungunsten des Mannes verändert. 'Was willst du denn jetzt noch wissen?' fragt der Türhüter, 'du bist unersättlich.' 'Alle streben doch nach dem Gesetz', sagt der Mann, 'wieso kommt es, daß in den vielen Jahren niemand außer mir Einlaß verlangt hat?' Der Türhüter erkennt, daß der Mann schon an seinem Ende ist, und, um sein vergehendes Gehör noch zu erreichen, brüllt er ihn an: 'Hier konnte niemand sonst Einlaß erhalten, denn dieser Eingang war nur für dich bestimmt. Ich gehe jetzt und schließe ihn.'" Kafka, *Gesammelte Werke*, 121.

represented by the man from the country. Justice, accordingly, is nothing but this inexhaustible effort of negotiation in the interaction between law and life.

But there is another element in the quote above, one that has been neglected here so far: the shimmer of light (*Glanz*) that the man sees toward the end of his life.[527] Benjamin's brief reference to this parable, pointing at the striking "cloudy spot [*wolkige Stelle*] at its interior",[528] could be hinting at the light that shines through the darkness. But Benjamin does not elaborate on this point, and leaves us to wonder.

Instead of speculating on the significance of this light, I complement the parable with a narrative that presents a similar image. Before doing so, it is worth noting particular features of the shimmer of light in the parable "Before the Law". As narrated in the parable, the man could only discern the light when his eyesight grew dim. For the most part, the man is at a loss: he begs, he asks, he forgets. The light is the only thing he sees clearly, and precisely at the moment when darkness falls around him. Then, immediately after this glimpse of light, the parable discloses that the man's days are coming to an end.

There is a story by another of Benjamin's favourite authors whose ending recalls the light image in Kafka's parable. In a letter dated 18 January 1934, Benjamin wrote to Scholem:

> You know the exceptional interest with which I read all of Agnon's writings that are accessible to me. I have just finished this volume, and I will often refer back to it. For now, I bring it into the conversation whenever possible. I have yet to find anything more beautiful in his works than "The Great Synagogue," which I regard as a tremendous masterpiece. […] Agnon displays mastery in every piece, and if I had become "a teacher in Israel"—but I could have just as easily become an ant lion—I would not have been able to refrain from a lecture on Agnon and Kafka.[529]

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[527] Liska points out the significance of this detail, which often goes unnoticed, in "Before the Law stands a doorkeeper", 183.

[528] SW 2:2, 802.

[529] Benjamin and Scholem, *The Correspondence*, 94.

"Du weißt mit welchem außerordentlichen Anteil ich alles lese, was mir von Agnon zugänglich ist. Auf diesen Band, den ich eben beendet habe, werde ich noch öfters zurückgreifen. Zunächst weise ich darauf hin, wo es mir im Gespräch möglich ist. Schöneres habe ich nicht in ihm

According to his own testimony, Benjamin took a close interest in the work of the Hebrew modernist writer S. Y. Agnon, particularly in relation to Kafka's work. Agnon's "tremendous masterpiece" is a short story about the discovery of an ancient synagogue. "The Great Synagogue" begins with a group of children who, while playing an imaginary game of rebuilding the temple, discover a roof tile buried in the sand. As the story progresses, a perfectly preserved building gradually emerges, ultimately revealed to be an ancient synagogue. The final paragraph vividly depicts the building's interior:

> And twin carved doves spread their wings, the wings of the dove covered with silver, and a great prayerbook was set on the lectern, a prayerbook written in lovely script on deerskin. Everything was in its place, intact. Only the Eternal Light was on the point of going out.[530]

Robert Alter—who mentioned this story in his book on Benjamin, Scholem, and Kafka—pointed to the "artful ambiguity" in its closing remark. The miraculous incident—the Eternal Light which continued to burn underground—is undermined by the observation that it is about to die out.[531] "[T]he wondrous renewal of the past presents a soul-stirring spectacle", writes Alter, "but it comes too late in the history of faith and culture—the return can no longer take place."[532] In Agnon, he further observes, we find a process of judgement similar to Kafka's,

gefunden als "die große Synagoge", die ich als ein gewaltiges Musterstück ansehe. […] Musterhaft ist Agnon in jedem Stück und wenn ich "ein Lehrer in Israel" geworden wäre—aber ebenso leicht hätte ich wohl ein Ameisenlöwe werden können—so hätte ich mir eine Rede über Agnon und Kafka nicht nehmen lassen." BR, 597–98.

[530] Agnon, quoted in Alter, *Necessary Angels*, 16–17.

"הבית גדול ורחב ידיים והארון מלא ספרי תורה. ותאומי יונה פורשות כנפיים וכנפי יונה נחפו בכסף וסידור גדול מונח על התיבה והסידור כתוב בכתב נאה על קלף צבי. והכל על מקומו בשלום, רק נר התמיד היה סמוך לשקיעתו."

[531] As part of the instructions for constructing the temple, Exodus 27:20–21 includes the commandment to kindle a perpetual light within it. In synagogues—traditionally regarded as "minor temples" (b. Megillah 29a)—it is customary to place a light that symbolises the Eternal Light of the temple.

[532] Alter, *Necessary Angels*, 17.

only with the "guise of tradition". Agnon's nostalgic enchantment of tradition is the guise which allows him to "ironically subvert [it] from within".[533]

Kafka has nothing of nostalgic enchantment. There is nothing in the parable that connects the light emanating from the gate with the Eternal Light of a synagogue or a temple. The light in Agnon's "The Great Synagogue", which is on the point of dying out, indicates that we have come too late. In Kafka's "Before the Law", the temporality is reversed: as the doorkeeper repeatedly conveys—not now, not yet—the man's requests come too early. This reversal is reflected in the order of light and darkness. In Agnon, the light is followed by darkness; in Kafka, darkness precedes the light. Not only that, but in the latter, darkness arises from the obscurity of perception.

The cloudiness of the parable is twofold: it concerns the nature of law within the narrative, and the function of meaning-making beyond the narrative. The focus on narratives—and narratives whose meaning, unlike ordinary parables, cannot be smoothly unfolded on one's palm—leaves us with cloudiness, with an enigma. Benjamin's enigma, like Kafka's cloudiness, cannot be fully dispelled. It is not there to be solved, but to disturb, to disrupt the continuous flow of thought. The process of meaning-making, of turning nonsense—that is, narratives and images whose function goes beyond "making sense"—into sense, is a continuous effort. At any point, one is left with some nonsense at hand. Throughout these pages, I have not tried to dispel the enigma, clear away the cloud—which at any rate would be impossible—but only occasionally, to borrow an expression from Adorno,[534] make the cloud rain.

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[533] Alter, *Necessary Angels*, 17.

[534] I am paraphrasing an expression from Adorno's letter to Benjamin dated 17 December 1934, where he writes: "There is more here than a 'cloud', namely dialectics; it is certainly not 'illuminating' the cloudiness, but dialecticing—making the parable rain, so to speak—which remains the innermost concern of a Kafka interpretation." Benjamin, *Benjamin über Kafka*, 104 (my translation).

"Hier ist mehr als 'Wolke', nämlich Dialektik und die Wolkengestalt gewiß nicht 'aufzuklären' aber durchzudialektisieren—gewissermaßen die Parabel regnen zu lassen—das bleibt das innerste Anliegen einer Kafkainterpretation."

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