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**KAFKA'S BEFORE THE LAW AS A CROSS-ROAD OF LITERATURE,
PHILOSOPHY, PSYCHOANALYSIS AND THEOLOGY**

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Abstract: Kafka has been discussed at length both in literature theory and in philosophy. This study analyses Kafka's short but enigmatic text *Before the Law* this text both as an independent narrative and as a part of Kafka's novel *The Trial*, and tries to determine the difference between the two 'versions'. This analysis is based on the assumption that Josef K., the protagonist of *The Trial*, represents modern man, who is *guilty* indeed, instead of interpreting him as a victim of some kind of oppressive system. Therefore, this study focusses on the specific qualities of the spacing before the Law, with all its artistic, philosophical and theological peculiarities, and intends to demonstrate that the space before the law constitutes a crossroad of Literature (art), Philosophy, Psychoanalysis, and Theology within the context of law and justice.

Key words: Kafka, Before The Law, The Trail, Derrida, Moses Maimonides, Law, Justice.

1. Introduction

Since Kafka's aporetic "legend" called *Before the Law* elaborates more on the peculiar *stance* of (a) man (from the country) *before the law* than on the semantic content of (the) law itself, this study aims to focus on the *pre-position* "be-fore" in the title: The man of whom the story tells comes *from* the country *to* the law, but cannot enter *in-to* the law which is kind of 'bared' by a Tartaric looking door-keeper. This man from the country does not stand alone at this peculiar spot. Actually, it is a quite crowded place where he *got stuck*: both Josef K. and the reader *are stuck there*, and maybe even man as a species damned to a *Dasein-before-the-law*. This *situ-ation* is a result of the writer's peculiar attitude. Kafka's narrative strategy seems to consist in strictly withholding any knowledge about the law itself. Except the vague descriptions conveyed to the protagonist by the doorkeeper who seems to possess some kind of *insider* information regarding the law, and the light which the man from the country can see at the end of his life, no distinct knowledge of the law as such is mentioned: "In his tales, we never get to see or know the Law; we never really get to meet the denizens of the Castle (or, when we do, we do not recognize them as such, so fixated are we on the fleeting glimpses and symbolic signs that stand in for truth in our world). Kafka scrupulously prevents us from learning anything about these mysteries" (Martel 2011, 92).

Notwithstanding possible expectations, Kafka does not refer to any already existing philosophical or theological content. On the contrary, the deliberate non-representation of the law itself is a strategy that serves the purpose of approaching law as a *problem*, and *not as a solution*. Therefore, the signification "before" refers neither to a certain space at a certain time, but remains totally abstract, and shifts the whole narrative into the philosophical and theological context of (*genea-logical priority*). This enigmatic style of Kafka's legend can therefore be compared to Plato's cave allegory or the following parable of Moses Maimonides in his *Guide for the Perplexed*: "I shall begin the discourse in this chapter with a parable that I shall compose for you. I say then: The ruler is in his palace, and all subjects are partly within the city and outside the city. Of those who are within the city, some have turned their backs upon the ruler's habitation, their faces being turned another way. Others seek to reach the ruler's habitation, turn toward it, and desire to enter it and to stand before him, but up to now they have not seen the wall of the habitation. Some of those who seek to reach it have come up to the habitation and walk around searching for its gate. Some of them have entered the gate and walk around in the antechambers. Some of them have entered the inner court of the habitation and have come to be with the king, in one and the same place with him, namely, in the ruler's habitation. But their having come

into the inner part of the habitation does not mean that they see the ruler or speak to him. For after coming into the inner part of the habitation, it is indispensable that they should make another effort; then they will be in the presence of the ruler, see him from afar or from nearby; or hear the ruler's speech or speak to him" (Maimonides 1972, 342).

Although the content of Maimonides evokes certain association with Kafka's work, Maimonides' text has been quoted only to demonstrate the literary abstraction level on which the legend operates in the technical sense. Maimonides had a semantic content in mind, since he thinks in theological (Judaic) terms; but it cannot be taken for granted that Kafka conveys the same ideas.

2. Derrida's *Préjugés*

It is not surprising that Jacques Derrida showed special interest in this *spacing* before the law. Firstly, Derrida was used to a strain of thought that does not take any *pre*-supposition(s) or *pre*-condition(s) as starting point from his early studies in Husserl's phenomenology. When Husserl meditates on whether the "idea of science that shall be grounded absolutely" is legitimate or not, he underlines that such an idea is "obviously [...] something we must not *pre*-suppose, to say nothing of taking any norms as already established [...] – or perchance a whole system of norms. [...] As beginning philosophers we do not yet accept any normative ideal of science" (Husserl 1960, 7-8). Secondly, deconstruction itself has an obsession for the phenomenon of "spacing" under all possible aspects: "The term 'spacing' (*espacement*)," as Louise Burchill explains, "is absolutely central to Derrida's entire corpus (...) Two characteristics have been continually underlined in, as Derrida himself puts it, this analysis of spacing. The term designates, first, an interval or 'in-between' that would be the index of an irreducible exteriority, rendering it thereby impossible for an identity to be closed up within its proper interiority, but it is also meant to be the index of a 'productive,' 'genetic' movement that indicates an irreducible alterity" (Burchill 2011, 27).

The prefix *pré* in the (according to the author) untranslatable French title of Derrida's analysis of Kafka's legend, *Préjugés*, brings the "*ante porta*" (De Ville 2011, 90) aspect of the legend, in other words, the question of the logical priority of a pre-juridical, if not pre-semantic and even pre-logical character of the spacing before the Law to the fore. The use of this prefix can be considered as a hint at a state of mind, a human, maybe all too human status even *before logos* – *logos* in the sense of "language", "reason" and "meaning" (Hörisch 2009, 14) as this Greek word is generally translated. And insofar it is taken for granted that *man* can be designated as *zoon logon echon*, this pre-logical status can be seen in close relation to the fundamental onto-semiological problematic of the "jagged line of

demarcation between *physis* and meaning” (Benjamin 2002, 166). According to Herder this demarcation line constitutes the difference between animal and man, who, “already as an animal has language” (Herder 1966, 87), but must also “have the logos or –so the more sophisticated understanding of this (Greek) formula– be possessed by, adhere and belong to the logos” (Hörisch 2009, 13) in order to be called man.

A pre-logical state of mind corresponds to a stage in human development that Jack London called *Before Adam* (London 1907); but while the protagonist of London's novel seems to kind of remember his past, another contemporary of him, namely “Rotpeter” from Kafka's *Report to an Academy*, cannot share any memories of his “former life as an ape”, since Rotpeter has left his “apehood” behind him already “five years” ago – a period that may be short in terms of the calendar but is an *infinitely long* one to gallop through” (Kafka 1996, 81).

In his essay Derrida draws on important examples while reflecting on the logical priority of a “law of the law” which might shed a light on the rather abstract subject matter of the legend. One of these examples is Kant's “as if”: “Further, I was concerned with the ‘as if’ (*als ob*) in the second formulation of the categorical imperative: ‘Act as if the maxim of your action were by your will to turn into a universal law of nature.’ (...) That would be the *law of the law*. Pure morality has no history: as Kant seems as first to remind us, no intrinsic history. (...) What remains concealed and invisible in each law is thus presumably the law itself, that which is the law of these laws, the being-law of the laws”, may they be “moral, judicial, political, natural etc.” (Derrida 1992a, 190-192) In terms of logical priority or genealogy the “law of the law” exists *before* the law.

Another important example Derrida cites is the primal patricide in Freud's *Totem and Taboo*. Freud's reconstruction of the birth of conscience describes a *pre-human* horde that does really justice to the term *before* the law: “The earliest moral precepts and restrictions in primitive society have been explained by us as reactions to a deed which gave those who performed it the concept of ‘crime’. They felt remorse [but how and why, if this is *before* morality, *before* law? J.D.] for the deed and decided that it should never be repeated.” (Derrida 1992a, 198) Derrida seems to be fascinated by Freud's question, how it was possible that the perpetrators of the very first patricide felt remorse at first place.

These heavy weight examples demonstrate that the “spacing” before the law obviously constitutes a crossroad where literature, philosophy, psychoanalysis and theology cannot help but to pass by.

3. The Legend in the Context of *The Trial*: Church and Bank

At this point it is enlightening to analyse Kafka's legend in the light of *The Trial*, since the novel encompasses diametrically opposed structural spheres of action which create the context in which the legend fulfils its specific function. In *spatial* terms these are the the bank on the one hand, and the court on the other hand. The "Cathedral" scene in Chapter Nine takes place in a church, which is attached to the court and belongs therefore to its sphere of the action.

Obviously the church is not a place where Josef K. is usually to be found. He works in and for a bank, where people submit to another God. The bank is the realm of the "visible God." The metaphor "visible God" from *Timon of Athens* – favoured by both Marx reading Shakespeare and Derrida reading Marx reading Shakespeare (Derrida 2006, 51) – refers to the *hegemony of the economic genre over the others in modern times*, as Lyotard puts it (Lyotard 1988, 180). Hörisch, who also cites Shakespeare's expression plus the statements of Marx and Derrida, defines money as *the "onto-semiological leit-medium" of the New Age*, in opposition to the "Eucharist" provided by the Christian church in the Middle Ages. The establishment of money as the "God term" is completed "in the nineteenth century, (when) money finally achieves the status of modernity's god and becomes the primary medium of social synthesis." (Hörisch 2000, 80)

Since Josef K. belongs to the bank, it can at least be assumed that he represents a state of mind which is under the hegemony or supremacy of the economic genre. This could then be the reason why Josef K. acts like 'like a peasant' in the metaphorical sense, when he is suddenly confronted with a priest, namely the "prison chaplain", who is attached to the court and preaches in a logic entirely alien to the protagonist.

It must be underlined that there exists obviously an incompatibility between Josef K.'s state of mind and the mind-set of both the court and the priest. As we know from the bank scenes at the previous chapters Josef K.'s life seems to be devoted to and entirely absorbed by money, which is *the magic fetish of a*: "(...) visible religious cult, perhaps the most extreme there ever was. Within it everything only has meaning in direct relation to the cult: it knows no special dogma, no theology. (...) This concretization of the cult connects with a second characteristic of capitalism: the permanent duration of the cult" (Benjamin 1996, 288).

Therefore, it is not at all the metaphysical service in the house of the invisible God that is the reason of Josef K.'s visit. For him this visit consists merely of a touristic visit, just as a nuisance he has to part of bank business: "I have had you summoned here," said the priest, 'so that I can talk to you.' 'I didn't know that,' said K. 'I came here to show an Italian (bank customer) round the cathedral.' 'Forget such matters, they are

irrelevant,' said the priest. 'What is that you have in your hand? Is it a prayer-book?' 'No,' replied K., 'it's an album of the sights of the city.' 'Put it down,' said the priest. K. threw it away so violently that it opened up and skidded across the floor, crumpling some pages." (Kafka 2009, 151).

If the state of mind of Josef K. and that of the priest are compared with each other, an important difference between both men can be discerned. While Josef K. is ignorant regarding the explanations of the priest, the priest seems to have a rather clear insight into Josef K.'s situation. The latter misses constantly the message of the priest, and his annoying comments even cause an emotional outburst of the calm man, who sincerely wants to help Josef K. in his "case": "Are you angry with me?' K. asked the priest. 'Perhaps you don't know what kind of court you're serving.' There was no reply. 'Of course, that's only my experience,' said K. It was still silent above him. 'I didn't mean to insult you,' said K. Then the priest shouted down at K.: 'Can't you see two steps in front of you?' It was shouted angrily, but at the same time as if by a person who can see someone falling and shouts out automatically, throwing caution to the winds because he is horrified himself." (Kafka 2009, 152) This is how the priest is eventually compelled to give Josef K. a true lesson into the matter by telling him the legend.

4. The "Case" of Josef K.

The action of the novel leads to the narration of the legend, with the aim to demonstrate to Josef K. (who, perplexed as he is, cannot see two steps in front of him) that he is in the same situation as the man from the country: before the law. Insofar the narrative functions as a "parable" in the sense how Moses Maimonides would understand this genre. Kafka knew Maimonides through Franz Rosenzweig's *Star of Redemption*: "Like Maimonides, Rosenzweig describes in his book the *process* that leads from shared everyday life towards turning to God. (...) In this way one passes from the 'miracle' (*Wunder*) of the revelation to 'illumination' (*Erleuchtung*), which consists in considering the divine reality, looking towards it either directly, inasmuch as it is invisible, as it happens in Jewish liturgy, or indirectly, inasmuch as it is incarnate, as in Christian liturgy" (Kajon 2014, 161).

Maimonides was not only a specialist in the Judaic Law, the *Halacha*; importance lies also in his efforts to overcome "conflicts between Bible and philosophy" by means of an "allegoric interpretation" of the Hebrew scripts. For Maimonides "the bible was a philosophical book, whose deeper meaning had to be deciphered in the light of philosophy. [...] thus the poetical elements of the Hebrew Bible" were emphasized. "Maimonides [...] praises the beauty of parables. [...] He differentiates two kinds of parables. The metaphorical meaning of *single* expressions should be read

different than the parable-character of *whole narratives*. [...] he also announced the so-called historical parts and their revelations as allegories of philosophical insights. This promoted the sense for oriental-poetical forms of expression [...] (in order to) sort out the conflict between Greek-Arabic (Indo-German and Semitic) ratio and the wording of the revelation.” (Flasch 2006, 141-142)

Just like Maimonides tries to guide “perplexed” people by means of telling his parables, the priest in the *Trial* tells the legend to Josef K. in order to enlighten him about his own situation.

The biggest problem is of course that banker Josef K. does not know that he is in a precarious situation. For this reason, the *perplexed* Josef K. does not even recognize himself in the tale. Contrary to the court and the church, which devote themselves entirely to the quest of transcendence, Josef K. does not feel this urge. He prefers to cling to his figures, numbers and rationality, and is happy when he can make these ends meet. It is this *incompatibility between the bank and the court or church* that creates the deep structure of the novel.

In the eyes of the court and the church, i.e. from the metaphysical point of view of transcendence, Josef K., who is totally entangled in his bank business and remains thoroughly immanent, is a failure. Briefly, he does not fulfil the human quest of transcendence. The tale has the intention to tell Josef K. that he *is before the law*, like the man from the country, since money does not create any meaning. But Josef K., under the spell of money, has not only neglected totally the transcendental quest or his “case”, at the same time he is “guilty”.

5. Josef K.’s Guilt

In order to find out more about Josef K.’s guilt it is necessary it is crucial to underline the antagonistic contradiction and incompatibility between the bank and the court (plus church). This contradictive structure is telling, when compared with the process in which large parts of Europe went through a shift from transcendence to immanence. The shift from God to money as new “Leitmedium” that began in the Renaissance, and this transition is not as innocent as it appears at first glance. If money economy and private property are to be established, it has a (spiritual) price. Money economy could not leave the metaphysical God where he had been during the Middle Ages, and eventually, latest in the 19th century, took him down from his throne in the center of social synthesis. Nietzsche has more dramatic words for this usurpation: “God is dead. God remains dead. And we have killed him. How shall we comfort ourselves, the murderers of all murderers? What was holiest and mightiest of all that the world has yet owned has bled to death under our knives:

who will wipe this blood off us? What water is there for us to clean ourselves?" (Nietzsche 1974, 181).

Although detailed positive evidence is very scarce about Kafka's Nietzsche studies, and despite the fact that Max Brod denied any "connection" between Kafka and the philosopher (Brod 1966, 259), research has revealed a connection at least within the context of the crises of language: Kafka seems to have "participated in the [...] discourse of language critique at the turn of the century" (Oschmann 2009, 131). But language critique was not the only domain where Kafka met Nietzsche. Kafka knew surely also many other fundamental ontological and anthropological items Nietzsche had brought onto the agenda of his time, and of course Nietzsche's "God is dead" motive.

Josef K. had not only neglected man's metaphysical quest (his "case"), but he had even actively conspired against the metaphysical efforts of the court and the church. At least the fact that he is to be executed in the last chapter should make everybody suspicious of the innocence of the accused. And if Josef K. is *sentenced to death*, he must have committed some sort of a capital crime.

6. The Legend as Independent Narration

So far it was convenient to analyze Kafka's legend within the context of *The Trial*. But the text was also published separately by Kafka himself. The separate publication of the legend has the interesting effect that it is not tailored custom-made for Josef K. but told directly to the reader as members of the species man. It is this broad range of the tale why it fits at the same time to Josef K.'s existential status. Being before the law is an ontological and semiological position that is valid also for the modern condition. The relation between man in general and modern Josef K. is similar to the relation between the term "mortal man" and the man Socrates in the famous syllogism. This kind of highly abstract interpretation of man's situation in the legend as man's universal *status quo* has at least the merit to shed light on the law itself: it is obvious that this law has something to do with man's anthropological essence. Why should a human being strive to get inside the law if this law is irrelevant to him – if this law is not somehow *his* law, if it does not concern *him* somehow?

If other living creatures from the countryside, like animals, were at stake in the legend, *their* law could easily be defined: "(...) no harder fate can be thought of than that of the beast of prey pursued through the wilderness by the most gnawing torment, rarely satisfied and even then in such a way that satisfaction is purchased only with the pain of lacerating combat with other animals or through inordinate greed and nauseating satiety. To hang on to life madly and blindly, with no higher aim than to

hang on to it; not to know that or why one is being so heavily punished but, with the stupidity of a fearful desire, to thirst after precisely this punishment as though after happiness - that is what it means to be an animal" (Nietzsche 1997, 157). As far as it concerns the species man, there seems to be, according to Nietzsche, an ontological difference: "and if all nature presses towards man, it thereby intimates that man is necessary for the redemption of nature from the curse of the life of the animal, and that in him existence at last holds up before itself a mirror in which life appears no longer senseless but in its metaphysical significance. Yet let us reflect: where does the animal cease, where does man begin? - man, who is nature's sole concern!" (Nietzsche 1997, 157).

The difference between man and animal (according to Nietzsche) can be clearly determined: contributing metaphysical significance makes the difference. Animals do not have a metaphysical quest. Notwithstanding, they live up to *their* law. Speaking in the style of Maimonides, the animals comply thoroughly to the rules of the "Ruler." Man, on the other hand, despite being a part of nature (from the "country", from "Dasein"), is the subject of another law. He is supposed to pursue his quest for "metaphysical significance." This is according to early Nietzsche the specific function of man, of *him and only him*, and this fate (text) cannot be changed.

Now the question appears in one's mind how come that man has the necessary mental constitution to be able to create "metaphysical significance." It seems that man as species has a mind-set that enables him to couple the "logic of being and the logic of meaning" (Hörisch 2009, 9), and, in other words by the same author: "(t)o wave being and meaning, soma and sema, *physis* and significance into each other, to interweave words and things, *les mots et les choses* in such a way that they will be experienced as a reciprocal unity" (Hörisch 2000, 24). Surprisingly this ability derives actually from a deficiency, since man is kind of bared from posing the question: What is man?

When man asks this question, he does not ask about anything else, but "asks about *himself*" (Wisser 1998, 247 pp). And exactly at that point he experiences the existential dilemma that there is no definite answer for this question. Man's essence is, that he has no essence. Wisser uses the term "being without essence" for man (Wisser 1997, 25). Nietzsche calls men "the still undetermined animals" (Nietzsche 2002, 56). In Kafka's words: Man is "before the law" in the *trans-historical* sense. For this reason, he is compelled to fill this gap through his own means. This is the message of the independent legend. The expected result of the narration of the tale would be that modern readers should understand their metaphysical quest, and how little they make an effort in terms of transcendence. The pedagogical function of the legend as a parable for the perplexed could be to stir up a reflection to see oneself and modern civilization in total in the light of the "openness" of human existence and the metaphysical quest for

signification. It should be clear by now that modern society cannot be considered as a champion in this field. The hegemon(e)y of the economic genre actually prevents any trans-substantial passages between *Dasein* and meaning.

In the context of law, an important issue is the problematic of justice. Justice in Kafka's legend does not mean to comply with a certain law, but to do justice to the metaphysical quest of man. Law is not a solution but a problem, and as a problem it is to stay. Since the answer to the question: What is man? is always "open" (as the door to the law), it reveals by means of its permanent openness that all answers transform the original and genuine question into a merely rhetoric one. Such answers presume already a certain type of man – for example in the Judaic tradition there is a law of man, and this specific answer to the question regarding the essence of man as creature of the *creator spiritus* has already been presumed from the beginning. Kafka, on the other hand, keeps the question "open." In the perspective of the legend neither man's activities nor his so-called 'substantial' qualities count. What really matters first of all is how man copes with his existential situation *before* the law. The question is: how do human societies couple being and meaning in a "unified oneness", as it were a "fourfold" of (an) immortal God(s) and mortal man/men, heaven and earth (Heidegger 1995, 77) In such an onto-semiological light Kafka's legend appears in no way as the *pre*-scription of a certain law by presuming an essence of man as such. It is more likely that he tries to suggest a criterion which can be applied to human societies at all stages of history, to all world ages (*Weltalter*). In Heideggerian terms one might say that such a fourfold "requires us to consider its poetizing form, which shows that the fourfold is continually disclosed differently for different cultures" (Rickert 2013, 236).

7. Conclusion

In the independent legend Kafka narrates the legend directly to the reader without a detour like in his novel. In the *Trial* the tale is told to Josef K., the private proprietor of a modernist-monetarist state of mind, and the reader is to see *himself* critically in the protagonist. It is clear that Josef K. does not grasp the lesson. Instead of reflecting on his own status, he continues with his vain efforts to convince the priest of his banker's logic, but the priest clings steadily to the "text" which is not open to change. Therefore, it should be no surprise if Josef K. is eventually executed by "opera tenors" in the next and last chapter. In the eyes of the court and the church organization Josef K. deserves this fate, because they did try to find a solution for being before the law. Opposite to Josef K. and the bank, the court and church act in accordance with the metaphysical quest. While the court-church organization could connect between the

spheres of being and meaning, the banker Josef K. as representative of modern mankind is a failure. The functionalist money God even jealously prevents all kind of transcendence. Modern civilization moves in the opposite direction, and becomes more and more immanent, until it reaches an end-point in this abyss.

Sokel has underlined that the “opera tenors” in the *Trial* are to evoke Wagner operas and the Schopenhauerian idea of a redemption from the will through (the) death (of the *principium individuationis*). If this is the case, the reader might read the ending of the novel as an ironic description of the end-point of the history of European culture (the *Prozess*): Wagner’s music and Schopenhauer’s nihilism? It is not impossible. Kafka seems to like such double meanings: just like the German word *Prozess* designates both a trial and a process, the word *Schloss* means both castle and lock. At least Max Brod says Kafka laughed loudly while reading the manuscripts of the *Trial* to his friends – the joke is on Josef K.’s “case”: The price of money economy is philosophical nihilism as in Schopenhauer’s philosophy of a blind will and Wagner’s operas that glorify death.

In the light of the perspective of man’s standing before the law as represented in and through Kafka’s parabolical legend the court seems insofar ‘logical’ as its organization has found a way to create a rendezvous between being and meaning. If certain logo-centric tricks are applied, such as the presumption of an essence of man as a created being, this is for the deconstructionists after Kafka to judge. Kafka himself leaves the question regarding man open: The gate to the law is always open, says the text of the legend.

Therefore, it is not surprising if Derrida, as a post-modern philosopher is forced to cultivate a stance in face of man’s standing before the law. It seems that Derrida found a solution that enables him to escape the opera tenors Schopenhauer and Wagner. In his speech on justice Derrida asserts that “Deconstruction is justice.” (Derrida 1992b, 15). Although the word “justice” does not appear in Kafka’s legend, “it seems to underlie the concept of law described here” (Martel 2011, 2).

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