

Literature on (the) Trial: Benjamin, Deleuze and Guattari, and Derrida before Kafka

Jonathan Basile, University of Toronto

Klaus Hermsdorf recounts an anecdote from Kafka's life that we could say distills the principle of our theme, were that theme not the very self-abnegation of the principle. During the years of his employment with the Worker's Accident Insurance Institute (*Arbeiterunfallversicherungsanstalt*), Kafka once sent his annual report to the editor of the literary journal *Hyperion*.¹ Our theme then—and one could certainly say, Kafka's as well—what happens when the law submits to literature? Or, what is that thing we call law given that this submission has always already taken place?

One can imagine the scene as this envelope was opened. Certain possibilities of reading would have presented themselves to Franz Blei, editor of *Hyperion* and Kafka's first publisher, possibilities no text is immune to precisely because they condition reading itself, rather than being simple properties of a given composition. He might blame a mistake or oversight, just the sort of absent-mindedness that plagued the functionaries in Kafka's novels and trapped their supplicants in the gears of a bureaucratic machine; a document not destined for his eyes might have found its way into the wrong envelope, while (he might imagine) somewhere his counterpart, a similarly bemused office clerk or court clerk, puzzled over why Herr Kafka had let what seemed to be a piece of fiction cross his desk. If a simple slip up can make the high low and the low high in this way, it is just as possible that the reader of this almost unanticipatable gift or submission could suspect an intentional substitution; perhaps he would still read or view it (not even bothering to glance past the first lines) as a kind of impostor, a prank placed before him for his benefit or at his expense, that Kafka might have a laugh with him or at him, this humble and banausic text being much like that Abraham summoned forth from the back of the classroom, that his peers might mock the incongruity with which he occupied such a place of honor.²

The third reading that would find its opening there, or that this recipient would have stumbled into as into a trap or *Unfall*, neither simply belonging to the reader nor the text (in the narrow sense), given that neither one purely exists outside of this fiction, would be the reading I think of as Kafka's own, though only if we can grasp it without opposition to the other 'two'. Perhaps it was intended and perhaps we intend ourselves to read this document *as literature*, whatever that means. Perhaps, then, the law has no existence and no subsistence, no integrity as law, until it has received its chance from this literary opening, which requires that anything resembling a principle be inscribed in what is too singular to ever be exhausted conceptually, categorically, principally, or legally, while nonetheless only revealing that singularity as the shadow or *restance* of some law. It is no less the case that this scene has a judge, the literary *critic* who would subsume this instance or case under its concept (determining if this is literature and good literature), but who in doing so will never be anything but a gatekeeper before the law, one without ultimate authority.

All I hope to manage here, rising to the occasion of the gift of space granted by my editor, Nicholas Royle, while hopefully not falling short of his judgements of literary merit, is to recognise this co-implication or co-precedence of literature and law, each before the other, as what Derrida tarried with in his reading of 'Before the Law'.³ Being somewhat of a slow pupil myself, I'll try to take a running start by showing how Derrida's reading can be understood as a response to those of Benjamin and Deleuze and Guattari. Each author has a peculiar understanding of the manner in which Kafka's literary work could be understood to take place *before the law*. Literature before the law meaning both 1) subjected to law's authority or *instance*, and 2) anticipating or precipitating law, pre-conditioning it and even evading any sentence that would be anything but a postponement.

For Benjamin, it is as if Kafka's writing is an allegory without an allegorised. In Benjamin's terms, borrowed from a Jewish scriptural tradition, Kafka's body of work would be a Haggadah without a Halakhah.⁴ Parables without a doctrine or moral to illustrate, opening thus on a 'reflection

without end'.⁵ These Haggadic texts themselves take on, in Benjamin's eyes, the unruly (perhaps one could say, un-apologue-getic) character of Kafka's animals or animal stories:

Kafka's genius lay in the fact that he tried something altogether new: he gave up truth so that he could hold on to its transmissibility [*Tradierbarkeit*], the haggadic element. His works are by nature parables. But their poverty and their beauty consist in their need to be *more* than parables. They don't simply lie down at the feet of doctrine, the way Haggadah lies down at the feet of Halakhah. Having crouched down, they unexpectedly cuff doctrine with a weighty paw.⁶

One encounters a text whose every detail evokes the allure of esotericism, but without any supplement of doctrine or revelation to catch its overflow.

The Nature Theatre of Oklahoma, from *Amerika*, suggests something similar.⁷ The world entire conscripted into a performance, without any natural or supernatural life beyond it of which it could be the portrayal. Benjamin conjures another poignant image to caution us against attempting to peer beyond the limits of this stage or *mise en scène*:

Each gesture is an event—one might even say a drama—in itself. The stage on which this drama takes place is the World Theater, which opens up toward heaven [*dessen Prospekt der Himmel darstellt*—whose backdrop portrays the heavens]. On the other hand, this heaven is only background; to explore it according to its own laws would be like framing the painted backdrop of a stage and hanging it in a picture gallery. ('FK' 802)

On this world stage every act is such a gesture or *gestus*. Benjamin observes that the often baroque or vaudevillian movements of Kafka's characters are increasingly, as his style comes into its own, presented without any explanatory intention or aim, pursued in an unconscious or dreamlike fashion. Each suggests the significance that, *in the same gesture*, it withholds by its idiosyncrasy. Benjamin finds an example of the apogee of this gestural style in *The Trial*, precisely from the

chapter where K. hears recounted the parable elsewhere titled ‘Before the Law’: ‘*Der Prozeß*’ has already left such motivations far behind. In the penultimate chapter, K. stops at the first rows in the cathedral, ‘but the priest seemed to consider the distance still too great; he stretched out an arm and pointed with his sharply bent forefinger to a spot right in front of the pulpit. K. followed this direction, too; in that spot, he had to bend his head far back to see the priest at all’ (‘FK’ 801–2).⁸

Deleuze and Guattari’s *Kafka* is sometimes read as a response to precisely these themes in Benjamin.⁹ They are, similarly to Benjamin, opposed to those interpretations of Kafka that see his work as a *representation* of some definite sphere of psychological, social, or religious life. The animal stories are not *representations* of some human domain, any more than the courts or the castle *represent* the relations of heaven and earth. Against this correspondence or adequation theory of narrative, Deleuze and Guattari find in Kafka’s writing a pathway of *experimentation* that forms and severs connexions on its way (*K* 7). The animal world, the world stage, or the world bureaucracy is not a mere emblem for the family (for example), but forges novel connexions that open writer and reader to what Deleuze and Guattari call *lines of flight*, which are precisely escape hatches from the totality of such realms of authority.

This critique of representation is also a critique of critique. Even if we were to say that Kafka represented or allegorised Oedipal struggles or bureaucratic systems in order to critique them, we would be playing into a frame of reading whose limits are precisely those that Deleuze and Guattari believe Kafka’s writing exceeds. One would reinforce that bourgeois domain in which political engagement is a mere question of conviction or belief, rather than something one lives in and through in every act, including these writerly experiments.¹⁰ In this respect, Deleuze and Guattari’s reading is particularly valuable today, when this notion of literature as critique is often taken as the justification of the literary and critical vocation, at the risk of reinforcing an orientation toward literature and politics that would be that of the beautiful soul.

Nonetheless, there is a further turn in Deleuze and Guattari's practice of reading that suggests a critique of Benjamin (I say 'critique' deliberately, given that their texts constantly betray their aspirations of moving beyond critique or oppositional thought). Though they share Benjamin's frustration with *definite* allegorical significances (such as the psychoanalytic or theological) read into Kafka's work, Deleuze and Guattari take a step toward opposing representation or allegoricity as such (though Benjamin is also opposed in a sense to language as representation or communication, the difference with Deleuze and Guattari hinges on how the alternative is imagined). Throughout their brief text, they repeatedly dismiss anything like metaphor, symbolism, allegory, representation, or interpretation, to move toward a language that would be, they believe, entirely devoid of such rhetorical or referential gestures:

There is nothing metaphoric about the becoming-animal. No symbolism, no allegory. Nor is it the result of a flaw or a malediction, the effect of some sort of guilt. As Melville says of the becoming-whale of Captain Ahab, it is a 'panorama,' not a 'Gospel.' It is a map of intensities. It is an ensemble of states, each distinct from the other, grafted onto the man insofar as he is searching for a way out. It is a creative line of escape that says nothing other than what it is [*ne veut rien dire d'autre qu'elle-même*].¹¹ (K 35–36)

Can there be such a language, one that would 'mean nothing other than itself'? Moreover, could such a notion of self-identity possibly be apt in relation to the texts of Kafka, which find their emblem, for example, in the world theatre and the endless representatives of the law?

Rather than extricating us from the political aspirations of Deleuze and Guattari's reading, it is here most of all that we glimpse the hinge of Kafka's work with politics. Wherever it is argued that a certain literariness can or ought to be dismissed to arrive at the real, the political, the true intervention in true life, it is just here that Kafka can remind us that one never encounters the authority as such from which such a rebellion (or flight, or escape) takes its meaning. There are only

representatives of the law, which is why every aspiration toward the most real intervention in this world must tarry with questions of how to represent totalising authority and the collective or assemblage that resists it.¹² Here too, we can draw a lesson from these triangulated readings to question certain notions of the relationship of literature to politics or social critique today.¹³

(Moreover, Deleuze and Guattari's readings of Kafka, which frequently strike me as more willful or motivated than Benjamin's, reach an inflection point of irony when they come to *The Trial*, and again to the encounter of K. and the priest or prison chaplain (K 44). They are particularly concerned with dislodging any sense of finality from the novel's arrangement, and especially anything that would tie that finality to religiosity. Thus, they multiply arguments with a kettle logic: the final judgement or execution of K. was written in a post-break up depression, and after all it may only be a dream [they argue its finality is the result of a passing mood, and that that finality does not exist]. With respect to the penultimate chapter, they argue both that it belongs earlier in the novel [where its religious themes would supposedly seem less ultimate] and yet at the same time that the parable 'Before the Law' is 'ambiguous' [thus neither ultimate nor ultimately religious] and that by connecting the priest to the court system it makes him a member in a series he cannot ultimately govern. All this is just as veritable as it is self-defeating; it is just as true that there is no necessary finality to these sequences as it is that something *must*, however incongruously, occupy the position of finality, if only because mortality or finitude leaves it without a successor.)

We can read an opposition or attempted opposition, undoubtedly an equivocal one, between Benjamin's Kafka and Deleuze and Guattari's. If we were to say that Deleuze and Guattari seek a literary practice of writing and reading that dispenses with the necessity of recourse to the law, the same *could* be said of Benjamin. And yet, there is undoubtedly a different sense in both texts of these relations of law and literature. I would suggest, then, that Derrida can be understood as an

intervention among these readings or readers, certainly not as their synthesis or dialectic, but by giving expression to their undecidability.

If we were to summarise this undecidability, it would require pursuing the nonlinear path of Derrida's *Before the Law*, in which *literature precedes the law, and the law precedes literature*. The first half of this equation or inadequation can certainly be read in and as the texts of Kafka, though Derrida also suggests that it is legible everywhere one attempts to locate the institution of legal authority. Both Kant and Freud provide ostensibly different accounts of the institution of the moral law, but what Derrida finds in both is the necessity and impossibility of narrativity or literariness preceding that institution.¹⁴ A narrated law is derived, thus is not the law, and yet an unnarrated law would be nothing at all—this is the law of the law. It takes the form, in Kafka, of the endless series of representatives of the law who nonetheless have never been in the presence of the law itself. It is an aporia of *singularity* and *universality*, which are co-impossibles, each demanding and vitiating the other.

On the other hand, it is just as inevitable that literature, in order to be literature, must be preceded by some law or legalism. The very description given in the previous paragraph, in which literature was said to have some integrity *before* the law, preceding and preconditioning it, depends on our ability to categorically or conceptually recognise something *as literature*. Derrida points out that he uses this designation, rather than others that might have seemed more pertinent at certain moments in the history or tradition literature pretends to encompass such as 'poetry' or 'belles-lettres'. This pretense of categorial or conceptual unity is just another instance of the law of the law, of the force of belonging that feigns universality. The context in which 'literature' appears as the proper name of something older than the law itself can only take place in a fashion preceded by an all too contingent legal framework, for example, the modern framework of copyright law, which plays some role in granting provisional intelligibility to notions such as authorship and the authority of the original text.¹⁵

Law is literature, which is the law, which means that neither is neither. Each betrays its ‘self’.

In Derrida’s words, ‘Under those conditions, literature can *trick the law* [*jouer la loi*], repeat it while also deflecting it or going around it [*la répéter en la détournant ou en la contournant*]' (BL 70–71). This *jouer* can name not only performance or representation, literature plays the law, as if it were an actor in the nature theatre, but also (as the translator has emphasised) trickery, literature gets one over on the law. As soon as any such *oversight* on the part of the law is possible, from before the beginning, the law of the law, its integrity and authority, is uncertain. What we call literature—without ultimately knowing what that is, and exposed to the possibility that its greatest power or delegation derives from *being* nothing at all—even if it depends on a legalistic (conceptual, categorical, theoretical-scientific-philosophical) framework for its intelligibility, nonetheless plays a role in constituting any such framework and in the step beyond it, in abrogating it by giving rise to another.

The implicit dialogue passing between Derrida and Benjamin’s readings of Kafka could be compared to their explicit encounter in Derrida’s ‘Force of Law: The “Mystical Foundation of Authority”’.¹⁶ Benjamin’s reading of Kafka shares certain similarities with what he says in his ‘Critique of Violence’ (which Derrida spends the bulk of ‘Force of Law’ reading).¹⁷ In the ‘Critique of Violence’, Benjamin distinguishes law-founding and law-preserving violence, which he associates with Greek myth, from a *divine* violence that would be law-destroying (which Derrida sees as implicitly Judaic). Similarly, when reading Kafka, Benjamin describes the ‘world of myth’ as ‘incomparably younger than Kafka’s world’, and even suggests that Kafka’s critique of myth stems from a notion of justice that must be distinguished from law (‘FK’ 799, 815). Kafka’s writing is thus a kind of divine violence, it destroys the law of myth (again, in a fashion comparable to Heidegger’s *Destruktion*, oriented toward the archaic), not by founding its own law but by suspending law altogether. On the one hand, we can relate this to the distinction between justice and law made by Derrida, who sees every institution and preservation of law as calling for a further judgement of its

own justness that cannot be authorised of itself. On the other hand, as his notion of the co-implication of law and literature demonstrates, Derrida differs from Benjamin in not attempting to isolate this justice in a pure opposition to its other, law or myth; Derrida goes so far as to suggest that Benjamin's divine violence 'resembles too closely', to the point of possible 'complicity', the final solution ('FL' 298).

Benjamin described one aspect of the Haggadic nature of Kafka's work as its *citability*: 'they do not want to be taken at their face value; *they lend themselves to quotation* and can be recounted for purposes of clarification' ('FK' 803; emphasis added). Derrida's reading of 'Before the Law' concludes by considering something like this citability, the grafting of 'Before the Law' into *The Trial*, where it becomes the subject of the priest's exegeses. When Deleuze and Guattari read this same scene, they read it as an instance of desire without law, a desire whose contingency and mobility dispenses with law or guilt (one should always be suspicious around such attempts at *redeeming* a Jewish text or author, liberating from law and sin in a fashion resembling Christian conversion). Thus, when they read, 'The Court wants nothing from you. *It receives you when you come and dismisses you when you go*', they emphasise the facilitation of K.'s mobility, the passage by contiguity of desire, supposedly enabled because the Court wants nothing, places no obstacle in desire's path (K 49).

Derrida reads this scene differently. In relation to 'Before the Law', it plays the role of what he calls '*contre-abyme*' (BL 76). The abyssal relations of the man from the country and the doorkeeper are repeated on another level by the relations of K. and the priest. Derrida recognises that this abyssal mirroring, rather than a sort of innocence of becoming or desire, includes even the impossible desire to be judged, to be before the law. A desire for which facilitation and safe passage are precisely the impasse. Derrida makes much of the fact that, in the face of the doorkeeper, the man from the country is not prevented from passing, nor does he simply decide to detain himself, but *decides to*

prefer to wait (*entschliesst er sich, doch lieber zu warten*) (BL 41). Derrida relates this desire for impasse to another scene from Kafka's notebooks, that transforms the topography of the aporia and its desire to emphasise the extent to which facilitation and safe passage are themselves a burden and impasse:

I ran past the first watchman. Then I was horrified, ran back again and said to the watchman:

'I ran through here while you were looking the other way.' The watchman gazed ahead of him and said nothing. 'I suppose I really oughtn't to have done it,' I said. The watchman still said nothing. 'Does your silence indicate permission to pass?' (qtd. in BL 41n53).

When we arrive, then, at the mirroring counter-abyss of K. and the priest interpreting this story, we find that K. too betrays an anxiety at the ease with which he comes and goes. Such a desire for impasse might be the yearning to know where one stands, as if any such detention manifested the will of the law itself: 'in the same counter-*abyme* of "Before the Law" it is K. who asks the cleric to wait and this same request goes so far as to ask the priest-interpreter to do the asking himself. It is K. who asks him to ask. ("Wait, please, just a moment!" 'I'm waiting,' said the priest. 'Don't you want anything more from me?' K. asked. 'No,' said the priest.")' (BL 76–77).

Don't you want anything more from me? A conclusion, one supposes. It remains to satisfy myself and you, myself in you and you in myself, that there was a *reason* for this, which demands finding its principle, placing it under the structure of rationality as law-abidingness. For, even if we promised each other an illicit union that hoped to dispense with this classical structure, text as law and law as text, it would only be possible if we already recognised that law, and formed a counter-covenant in the process. It is only because literature plays the law, being the law's only substance, plays with it or before it, that something else, that something at all happens, which does not simply take place without law. For, even if I dispensed with this custom of conclusion, we would still arrive at an *end*. That end? It receives you when you come and dismisses you when you go.

¹ The enclosed letter does not suggest that it was sent as a submission to the journal, though it is hard to imagine that Kafka would not have felt some self-consciousness or rather pride about its literary merit when placing it before such a reader. Hermsdorf analyzes several ambiguities of this scene; see Klaus Hermsdorf, 'Arbeit Und Amt Als Erfahrung Und Gestaltung' in *Amtliche Schriften*, by Franz Kafka, ed. Klaus Hermsdorf (Berlin: Akademie Verlag, 1984), 28–29.

<https://doi.org/10.1515/9783112752739-001>; See also Richard Heinemann, 'Kafka's Oath of Service: "Der Bau" and the Dialectic of Bureaucratic Mind', *PMLA* 111, no. 2 (1996): 269n4, <https://doi.org/10.2307/463105>; Richard Heinemann, 'The Rhetoric of Kafka's *Amtliche Schriften*', *Journal of the Kafka Society of America* 15, no. 1 (June 1991): 29–36 (especially 35n7).

² Franz Kafka, 'Abraham' in *Parables and Paradoxes*, translated by Clement Greenberg (New York: Schocken, 1976), 40–45.

³ Jacques Derrida, *Before the Law: The Complete Text of Préjugés*, translated by Sandra van Reenen and Jacques de Ville (Minneapolis: University of Minnesota Press, 2018). Hereafter *BL*. Franz Kafka, 'Before the Law' in *The Complete Stories*, translated by Willa and Edmund Muir (New York: Schocken Books, 1971), 3–4.

⁴ 'We may remind ourselves here of the form of the Haggadah, the name Jews have given to the rabbinical stories and anecdotes that serve to explicate and confirm the teachings—the Halachah.' Walter Benjamin, 'Franz Kafka: *Beim Bau Der Chinesischen Mauer*' in *Selected Writings: Volume 2, Part 2: 1927-1934*, ed. Michael W. Jennings, Howard Eiland and Gary Smith, translated by Rodney Livingstone (Cambridge: Belknap, 1999), 496.

⁵ Walter Benjamin, 'Franz Kafka: On the Tenth Anniversary of His Death' in *Selected Writings: Volume 2, Part 2: 1927-1934*, edited by Michael W. Jennings, Howard Eiland and Gary Smith, translated by Harry Zohn (Cambridge: Belknap, 1999), 802. Hereafter 'FK'.

⁶ Walter Benjamin, 'Letter to Gershom Scholem on Franz Kafka (June 12, 1938)' in *Selected Writings: Volume 3, 1935-1938*, edited by Howard Eiland and Michael W. Jennings, translated by Edmund Jephcott (Cambridge: Belknap, 2006), 326.

⁷ Franz Kafka, *Amerika*, translated by Mark Harman (New York: Schocken Books, 2008).

⁸ Franz Kafka, *The Trial*, translated by Willa and Edmund Muir (New York: Schocken Books, 1995).

⁹ Réda Bensmaïa, 'Foreword: The Kafka Effect' in *Kafka: Toward a Minor Literature*, by Gilles Deleuze and Félix Guattari, translated by Terry Cochran (Minneapolis: University of Minnesota Press, 1986), xix; Gilles Deleuze and Félix Guattari, *Kafka: Toward a Minor Literature*, translated by Dana B. Polan (Minneapolis: University of Minnesota Press, 1986). Hereafter *K*.

¹⁰ 'In major literatures, in contrast, the individual concern (familial, marital and so on) joins with other no less individual concerns, the social milieu serving as a mere environment or a background; (...) Minor literature is completely different; its cramped space forces each individual intrigue to connect immediately to politics' (*K* 17).

¹¹ Cf. pp. 22, 45–46, 70.

¹² Thus, Deleuze and Guattari dismiss the notion of the 'transcendence of the law', again, in a fashion that is difficult to square with Kafka's texts (*K* 45). The doorkeepers or offices of the law do not have the provisional status they evidently have in Kafka because of the inaccessibility of a transcendent and ultimate law or judge—Deleuze and Guattari claim—but because each office and official leads on to the next room, indefinitely (*K* 50). This relates to their anti-Oedipal attempt to think desire without repression and without law, desire moving in this contiguous fashion without needing to be derived from a fundamental lack or guilt in the eyes of the law. We can see that, rather than eliminating literary representation, they have attempted to trade metaphor for metonymy, and that the very effort to elect a preference in this field depends on the metaphoric/transcendent pole it

claims to do without. Without that transcendence, the oppositional status of contiguity loses its meaning.

¹³ See Jonathan Basile, 'The Political Climate: Ecocriticism and the Apocalyptic Tone', *ELH*, Forthcoming.

¹⁴ 'What if law, even if it is not through and through [*elle-même transie de*] literature, shared its conditions of possibility with the literary thing [*la chose littéraire*]?' (BL 35)

¹⁵ '[The work] has existence and consistency only on the conditions imposed by law and it becomes "literature" only in an age [*époque*] when law regulates the problems of the ownership of creative works, the identity of corpses, the value of signatures, the difference between creating, producing, and reproducing, etc.' (BL 69). On copyright law, compare Jacques Derrida, 'Psyche: Invention of the Other' in *Psyche: Inventions of the Other*, edited by Peggy Kamuf and Elizabeth Rottenberg, translated by Catherine Porter, vol. I (Stanford: Stanford University Press, 2007), 1–47; Jacques Derrida, 'Des tours de Babel' in *Psyche: Inventions of the Other*, edited by Peggy Kamuf and Elizabeth Rottenberg, translated by Joseph F. Graham, vol. I, (Stanford: Stanford University Press, 2007), 191–225.

¹⁶ Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"' in *Acts of Religion*, edited by Gil Anidjar, translated by Mary Quaintance (New York: Routledge, 2002), 228–98. Hereafter 'FL'

¹⁷ Walter Benjamin, 'Critique of Violence' in *Selected Writings: Volume 1, 1913-1926*, edited by Marcus Bullock and Michael W. Jennings, translated by Harry Zohn (Belknap, 1996), 236–52.