

Zhiron Khujadze*

Kafka, Benjamin, Derrida: On Violence, Law and Justice

Kafka's parable "Before the Law" tells us about the countryman who spends his whole life in front of the law's gate and aims futilely to gain access to it. This article is devoted to the main question expressed as follows: why can't the man attain his aim? Wording the question is already an interpretation which in Kafka's world is not completed by "solving". And philosophers of "irresoluble" are Walter Benjamin and Jacques Derrida. They read Kafka (his literature and his personality) and help the man from the country, which requires analysing the connections and relations between the law (das Gesetz, la loi) and violence, law (das Recht, le droit) and religious teachings, the law and its origins, law and justice.

Keywords: *Kafka, Benjamin, Derrida, before the law, teaching, violence, law, justice, deconstruction.*

1. Introduction

Kafka was a practicing lawyer who often wrote about legal issues, although he did not write as a lawyer, or specifically as a judge, prosecutor or defense lawyer, but as an "other" who experiences alienation and oppression is unable to understand the "system" and his "legal subjectivity". In his world "being the other" is the rule, not the exception, and to speak as an "other" is to grasp the illegitimacy of an order. By double observation, both from the external and internal perspectives, Kafka evaluates the law, detects its internal contradictions which usually remain beyond the horizon of the bureaucratic machine and are perceived as the subject of mechanical "correction".

Two contributing factors assisted Kafka in describing the alienness before the law. First, he was an "outsider", a German-educated secular Jew who lived in a Czech province of the Austro-Hungarian Empire. He couldn't (didn't) identify himself as truly German, Jewish or Czech, which precluded his undoubted belonging to any of the three cultures. Second, he worked as an attorney for the state agency responsible for administering the worker's compensation scheme in Prague. Kafka represented injured Czech workers who sought protection under a complicated legal system built on German legalese, in conditions of economic and linguistic subordination.¹

Theodor Adorno wrote about Kafka's work that each sentence says to interpret it, and none permits the interpretation.² A clear example of this ambiguity, of simultaneous prohibition-permission, is the parable "before the law" ("Vor dem Gesetz") first published in December 1915. The parable, based on the author's diary (1914), had been written one year earlier, during the composition of *The Trial* which was first published after the author's death in 1925. His diary informs us that this portion

* PhD student of Ivane Javakishvili Tbilisi State University, Faculty of Law, Research Fellow at Tinatin Tsereteli Institute of State and Law, Assistant at Legal Methods Department, TSU Faculty of Law.

¹ Litowitz D.E., Franz Kafka's Outsider Jurisprudence, *Law & Social Inquiry*, Vol. 27, № 1, 2002, 104.

² Adorno T.W., Notes on Kafka, *Prisms*, Weber S., Weber S. (trans.), Cambridge, 1983, 246.

of *The Trial*, the legend, told by the prison chaplain to Josef K., is a rare exception that made the author experience satisfaction and happiness. Perhaps that is the reason why it was published separately from the novel twice in Kafka's lifetime.³

Since the parable tells us about the story of impossibility of having access to the law, the main issue of the article is the law (*Gesetz*), law (*Recht*), but not the law in an abstract, rather the law's (in the broad sense and not only legal) relationships to its foundation, violence and justice. Where does the law come from? Do we know the moment of its origin? Is it possible to penetrate it? What does it mean to be before it? Does it always presuppose violence, e.i. coercive enforcement in itself? What is the difference between law and justice? The parable will be presented as conductive, accepting, motivating of different ideas, but not unequivocally rejecting.

Seeking answers to the above questions requires referring to the thoughts of others, and for this, we will have to borrow the ideas of the two greatest thinkers of the twentieth century – Walter Benjamin and Jacques Derrida. Benjamin's discussion on the inseparable connection between law and violence, on Kafka's prose imbued with the influence of Jewish tradition, and Derrida's reasoning on the ahistorical origin of the law, on the relationship between the law and justice, as general and singular, calculable and incalculable, provide fertile ground for various interpretations of the fable.

2. Before the Law

As the full version of the parable covers only one page, let's introduce it here:

"Before the Law stands a doorkeeper. To this doorkeeper there comes a countryman 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. Observing that, the doorkeeper laughs and says: "If you are so drawn to it, just try to go in despite my veto. But take note: I am powerful. And I am only the least of the doorkeepers. From hall to hall there is one doorkeeper after another, each more powerful than the last. The third doorkeeper is already so terrible that even I cannot bear to look at him." These are difficulties the countryman has not expected; the Law, he thinks, should surely be accessible at all times and to everyone, but as he now takes a closer look at the doorkeeper in his fur coat, with his big sharp nose and long, thin, black Tartar beard, he decides that it is better to wait until he gets permission to enter. The doorkeeper gives him a stool and lets him sit down at one side of the door. There he sits for days and years. He makes many attempts to be admitted, and wearies the doorkeeper by his importunity. The doorkeeper frequently has little interviews with him, asking him questions about his home and many other things, but the questions are put indifferently, as great lords put them, and always finish with the statement that he cannot be let in yet. The man, who has furnished himself with many things for his journey, sacrifices all he has, however valuable, to bribe the doorkeeper. That official accepts everything, but always with the remark: "I am only taking it to keep you from thinking you have omitted anything." During these

³ *Born J.*, Kafka's Parable "Before the Law": Reflections towards a Positive Interpretation, *Mosaic: An Interdisciplinary Critical Journal*, Vol. 3, № 4, 1970, 153-154.

many years the man fixes his attention almost continuously on the doorkeeper. He forgets the other doorkeepers, and this first one seems to him the sole obstacle preventing access to the Law. He curses his bad luck, in his early years boldly and loudly, later, as he grows old, he only grumbles to himself. He becomes childish, and since in his yearslong contemplation of the doorkeeper he has come to know even the fleas in his fur collar, he begs the fleas as well to help him and to change the doorkeeper's mind. 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 gateway 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 towards him, for the difference in height between them has altered much to the countryman'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 recognizes that the man has reached his end, and to let his failing senses catch the words roars in his ear: "No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it."⁴

Giorgio Agamben in *Homo Sacer: Sovereign Power and Bare Life*, discussing Kafka's legend, emphasizes the Law that demands nothing of man and commands nothing, it no longer prescribes anything except its "openness". It is a "pure form" in which law asserts itself with the greatest force at the point where it no longer prescribes anything, operates as a "pure ban" in which the Law is in force without significance: "The open door destined only for him includes him in excluding him and excludes him in including him. And this is precisely the summit and the root of every law. When the priest in *The Trial* summarizes the essence of the court in the formula "The court wants nothing from you. It receives you when you come, it lets you go when you go," it is the originary structure of the *nomos* that he states."⁵ At that moment, the empty potentiality of law gets to such a degree that it becomes indistinguishable from life. That is why the man reaches his aim only when the door is closed, for if the door's very openness signified invisible power or empty force of the Law, closing the door would be its destruction.⁶

Agamben decrypts the first letter of Josef K.'s surname not as Kafka, but as the old Latin word – *kalumniator* which means a slanderer. A false accusation was a great threat to Roman Law, and a calumniator was punished by engraving the letter K on his forehead. *The Trial* starts with the sentence: "Someone must have slandered Josef K., for one morning, without having done anything wrong, he was arrested." So Agamben concludes that Josef K. slanders himself, brings a slanderous trial against himself. The only guilt is self-slander, accusing oneself of non-existent guilt.⁷

⁴ Kafka F., *Before the Law, Wedding Preparations in the Country and Other Stories*, Muir W., Muir E. (trans.), New York, 1978, 127-128.

⁵ Agamben G., *Homo Sacer: Sovereign Power and Bare Life*, Heller-Roazen D. (trans.), Stanford, 1998, 50.

⁶ Ibid, 53, 55.

⁷ Agamben G., K, *The Work of Giorgio Agamben: Law, Literature, Life*, Heron N. (trans.), Clemens J., Heron N., Murray A. (eds.), Edinburgh, 2011, 13-14.

For the words to be used when talking about a parable should be “maybe”, “perhaps” and not “certainly” or “indeed”, so we can say: “Perhaps the man from the country” or “perhaps the doorkeeper”. And the doorkeeper may be the colonizer who promises the conquered people to grant his law, share his culture, give benefits from his economy and teach his language, but a promise remains pending. In the story, the man from the country decides to wait when he closely looks at the doorman and sees his “big sharp nose and long, thin, black Tartar beard”, so his appearance causes fear and only “the other” can provoke dread. And the other’s law, be it cultural or legal, never becomes yours despite the efforts and waiting.

We can cite one example from the past which is non-violent⁸, but still an unwarranted model of legal transplantation. Legal transfer to be successful should be assimilated to the deep structure of the “new law”, to the social world meanings that are unique in different legal cultures. Gunther Teubner discusses the transplantation of the Continental (mostly German) legal principle of good faith (*bona fides*) in British law, the purpose of which was the unification and harmonisation of European contract law, and which caused the irritation of bind arrangements, that tie law to the social discourses, and alienation of the contract law principles established in domestic legal order that were linked to a different type of economic transactions than continental. Teubner translates legal transplantation into the language of social systems and calls it “legal irritation”, which means the “irritation” of a domestic legal space by a rule, concept or institution transferred from foreign legal order: “Foreign rules are irritants not only in relation to the domestic legal discourse itself, but also in relation to the social discourse to which law is, under certain circumstances, closely coupled.”⁹

No admittance to the law is the law. Law has a self-referring nature. It regulates its adoption, operation, losing force or change. We can imagine the constitution with only one article that claims: “Law is abolished”. In this case, law “does not exist” by the stipulation of law itself, but if law does not exist, it can not enact anything, therefore, the absence of law must be an event not based on law, which we can call a life, or the condition when the relation itself ensures the regulation of relation. The man from the country is mistaken when he thinks that the law is for everyone. It would be so if the law prescribed it. But the guard’s last words to the dying man are puzzling: “No one else could ever be admitted here, since this gate was made only for you.” If we don’t suppose here the superhuman dimension and stay in the systemic legal space, what comes out? Did the guard break the law by not letting the man in? Conceivably, and it is a paradox, the law was intended for the man not to enter into it. The law which states that “you have the right to not enter the law” is different from the law which states that “entering into the law is prohibited”. The right to not enter the law and the prohibition of entering are not the same. The first has a positive connotation and says nothing about admittance to the

⁸ The understanding of violence should not be limited to its individual, such as oppression, rape, torture, property damage, or mass manifestations, such as war and terrorism, that is, the basic definition of violence should not be subjective, whose main sign is aggression. Violence does not require a vertical line of power or a concrete, identifiable perpetrator and victim. A man placed in an era, as a social being, coexists with violence all along. We mean violence concomitant of social practices and institutions, internal to them. This kind of violence is mostly manifested in hidden forms. We can call them structural, systemic, objective violence.

⁹ *Teubner G.*, Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences, *The Modern Law Review*, Vol. 61, № 1 1998, 31-32.

law, while the second has a negative composition which by forbidding entry into the law excludes the acting possibility.

The doorman does not age. He is not a human in a biological sense. He is not identifiable as a concrete person from whom you can require an answer, that is why he causes fear. He has no history as he repeatedly produces himself, the doorman is always young and unchanging. He does not specify the number of guards but simply notes that even he, so powerful, is afraid of the third one. This innumerability, which possibly is not so and the guard may be the only obstacle to access the law, indicates an institutional impassability, a bureaucratic labyrinth, which is threatening because it is a labyrinth and not because someone is inside. The form itself is alarming. This is confusing for Josef K., not the people whom he encounters along the way, but the Trial itself. The Trial is the true appearance of law, and not the norm or the person who applies it.

The doorman often uses the vocabulary of “father” and he, as a father, always prevails over the countryman, as a “son”. Kafka’s *Letter to his Father* conveys son’s attitude towards his father being physically and psychologically stronger than him, which makes the son feel feeble to gain independence. Although the father seems to support his son to escape from his influence, it reminds of the moment when playing together, one child is holding, even squeezing the other’s hand and shouting: go away, why don’t you go? Kafka thinks that father genuinely said the word “go”, but unconsciously he always held him back with the strength of his personality.¹⁰

The man gets old in waiting and indecisiveness. But in his old age he “becomes childish”. His life is circular, it ends where it started. He wasted the days in timidity. He was defeated, but failure is feasible where there is even a slight possibility of victory. So, what would be counted as a victory? Perhaps, the resistance even at the cost of further punishment, or at least leaving the place? But, by no means just waiting, expecting, sitting on a stool, begging, talking. As Nietzsche says: “Damned I also call those who must always wait – they offend my taste: all the publicans and grocers and kings and other shop- and country-keepers.”¹¹

3. Benjamin and Kafka: Talmudic Categories and the Violent Nature of Law

3.1. The Parable from the Talmudic Categories

In June 1938, in a letter addressed to Gershom Scholem, Walter Benjamin speaking about Kafka notes: “Kafka’s work presents a sickness of tradition. Wisdom has sometimes been defined as the epic¹² side of truth. Such a definition stamps wisdom as inherent in tradition; it is truth in its

¹⁰ *Kafka F., Dearest Father, Stokes H., Stokes R. (trans.)*, Great Britain, 2008, 77. Speaking about the relationship between power and the family, Benjamin notes: “The fathers punish, but they are at the same time the accusers.” *Benjamin W., Franz Kafka: On the Tenth Anniversary of his Death, Illuminations: Essays and Reflections, Zohn H. (trans.), Arendt H. (ed.)*, New York, 1969, 114.

¹¹ *Nietzsche F., Thus Spoke Zarathustra, Del Caro A. (trans.), Del Caro A., Pippin R.B. (eds.)*, Cambridge, 2006, 156.

¹² Epic (epikos) as a word defining the genre, comes from the Greek term epos, the original meaning of which is a “word”. If myths tell us about the stories of gods, epic poem narrates about heroic characters.

haggadic consistency.” And adds: “It is this consistency of truth that has been lost.”¹³ Benjamin associates the crisis of tradition with the dying out of wisdom expressed in epic form and transmitted orally, which had been noticed by many before Kafka.¹⁴ He mentions Haggadah which in Jewish culture designates the parts of Talmud, the rabbinical stories that serve to explicate and confirm the Halachah, i.e., laws at large. Benjamin regards Halachah as a doctrine, teaching (*Lehre*) and notes that Kafka’s parables don’t lie before *Lehre*, as Haggadah lies before Halachah, but threaten it. Kafka confronted the crisis of transmission not with the superiority of truth over expression, but the other way around. He has a concern not about the truth as such, but wisdom as a particular modality through which the truth is conveyed. Therefore, Kafka “saved” the haggadic character and “sacrificed” the truth, he separated form and content, preferred the former to the latter. That is why the form of Kafka’s prose is not simply parabolic: “Kafka’s writings are by their nature parables. But it is their misery and their beauty that they had to become *more* than parables.”¹⁵

In the text dedicated to the 10th anniversary of Kafka’s death, Benjamin mentions Haggadah and Halachah again. He talks about the double meaning of the word “unfolding”. The first is when a bud unfolds into a blossom, and the second is when the boat made by folding paper unfolds into a flat sheet of paper. This second kind of “unfolding” is characteristic of the parable, when a reader takes pleasure in unpacking the content so he has a meaning in the palm of his hand. However, Kafka’s parables unfold in the first sense, like the blossoming of a bud. That is why their effect mirrors poetry. However, this does not mean that his works belong completely in the tradition of Western prose forms. They have similar connection to doctrine as the Haggadah does to Halachah, but there is no *Lerhe* which is the final point of the story. We just have an allusion to it. Kafka might have said that these (more than parables) are relics transmitting *Lehre*, but it would be more accurate to consider them as preliminary stages, precursors preparing *Lehre*.¹⁶ Kafka’s parables are like blossoming, unfolding gradually, let us acknowledge more and more, but the final point remains hidden. In the Haggadah-Halachah relation, this second (and *Lehre*) is lost, therefore, the stories parables tell are stories with the message lost. They don’t explain laws, but this absence points to the future presence for which Kafka’s works have to pave the way.

¹³ Benjamin W., Some Reflections on Kafka, *Illuminations: Essays and Reflections*, Zohn H. (trans.), Arendt H. (ed.), New York, 1969, 143.

¹⁴ 2 years before the letter to Scholem, Benjamin in his essay “The Storyteller” mentions the dying out of wisdom, the thought expressed in epic form and transmitted orally, as the reason why storytelling is reaching its end. What differentiates the novel from all other forms of prose literature, such as the fairy tale or the legend, is that it neither comes from oral tradition nor continues into it. The storyteller tells from his experience or the experience shared by others, and he in turn makes it the experience of the listeners. And the novelist is isolated in himself, he has no counsel. See. Benjamin W., *The Storyteller: Reflections on the Works of Nikolai Leskov, The Novel: An Anthology of Criticism and Theory 1900-2000*, Hale D.J. (ed.), Malden, 2006, 364.

¹⁵ Benjamin W., Some Reflections on Kafka, *Illuminations: Essays and Reflections*, Zohn H. (trans.), Arendt H. (ed.), New York, 1969, 144. Also, see. Schonfeld E., Am-ha’aretz: The Law of the Singular. Kafka’s Hidden Knowledge, Kafka and the Universal, Cools A., Liska V. (eds.), Berlin/Boston, 2016, 114-119.

¹⁶ Benjamin W., Franz Kafka: On the Tenth Anniversary of his Death, *Illuminations: Essays and Reflections*, Zohn H. (trans.), Arendt H. (ed.), New York, 1969, 122.

Eli Schonfeld, professor of Jewish and European philosophy, interestingly connects Benjamin's consideration of Kafka and parable's (*Before the Law*) relation to the Talmudic characters of *am-ha'aretz*, which literally means the people from the earth (in the book of Ezra, it is opposed to *am Yehuda*, the people of Judah) and in rabbinic literature represents the person ignorant of the law, and of *talmid chacham* which means a wise pupil, the scholar of the law, of the Torah. *Am-ha'aretz* does not follow the rules of purity, not because he rejects the divine origin of the law, but rather because he is ignorant. Yet the law applies to him, since ignorance of the law excuses no one (*Ignorantia legis neminem excusat*), however, his intentional sins are considered as unwitting misdeeds (he is different from *shana ve-piresh* who studied the Torah and consciously decided to reject it). Not only he does not know laws, but he also is not aware of the meaning "being before the law". That is why the man from the country is *am-ha'aretz*, and the doorman is *talmid chacham*, who does possess not specific knowledge, but the art of study. He realises the dialectics involved in Talmudic learning, thus, for him, Torah never amounts to laws, but perceiving the difference between the law and Torah (teaching) constitutes his knowledge. On the one hand, formal legal system, which through coercion and power creates order among legal subjects, and on the other hand, teaching that makes us understand the true meaning of life. The knowledge of this "difference" is lacking in *am-ha'aretz*, who cannot differentiate between Torah and nomos, Torah and lex, Torah and Gesetz.¹⁷

Schoenfeld observes that the starting gate of *am-ha'aretz* is false knowledge. He thinks that the law should always be accessible to everyone. He finds the law universal, but this approach fails when it turns out that the law is never general. He has to journey a long way, spend his whole life at the door of the law, before the hidden knowledge will appear to him. As for the doorkeeper, he was always there, waiting for the man to come. His knowledge is the knowledge of uniqueness of time and the law. "Not at the moment" – says the doorkeeper to the man, means the right time. The priest, in Chapter 9 of *The Trial*, tells Josef K. that the story contains two important statements, one at the beginning, one at the end; the one says that the doorkeeper can't allow the countryman in now, and the other says that entrance was intended for him alone. And there is no contradiction between the two, but the first implies the second. Therefore, to know the appropriate moment is to know the singular. To Josef K.'s remark, that the doorman did not perform his duty and he should have let the man get into the law, the priest replies that he does not have sufficient respect for what was written. If chaplain's reasoning is correct, then it turns out that the doorkeeper knows that for the man, that is, for *am-ha'aretz*, entering the law has no sense. Or even more so, it has no sense for him also, because the world of meaning lies not inside the law, but before the law. A *talmid chacham* comprehends that penetrating the law leads to its violation. To fulfill the law completely and definitely is impossible. The death of the man is associated with the death of ignorance, not in the sense of dying *am-ha'aretz*, but because the truth that the gatekeeper tells in the end is revealed, which has always been there, but

¹⁷ Schonfeld E., *Am-ha'aretz: The Law of the Singular. Kafka's Hidden Knowledge, Kafka and the Universal*, Cools A., Liska V. (eds.), Berlin/Boston, 2016, 109-112. Schonfeld refers to a 1934 letter in which Benjamin writes Werner Kraft that he intends to show why the concept of the "laws" in Kafka, as opposed to the concept of "Lehre", has an illusory character and is, in fact, a decoy. See Citation: Walter Benjamin, *The Correspondence of Walter Benjamin: 1910-1940*, eds. Gershom Scholem and Theodor W. Adorno, trans. M.R. Jacobson and E.M. Jacobson, The University of Chicago Press, Chicago 1994, 463.

has been hidden, covered by the visible, external, it was covered by the law. The law covered teaching, *Gesetz* covered *Lehre*. Waiting was not a futile effort, because the man learned that the true law is singular, only for one, and therefore, it is no longer the law but teaching – *Lehre*. Kafka's genius lies in the fact that during the crisis of tradition, he exemplifies the “ignorant” as the cognizant of the teaching that exist beyond (the other side? in front of?) the law. In this case, the truth is passed not through the haggadic consistency, but through ignorance.¹⁸

Unlike this interpretation, which is guided by Judaism, it is necessary to bring the parable into a legal-political dimension, which will focus not directly (or only) on religious definitions, but on law as an essentially violent system, on the types of violence and on the possibilities of escaping from it.

3.2. The Doorman as a Policeman and the Man from the country as a Revolutionary

Hannah Arendt in her work *On Violence* notes that “the very substance of violent action is ruled by the means-end category, whose chief characteristic, if applied to human affairs, has always been that the end is in danger of being overwhelmed by the means which it justifies and which are needed to reach it.”¹⁹ Benjamin discusses the violent nature of law from the means-end perspective in his essay *Critique of Violence* (1921), where he talks about natural law and positive law, notices that the former justifies the use of violent means for just ends, and the latter attempts to warrant the justness of the ends through the justification of the means. The theory of positive law should become the initial (and not the final) subject of critique, because it undertakes a fundamental distinction between kinds of violence independently of cases of their exercise. Positive law distinguishes between sanctioned force and unsanctioned force by their historical origin, that is, it determines the legitimacy of violence based on a specific event. Ends that have general historical acknowledgment may be called legal ends, and ends which lack such acknowledgment – natural ends. The function of law is to deny the natural ends of the individual in those cases in which such ends could be pursued by violence, whereas the legal system erects legal ends that can be obtained only by legal power. From the general maxim of present-day European legislation that all the natural ends of individuals must come into collision with legal ends if pursued with violence, follows that law perceives violence in the hands of individuals as a threat to legal order. If this is the case, law should be afraid of not violence as such, but only the one which is directed to illegal ends. Interestingly, law monopolises all violence in itself. Therefore, Benjamin concludes:

“... that the law’s interest in a monopoly of violence vis-à-vis individuals is explained not by the intention of preserving legal ends but, rather, by the intention of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law.”²⁰

Benjamin distinguishes between lawmaking and law-preserving violence. “New conditions” established after the military violence (military violence, which is used directly, as predatory violence

¹⁸ Ibid, 119-128.

¹⁹ Arendt H., *On Violence*, San Diego, New York, London, 1970, 4.

²⁰ Benjamin W., *Critique of Violence*, Selected Writings, Vol. 1, 1913-1926, Jephcott E. (trans.), Bullock M., Jennings M.W. (eds.), Cambridge, London, 1996, 239.

towards its ends, is primordial of all violence used for natural ends) as a new “law”, which proves its worth in victory and bans “the violence of others”, that means forbids legal subjects from pursuing their natural ends, stands for lawmaking violence. That is why the figure of a “great” criminal, who confronts law with the threat of constituting a new one, causes fear for the state and admiration of public. As for law-preserving violence, violence as a means, it is used to achieve legal ends (e.g., compulsory military service which forces the use of violence as a means to the ends of the state). Kind of a mixture of these two forms of violence is present in *police*. Its power is formless and nowhere-tangible. If the legal decisions are determined by place and time and recognise “a metaphysical category”, which can be under the critical evaluation, police elude such critique. The state, because it no longer has the power to ensure empirical goals through legal order, provides the police with the possibility of action, which it uses in cases where there is no clear legal regulation and when the indeterminacy of legal goals leads to “free” action, i.e., imposition of a “new law” and its execution by the same “institutor”:

“True, this is a violence for legal ends (it includes the right of disposition), but with the simultaneous authority to decide these ends itself within wide limits (it includes the right of decree). The ignominy of such an authority ... lies in the fact that in this authority the separation of lawmaking and law-preserving violence is suspended.”²¹

The doorkeeper of Kafka’s parable resembles a policeman who is both a legislator and an executive. This is revealed in his conflicting propositions. Throughout the fable, one gets the impression that by not granting access to the law, he expresses the law’s demand, but the final phrase that the law was only for the man furnishes a different meaning to his actions. The doorkeeper is independent, or at least independent enough to decide the fate of the man. The law is entrusted to him, he makes and executes the law, but the man thought that the doorman was only an executor whose function was to observe the requirements of the law be followed. The man thought that he lived in a “democracy” where the legislative and executive powers are separated, and not in an absolute monarchy where the two are combined and that is why its operation is more “bearable”, or at least understandable. The doorkeeper tells the man that he cannot allow him in now (or yet), which means that “allowing in” depends on him, because if the lawgiver were “other” than the guard, he would have to say that he does not know, he does not decide. Countryman’s words “You are insatiable” refer to the capability of the doorkeeper, because insatiable cannot be a person who depends on the law established by someone else. An insatiable can, but does not carry out, just as the doorkeeper can adopt and enforce the right to enter the law. Perhaps, he realises his “excessive” power and behaves as “great lords” use to do. He becomes indifferent as he acknowledges his boundless power over the countryman.

Is there any other way than violence for regulating conflicting human interests? Benjamin thinks that a totally nonviolent resolution of conflicts cannot lead to a legal contract, because, even in the case of a peaceful agreement, all parties are provided with the right to claim about applying violence against the other if the agreement is infringed.²² However, contrary to the legal, official order,

²¹ Ibid, 242-243.

²² Ibid, 243.

negotiation among private persons, as a technique of civil agreement, can be managed nonviolently, which happens where there is civilized outlook, which presupposes courtesy, trust and peaceableness. It happens in the dialogue, thus, in the language which is the sphere of human agreement inaccessible to violence. This is evidenced by the fact that no legislation on earth originally stipulated a sanction for lying.²³

Benjamin associates the foundation of state power with mythical violence, which sets boundaries, does not annihilate the adversary but provides them with rights by establishing a “new law”. It is confronted by divine, i.e., law-destroying violence. However, it is only relatively, not absolutely, annihilating, which means that it annihilates goods, right, life, but not the soul of the living. As an example of the first, Benjamin cites the legend of Niobe. Niobe’s arrogance calls down fate upon her which brings about a bloody murder of her daughters and sons by Apollo and Artemis, and the mother Niobe turns to stone from the sorrow. But turning into a rock does not mean death, as even a cold stone feels the tragedy that the gods have inflicted upon it. Niobe is a perpetually mute bearer of guilt and a boundary stone on the border between gods and men. When it comes to divine violence, its example is God’s bloodless annihilation of the company of Korah, without warning and threat, which ultimately makes this judgment expiatory: “Mythic violence is bloody power over mere life for its own sake; divine violence is pure power over all life for the sake of the living. The first demands sacrifice; the second accepts it.”²⁴

Jacques Derrida, discussing Benjamin's essay, on divine violence says: “Instead of founding *droit*, it destroys it; instead of setting limits and boundaries, it annihilates them ... instead of killing

²³ Ibid, 244-245. Benjamin’s disposition towards the language is evident in the essays “On Language as Such and on the Language of Man” (1916) and “The Task of the Translator” (1923). In the first, he mentions the bourgeois concept of language, which treats the word as a means of communication. This understanding is contrasted by the founding, “pure language”, which comes from God. God creates the world in the word and his word is cognizable because it is a name. However, God does not create man from the word, but sets a language in man. Only a man can name his own kind. Thus, the word does not have an accidental relation to its object, as it is understood by the bourgeois view of language, it does not give mere signs that are established by some convention, but in it the word and what the word expresses coincide with each other. After the original sin, the word becomes a signifier. The knowledge of good and evil abandons the name, because it is knowledge from outside (it has no name given by God, therefore it is nameless, empty). See: *Benjamin W.*, *On Language as Such and on the Language of Man*, Selected Writings, Vol. 1, 1913-1926, *Jephcott E. (trans.), Bullock M., Jennings M.W. (eds.)*, Cambridge, London, 1996, 64-71. In the second essay, Benjamin talks about the possibility of translation and notes that the translation should not strive to convey the same meaning as the original, to say the same as the original work says, because the purpose of the literary work is not communication, on the contrary, it is this nontransitive, inexpressible, incommunicable feature of language that brings it to life. Therefore, the translator should not try to convey identical meanings of the words, but to present this “non-communicating” so that reader knows about it. This feature makes the language “poetic”. In a literary work we recognize the essential, that is: “beyond communication ... as the unfathomable, mysterious, 'poetic.'” See: *Benjamin W.*, *The Task of the Translator*, *Illuminations: Essays and Reflections*, *Zohn H. (trans.), Arendt H. (ed.)*, New York, 1969, 69-70. (Kafka writes this to Milena: “I am constantly trying to communicate something incommunicable, to explain something inexplicable ...”).

²⁴ *Benjamin W.*, *Critique of Violence*, Selected Writings, Vol. 1, 1913-1926, *Jephcott E. (trans.), Bullock M., Jennings M.W. (eds.)*, Cambridge, London, 1996, 250.

with blood, it kills and annihilates *without bloodshed*. Blood makes all the difference.”²⁵ However, it is not so easy to distinguish between divine violence and man-made horrors if we only take the “blood” as a determinative component. If we think of the Nazi concentration camps, mass killing was committed by gas, not by bullets, thus, without blood. The Holocaust is not an uninterpretable manifestation of divine violence. On the contrary, it is the result of instrumental rationality. Therefore, Derrida goes beyond Benjamin's messianism and considers “Critique of violence” too Heideggerian, too messianico-marxist, or archeo-eschatological.²⁶

However, blood for Benjamin is the symbol of mere life, it is just a sign, not literally perceived liquid tissue. Mythical violence needs such a sign to confirm its power, while the divine rejects signs, so, Korah and his company don't die with “ordinary deaths”, they are swallowed up by the earth, with no trace to remain.

If the mythical violence founds a new law, the divine suspends the old without establishing one. The resembling image of divine violence, that is the manifestation of pure immediate violence, is the revolutionary violence, which does not aim at changing and strengthening state power as it occurs during a political general strike, but sets itself the sole mission of destroying state power as a consequence of the proletarian general strike. If the mythic is recognizable, it is impossible to refer to pure violence since identifying its specific manifestation means falling into the same mythical circle, i.e., seeking for its justification and getting involved in the economy of means-end.²⁷ If the man from the country wants to destroy state power, abolish it without future restoration, he must be a revolutionary leader but without assurance that he is accomplishing this exact task. At this point, the means-end relationship must break, as long as violence must justify itself, which means, it must negate the other that it tries to annul, and it must negate itself as well. This simultaneous double annihilation gives rise to the previously impossible innovation which eventually excludes violence.

Pure violence functions as „yet to come”. The possibility of its realisation means its authenticity. After bringing about a revolt, the revolution starts seeking self-legitimation, developing justifying “reasoning”, falling into the same historical cycle.

According to Agamben, the cessation of the usual continuity of time and the beginning of a new era is not as inconceivable as it seems. Such practices were experienced in primitive societies, when people ruptured the homogenous flow of profane time by performing violent rituals. These rituals restored primordial chaos, made humans contemporaries of the Gods and allowed them approach to the original dimension of creation. Whenever the community was threatened, the world was losing the meaning, only by such a regeneration of time was possible to begin a new era.²⁸

We can catch an instant glimpse of the very moment when the old is destroying. It immediately ceases to exist when new sources of power are created. To “the very second” between annulment and

²⁵ Derrida J., *Force of Law: The “Mystical Foundation of Authority”*, Deconstruction and the Possibility of Justice, *Quaintance M. (trans.), Carlson D.G., Conell D., Rosenfeld M. (eds.)*, New York, London, 1992, 52.

²⁶ *Ibid*, 62.

²⁷ Benjamin W., *Critique of Violence, Selected Writings, Vol. 1, 1913-1926*, *Jephcott E. (trans.), Bullock M., Jennings M.W. (eds.)*, Cambridge, London, 1996, 239-240, 251-252.

²⁸ Agamben G., *On the Limits of Violence*, *Fay E. (trans.)*, *Diacritics*, Vol. 39, № 4, 2009, 107.

establishment we can call a pure event, which never happens but operates as “always to come”, because justice requires so.

4. Conclusion

The religious reading of the parable denied the generality of the law. The law is for one, it is singular, therefore, it is teaching. Penetrating the law is to violate it, and fulfilling the law is to abolish it, thus, is contradictory to its own logic. The man from the country is aware of it, not consciously, but inwardly, by intuition. That is why he spends his whole life before the law. Doesn't he have a family, wife and children? Is anyone waiting for him? But first, if someone (something) waits, it is teaching through which everything (someone and something) makes sense.

The political reading of the parable revealed the violent nature of law. Both, to found and to preserve law require violence. State power is impossible without violence. Violence, even to just ends, functions as a means to an end, and it is not possible to compromise between the justness of the ends and the justification of the means. At the very moment of lawmaking, in the name of power, it establishes as law not an end free from violence but necessarily bound to it. Therefore, the pure and immediate existence of violence, i.e., the possibility of justification based solely on itself, could be realised only by elimination of the state, that is, by law-destroying force.

The end in the next issue

Bibliography:

1. *Adorno T.W.*, Notes on Kafka, Prisms, *Weber S., Weber S. (trans.)*, Cambridge, 1983, 246.
2. *Agamben G.*, Homo Sacer: Sovereign Power and Bare Life, *Heller-Roazen D. (trans.)*, Stanford, 1998, 50, 53, 55.
3. *Agamben G.*, K, The Work of Giorgio Agamben: Law, Literature, Life, *Heron N. (trans.)*, *Clemens J., Heron N., Murray A. (eds.)*, Edinburgh, 2011, 13-14.
4. *Agamben G.*, On the Limits of Violence, *Fay E. (trans.)*, *Diacritics*, Vol. 39, № 4, 2009, 107.
5. *Arendt H.*, On Violence, San Diego, New York, London, 1970, 4.
6. *Benjamin W.*, Critique of Violence, Selected Writings, Vol. 1, 1913-1926, *Jephcott E. (trans.)*, *Bullock M., Jennings M.W. (eds.)*, Cambridge, London, 1996, 239, 242-243, 244-245, 250, 251-252.
7. *Benjamin W.*, Franz Kafka: On the Tenth Anniversary of his Death, *Illuminations: Essays and Reflections*, *Zohn H. (trans.)*, *Arendt H. (ed.)*, New York, 1969, 114, 122.
8. *Benjamin W.*, On Language as Such and on the Language of Man, Selected Writings, Vol. 1, 1913-1926, *Jephcott E. (trans.)*, *Bullock M., Jennings M.W. (eds.)*, Cambridge, London, 1996, 64-71.
9. *Benjamin W.*, Some Reflections on Kafka, *Illuminations: Essays and Reflections*, *Zohn H. (trans.)*, *Arendt H. (ed.)*, New York, 1969, 143, 144.
10. *Benjamin W.*, The Storyteller: Reflections on the Works of Nikolai Leskov, *The Novel: An Anthology of Criticism and Theory 1900-2000*, *Hale D.J. (ed.)*, Malden, 2006, 364.
11. *Benjamin W.*, The Task of the Translator, *Illuminations: Essays and Reflections*, *Zohn H. (trans.)*, *Arendt H. (ed.)*, New York, 1969, 69-70.

12. *Born J.*, Kafka's Parable "Before the Law": Reflections towards a Positive Interpretation, *Mosaic: An Interdisciplinary Critical Journal*, Vol. 3, № 4, 1970, 153-154.
13. *Derrida J.*, Force of Law: The "Mystical Foundation of Authority", *Deconstruction and the Possibility of Justice*, *Quaintance M. (trans.), Carlson D.G., Conell D., Rosenfeld M. (eds.)*, New York, London, 1992, 52, 62.
14. *Kafka F.*, Before the Law, Wedding Preparations in the Country and Other Stories, *Muir W., Muir E. (trans.)*, New York, 1978, 127-128.
15. *Kafka F.*, Dearest Father, *Stokes H., Stokes R. (trans.)*, Great Britain, 2008, 77.
16. *Litowitz D.E.*, Franz Kafka's Outsider Jurisprudence, *Law & Social Inquiry*, Vol. 27, № 1, 2002, 104.
17. *Nietzsche F.*, Thus Spoke Zarathustra, *Del Caro A. (trans.), Del Caro A., Pippin R.B. (eds.)*, Cambridge, 2006, 156.
18. *Schonfeld E.*, Am-ha'aretz: The Law of the Singular. Kafka's Hidden Knowledge, Kafka and the Universal, *Cools A., Liska V. (eds.)*, Berlin/Boston, 2016, 109-112, 114-119, 119-128.
19. *Teubner G.*, Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences, *The Modern Law Review*, Vol. 61, № 1 1998, 31-32.