

BETWEEN KANT AND KAFKA: BENJAMIN'S NOTION OF LAW

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Abstract

In this article I give the first detailed reading of Benjamin's *Zur Kritik der Gewalt* as well as his *Kapitalismus als Religion* in its relation to Kant's notion of *Recht*. I shall give the first analysis of Kant's reversal of St. Paul's spirit-letter opposition. It is by means of such a reversal that Kant sets out to redefine both religion and law in a radically anti-Judaic manner. If Benjamin rejects law in *Zur Kritik der Gewalt* he does not criticise Jewish law, rather he attempts to undermine the ethical validity of Kantian *Recht*. Yet Benjamin employs Kant's transcendental method. Benjamin's ambiguous relation to Kant becomes understandable through his 1934 Kafka essays. The rejection of *Recht* in *Zur Kritik der Gewalt* conceals a melancholic farewell to rabbinical Jewish law as voiced in the 1934 Kafka essays. Thus, the Kafka essays are read as *Zur Kritik der Gewalt*'s missing link.

1) Introduction

Scholarship has so far ignored the significance of Kant's philosophy of law for an understanding of Benjamin's rejection of law in *Zur Kritik der Gewalt*. In an important study Beatrice Hanssen has recently drawn attention to the Kantian theoretical context in which *Zur Kritik der Gewalt* needs to be seen. She aligns, however, Benjamin's notion of critique with Kant's transcendental notion of *Kritik*, not taking into account that Benjamin criticises that against which Kant interdicts any criticism, namely, the law.¹ I would rather argue that Benjamin's title *Zur Kritik der Gewalt* (1921) harks back to his friend Hugo Ball's *Zur Kritik der deutschen Intelligenz* (1918).² While it is true to say that Benjamin adopts Kant's methodology, he nevertheless radically undermines the latter's theory of law as secularised *Recht* issuing not from God, but from autonomous reason.

In *Zur Kritik der deutschen Intelligenz* Ball criticises Kant for a radical enmity to the empirical and the bodily as follows: "[. . .] selbst dieser knöcherne Rationalist, der von der Astronomie und den Sternen so vorsichtig herkam, daß er die Wirklichkeit eine 'Welt der Erscheinungen' nannte und sie in sträflicher Ferne für illusorisch erklärte – blieb nicht auch er ein Mystiker?"³ While, as we shall see, Benjamin assents to Kant's anti-empirical, transcendental method, he subverts this same method by replacing the Kantian authority of pure reason with the impulse of an intense messianism which destroys unredeemed and



suffering life only to resurrect it in a fully redeemed society. Benjamin's and Ball's critique of Kant meet, however, in their rejection of his political agenda. Ball makes it clear that behind the transcendental devaluation of the bodily lies an exploitative programme. Kantian transcendentalism justifies the brutal subjugation of empirical bodies by the violence of a feudalist and capitalist society: "Birgt sich hinter der Kantschen Moralmaxime nicht ebenso Friedrich Wilhelms Knutenregiment wie Friedrichs Pflichtideal im kategorischen Imperativ?"⁴ As we shall see, Benjamin follows up Ball's questions by focusing on the violence of the state which Kant's law demarcates as unquestionable. Yet, there are striking differences between Ball's rejection of Kant and Benjamin's critical appreciation of the method's of a Kantian philosophy which transcends the empirical and the bodily. While Benjamin concurs with Ball's critique of Kant's political agenda – which affirms the *status quo* of the ruling classes – he nevertheless subscribes to a transcendental method in which the empirical is not considered to be fully creaturely. However, following Ball, Benjamin takes issue with Kant's autonomous reason, which affirms the authority of the immanent ruler rather than the validity of transcendental, that is to say, divine or messianic justice. As we shall see, Benjamin's contrast between *Recht* and *Gerechtigkeit* means a confrontation between the secularised Christian capitalist, and therefore deceiving mythical law, and a Jewish messianic notion of justice.

Indeed, the law discussed in *Zur Kritik der Gewalt* is the secular law of the state founded on the immanentist justification of Kant's autonomous reason. Benjamin aligns this secular law with prehistory in the same way as he does in his 1934 Kafka essay *Potemkin*. In *Potemkin*, however, Benjamin contrasts the prehistoric 'pagan' law, which declares life as guilty, with Mosaic law, which aims at the protection of life. As we shall see, Kafka emerges as the Jewish critic of a modernity marked by Kant in both its Christian and capitalist forms. Kafka, however, does not affirm Jewish law; rather he describes in his parables the radical distance between contemporary society and the doctrines of *halachah*. In this way Benjamin characterises Kafka's narratives as *aggadah* (story) without *halachah* (teaching, guidance). Benjamin's reading of Kafka evidences his distrust in a possible way which would lead back from a Kantian Christian and capitalist society to one which is founded on the guidance of Jewish law. Jewish law which is not discussed in *Zur Kritik der Gewalt* appears in the 1934 essays as a contrast to the corruption of the society Kafka depicts, a contrast, however, that has been lost to the extent that Kafka himself seems to be ignorant of it.

As we shall see, Benjamin disregards rabbinical Judaism and opts for an intense messianism, because he perceives Kantian Christianity

to have thoroughly corrupted biblical scripture. As I shall show in the first analysis of Kant's reversal of St. Paul's spirit-letter opposition, the post-Reformation philosopher indeed sets out to redefine religion in a radically anti-Judaic way. Before a discussion of Benjamin's critique of Kant's law against the background of a lost Jewish law as depicted – at least in Benjamin's reading – by Kafka, I shall analyse Kant's law as Christian and at the same time capitalist. This analysis helps to ground philologically Benjamin's equation of capitalism and Christianity which radicalises Max Weber's analysis. I shall show that Benjamin's radicalisation of Weber's comparison between Christianity and capitalism has a philological foundation in Kant's writing on law. As we shall see, Kant attempts to separate Christianity from Judaic elements by a reversal of St Paul's spirit-letter opposition. By means of such a reversal he justifies the immanent law that upholds the power of the ruling classes with a traditionally – at least in the Lutheran form – Christian language derived from St. Paul. As an outcome of this reversal of St. Paul's spirit-letter opposition the bodily is radically devalued and therefore – having been divested of any creaturely status – justifies its violent subjection under the, in Hugo Ball's words, lashes of state power (Knutenregime).

1) *Kant's Reversal of St. Paul's Spirit-Letter Opposition or Benjamin's Notion of Christianity as Capitalism*

In his *Kapitalismus als Religion* (1921) Benjamin singles out Christianity as the only religion which is grounded in an absolute equation of life with guilt that does not allow for any form of atonement. Rather than working for a change of heart Christianity/capitalism tries to declare the whole of life guilty so that redemption can only be attained in complete despair which heralds the utter destruction of profane life:

Darin liegt das historisch Unerhörte des Kapitalismus, daß Religion nicht mehr Reform des Seins sondern dessen absolute Zertrümmerung ist. Die Ausweitung der Verzweiflung zum religiösen Weltzustand aus dem die Heilung zu erwarten sei. Gottes Transzendenz ist gefallen. Aber er ist nicht tot, er ist ins Menschenschicksal einbezogen.⁵

The strong messianic tones (Zertrümmerung) within this depiction of capitalist Christianity indicates Benjamin's paradoxical identification with his object of critique.⁶ As we shall see, this critical appreciation of the religion of capitalism (Christianity) parallels Benjamin's affirmation of Kant's transcendental method, while subverting its immanentist Christian agenda towards a non-rabbinical, intense Messianism. Benjamin defines Christianity as an immanentist religion in which the divine becomes involved with the human. Indeed, the divine, as exemplified by the figure of Christ, turns into the human. In Benjamin the incarnation of the divine into the human means that the former participates in the guilt appertaining

to the latter: the immanentism of Christianity as capitalism universalises guilt to the point that it even implicates God into the existence of a fallen world. It is Kant who develops a Christology to which Benjamin is implicitly referring in the quotation above. Like Benjamin, Kant contrasts Mosaic law and rabbinical Judaism, which are concerned with the spiritual guidance of empirical life according to the teaching of divinely revealed law, with the God turned immanent whose divinity does not consist in his life but in his acceptance of death which should be an example for all Christians. Whereas Judaism is oriented towards the 'Güter dieser Welt',⁷ in becoming immanent and therefore guilty (as all of a fallen humanity) Christ can only return to his divine origin through the radical rejection of all empirical life, even if it is not necessarily impure. In Kant, Jesus Christ appears as a revolutionary who overturns Judaism and this precisely because his worldly life illustrates the radical unworthiness of all bodily existence. As a result, Christ's truth consists not in the particular and exemplary form of his life (illustrating the concept of charity) but in the rejection, symbolised by the cross, of all worldly existence. The cross functions as an example only in the sense of a transcendental idea, as his death encourages everyone who wants to die away from all those objects that prevent him/her from following the unquestionable moral laws issuing from autonomous reason:

Da es also in einem wirklichen Menschen als einem Beispiel für alle anderen erschien, [. . .] durch das Beispiel desselben (in der moralischen Idee) eröffnet er die Pforte der Freiheit für jedermann, die eben so, wie er, allem dem absterben wollen, was sie zum Nachteil der Sittlichkeit an das Erdenleben gefesselt hält [. . .].⁸

Like Benjamin, Kant emphasises the involvement of the divine with the human (einem wirklichen Menschen) only to argue that this turning immanent of the divine underlines the necessity of a despair in and rejection of life that precludes the obedience to the commandments of an immanent morality (Sittlichkeit). Kant makes it in fact quite clear that he defines morality in relation to the laws of autonomous reason in radical separation from the religious statues offered in divine revelation (as in Mosaic or rabbinical law).⁹ Benjamin takes over Kant's language of martyrdom (absterben), but replaces autonomous reason with the messianic. It is this element of apocalypse (Zertrümmerung) which also fascinates Benjamin in the religion of capitalism.

This transcendental devaluation of life as guilty conditions Benjamin's rejection of law in its Kantian sense. Indeed, *Kapitalismus als Religion* equates Christianity not only with capitalism (money), but also with law:

Kapitalismus und Recht. Heidnischer Charakter des Rechts. [. . .] Methodisch wäre zunächst zu untersuchen, welche Verbindungen mit dem Mythos je im Laufe der

Geschichte das Geld eingegangen ist, bis es aus dem Christentum soviel mythische Elemente an sich ziehen konnte, um den eigenen Mythos zu konstituieren.¹⁰

This conflation of money and law in the context of Christian metaphysics harks back to Kant who exemplifies his Christian metaphysics of law through the workings of money. Thus Benjamin's equation of Christianity and money has a philological point of reference in Kant, for it is Kant who depicts money as a convincing illustration of the metaphysical, as the non-empirical, the purely formal. Indeed, one might say that money *is* Kantian metaphysics. Kant discards forms of exchange that operate via empirical objects (like gifts) and evaluates money as constitutive of his "metaphysische[n] Rechtslehre."¹¹ In Kant law appears to be as indifferent to the sins and sufferings of 'profane' life as money and it is the death away from all profanity as illustrated by Christ which justifies such capitalist indifference to the diverging qualities within empirical reality from a Christian perspective. If law is indifferent, it is separated from love or charity. Benjamin, indeed, equates law with violence and this has its philological point of reference in Kant's reversal of St. Paul's spirit-letter opposition.

Kant as post-Reformation, Enlightenment philosopher has in fact a significant bearing on Benjamin's understanding of modern Christianity as capitalist. In *Kapitalismus als Religion* Benjamin pinpoints the reformation as the time at which a capitalistic way of life manifests itself as Christian: "Das Christentum zur Reformationszeit hat nicht das Aufkommen des Kapitalismus begünstigt, sondern es hat sich in den Kapitalismus umgewandelt."¹² Informed by a Lutheran reformation tradition, Kant formulates Christianity as capitalism in a philosophical manner. We have already seen what a vital role money plays in Kant's *metaphysische Rechtslehre*. We have also seen how Kant develops his Christology in close relation to his transcendental philosophy. Yet Kant revolutionises the Christian terminology in, to employ Benjamin's terms, a capitalist, reformationist manner by reversing St. Paul's spirit-letter opposition. Kant employs the Pauline spirit-letter opposition only to reverse it. Daniel Boyarin has shown that Paul does not reject the body.¹³ In Paul the concept of charity is analogous to the concept of taboo as developed in Mosaic law: it safeguards the body as "God's temple" (1 Corinthians 3). Kant, however, separates law from charity. As we shall see, this Kantian separation of law from love results in Benjamin's opposition between law and Divine love that manifests itself in the messianic destruction of a capitalist society. In Kant law is autonomous reason as the freedom from material conditions. The separation of material existence from the intellectual and spiritual declares the whole of empirical life as guilty. Kant's understanding of Christianity and law as the rationalist and anti-sensuous shapes Walter Benjamin's percep-

tion of modernity. Benjamin interprets Kant's rejection of sensuous life as pagan and modern Christian. This association of modern post-Reformation Christianity and the pagan has to do with Benjamin's understanding of Judaism. Benjamin defines pagan religions by their equation of life with guilt:

Soviel heidnische Religionen, soviel natürliche Schuldbegriffe. Schuldig ist stets irgendwie das Leben, die Strafe an ihm der Tod. Eine Form der natürlichen Schuld ist die Sexualität, [. . .]. Eine andere die des Geldes [. . .]. Jüdisch: nicht das Leben, sondern allein der handelnde Mensch kann schuldig werden.¹⁴

Benjamin draws on a dialectic between sensuous life and death as an atonement for it which, as we we have seen, has been established by Kant's Christology. Benjamin contrasts this post-Reformationist Christianity with Judaism in which one can only become guilty through actions. The knowledge of a variety of particular laws enables such a possible avoidance of becoming guilty through sinful actions. Benjamin interprets Jewish Mosaic law as the conditioning of such a transcendence of guilt in empirical life. Mosaic laws guide empirical bodies away from sin:

[. . .] sie [die mosaischen Gesetze] bestimmen Art und Zone *unmittelbarer* göttlicher Einwirkung. Und ganz unmittelbar da wo diese Zone sich ihre Grenze setzt, wo sie zurücktritt, grenzt das Gebiet der Politik, des Profanen, der im religiösen Sinne gesetzlosen Leiblichkeit an.¹⁵

This quotation proves that Benjamin appreciates a Mosaic and rabbinical understanding of law that contrasts sharply with the immanent capitalist notion of Kantian *Recht* as discussed in *Zur Kritik der Gewalt*. As we shall see, Benjamin argues in the 1934 Kafka essays that such traditional understanding has been lost in post-reformation modernity. Kant's reversal of St. Paul's spirit-letter opposition determines such rupture of modern capitalist Christianity with its Jewish foundations. As Boyarin, Jacob Taubes and Peter Ochs have emphasised, Paul writes within a pharisaic Jewish tradition. In contrast to Kant's Christology, Paul's Christology not so much focuses on Christ's death, but – as W. D. Davies has pointed out – on his charitable life in which Jewish law is not abandoned completely – but as Boyarin and Taubes have recently shown – only those elements that tie it to a specific ethnic group. By using the term “the letter” of the law, Paul refers to cultural practices which he finds have become static and abstract. Thus circumcision as a pure marker of cultural identity, without its covenantal significance that compels all circumcised to act according to the law, loses its social and religious meaning: ‘Circumcision indeed is of value if you obey the law; but if you break the law, your circumcision has become uncircumcision’ (Romans 2, 25). As a sign detached from physical

actions in the social world circumcision has only abstract significance. In this way Paul's letter refers to stasis and abstraction, whereas by "spirit" he means charity – that is to say – care for the material world as God's creation. With Peter Ochs, one could therefore establish a relation between Paul's letter and "Sadducean literalism" as well as between Paul's spirit and the "oral law of the Pharisees."¹⁶ Indeed, Recent scholarship has shown that Paul did not establish an opposition between both law and charity and the spiritual and the empirical.¹⁷

Kant's reversal of St. Paul's spirit-letter opposition develops out of a radical anti-Judaism. This is perhaps one reason why Jewish writers like Simmel, Kracauer, Benjamin and Franz Baermann Steiner attempt to revert this Kantian dichotomy between the bodily and the spiritual.¹⁸ A legality (Legalität) – morality opposition parallels Kant's spirit-letter opposition.¹⁹ Like the letter, the legal is driven by motivating forces outside the sphere of a static understanding of law. Judaism has been interpreted in a reductive and derogatory manner as "legalistic." The target of Kant's reversal of Paul's spirit-letter opposition is in fact the oral law of the Pharisees. Kant criticises the Pharisean watchword according to which law could be reinterpreted if it helps to save human lives:

[. . .] wehe dem! welcher die Schlangenwindungen der Glückseligkeitslehre durchkriecht, um etwas aufzufinden, was durch den Vorteil, den es verspricht, ihn von der Strafe, oder auch nur einem Grade derselben entbinde, nach dem pharisäischen Wahlspruch: "es ist besser, daß ein Mensch sterbe, als daß das ganze Volk verderbe"; denn, wenn die Gerechtigkeit untergeht, so hat es keinen Wert mehr, daß Menschen auf Erden leben.²⁰

Kant associates Pharisaic Judaism with a desire for happiness, for survival in the "this-worldly". Radicalising his argument, Kant interprets Judaism as "materialistic". In Kant's interpretative framework Jewish law emerges as being captivated by the "Blendwerk der Güter dieser Welt."²¹ Kant established a Christology as the purely spiritual, in the sense of abstract, as a radical opposition to Judaism as the letter, in the sense of the material. Christ abolishes "alle moralische Gesinnung verdrängenden Zerimonialglauben[s]" and causes "eine öffentliche Revolution (in der Religion)."²² Here again Kant employs a Paulinian language only to change its connotations. As Boyarin has shown, in Paul "'slavery' is the benevolent and beneficial slavery of the child. It is for its own good."²³ In Paul "slavery" functions as metaphor for paternal guidance with which God directs the Jews. In Kant, however, slavery means oppression and bondage, worse yet Kant's "Sklavensinn"²⁴ has essentialist overtones.

If in Paul, the "spirit" – in distinction to the "letter" as the abstract and static – denotes that which is oriented towards empirical bodies so as to direct them away from actions that are violent and harmful, in Kant's

reading the “letter” signifies the materially concrete, whereas the “spirit” means the freedom (as opposed to enslavement) from the bodily as autonomous reason. Kant likens the letter to the particularity of empirical actions (“Handlungen”), whereas the spirit denotes abstract and static attitudes (“Gesinnungen”). Kant differentiates between someone who follows the law “dem Buchstaben nach (d.i. was die Handlung angeht, die das Gesetz gebietet)” and someone who observes the law “dem Geiste nach (der Geist des moralischen Gesetzes besteht darin, daß dieses allein zur Triebfeder ausreichend sei).”²⁵ He defines sin and guilt as that which is oriented to actions (the letter): “Was nicht aus diesem Glauben geschieht, das ist Sünde.”²⁶ Thus, the Paulinian spirit as that which gives life turns into Paul’s letter which kills, for Kant’s “Geist” commands a complete separation from material life. Every way of thought that has not the “spirit”, which exists, as autonomous reason, isolated from empirical reality, as sole motivating force (Triebfeder) is sinful. In this way Kant argues that the letter signifies any motivating force (Triebfeder) external to the unquestionable and static laws established by pure reason be it self-love or charity or compassion, whereas the spirit denotes morality as the following of the law for the law’s sake, free from any other motivating force:

Denn, wenn andre Triebfedern nötig sind, die Willkür zur gesetzmäßigen Handlung zu bestimmen, als das Gesetz selbst (z.B. Ehrbegierde, Selbstliebe überhaupt, ja gar gutherziger Instinkt, dergleichen das Mitleiden ist): so ist es bloß zufällig, daß diese mit dem Gesetz übereinstimmen: denn sie könnten eben sowohl zur Übertretung antreiben.²⁷

As a result of this refusal to differentiate between self-love and charity (“Mitleiden”, “gutherziger Instinkt”) Kant associates all forms of love with the transgressive. This outright condemnation of all forms of inclinations (“Neigung”) has to do with the binary opposition which Kant establishes between the physical and the moral: “Aller Hang ist entweder physisch, d.i. er gehört zur Willkür des Menschen als Naturwesens; oder er ist moralisch, d.i. zur Willkür desselben als moralischen Wesens gehörig.”²⁸

It is this juxtaposition between the physical and the moral which preconditions Kant’s binary opposition between law and charity. Benjamin takes issue with a Kantian antagonism between the moral and the physical as well as with a post-Reformation Christian dichotomy between law and charity as theoretically formulated by Kant. In *Zur Kantischen Ethik* Benjamin criticises “die Lehre von «vernünftigen Wesen»” which makes independent “die Anzahl der ethischen Subjekte von der der menschlichen Leiber.”²⁹ He also argues for an evaluation of the term “Neigung” which Kant denigrates: “Der Begriff «Neigung», den Kant für einen ethisch indifferenten oder wider-ethischen hält, ist durch einen Bedeutungswandel zu einem der höchsten Begriffe der Moral

zu machen, in der er vielleicht berufen ist, an die Stelle zu treten, welche die «Liebe» inne hatte." As we shall see, Benjamin, however, clearly believes that a capitalist Christianity has universally and effectively declared the physical as guilty so that a return to rabbinical Judaism or Paulinian Christianity, in which particular spiritual guidelines could safeguard human actions from contact with sin, is precluded. As will be discussed in the following section, Benjamin indeed evaluates inclination, not as love, however, but as anarchic violence that confounds all Kantian immanent law and thus enables the messianic destruction of the existing social order. It is a social order that Benjamin sees depicted in Kafka's novels, one which has lost any knowledge of Jewish law.

2) *Benjamin's Rejection of Kantian Law and his Affirmation of a Transcendentalist Messianism.*

The starting point of Benjamin's critique of law is violence, that is to say, that which in 'profane' empirical life threatens the well-being of empirical life. Kant, only pays attention to violence, not as a threat to material bodies, but rather as a subversion of the rational order of things: Kant's law attempts to preclude the revolutionary violence of those who rebel against a bourgeois state founded on the rationalisation of money and property. It therefore acts against a violent return to the 'original', 'natural' state in which the earth was everyone's possession. The violence of the law that upholds such a bourgeois and 'rational' state of society must not be reasoned against: "Der Ursprung der obersten Gewalt ist für das Volk, das unter derselben steht, in praktischer Absicht unerforschlich: d.i. der Untertan soll nicht über diesen Ursprung, als ein noch in Ansehung des ihr schuldigen Gehorsams zu bezweifelndes Recht (*ius controversum*), werktätig vernünfteln."³¹ Benjamin does precisely what Kant interdicts: he reasons against ("vernünfteln") the violence of positive law. However, he only abolishes Kant's immanent law issuing from autonomous reason and being upheld by the political ruler, in order to replace it with a transcendental violence, an, as he calls it "divine violence" ("göttliche Gewalt"), which ushers in a messianic age through the utter destruction of the profane. In this way, Benjamin still clings to a Kantian reversal of Paul's spirit-letter opposition, although he undermines the post-Reformation philosopher's immanentist and capitalist agenda.

Indeed, Benjamin does not discuss the rabbinical notion of "oral law" that tries to prevent any static and violent impositions on empirical life, but rather wants to be employed so as to minimise loss of life as well as violence. Instead, Benjamin exclusively discusses the positive law of state authority grounded in a static notion of rationality as delineated by Kant: "Rechtsetzung ist Machtsetzung und insofern ein Akt von unmittelbarer Manifestation der Gewalt."³² The violence of law is,

however, connected to the keeping secret of a spiritual doctrine by means of which men and women could avoid transgression. Through the guardians of law, the ruling powers enforce the violent suppression of a way of life in which guilt and sin could be avoided:

Denn unter dem Gesichtspunkt der Gewalt, welche das Recht allein garantieren kann, gibt es keine Gleichheit, sondern bestenfalls gleich große Gewalten. [. . .] Gesetze und umschriebene Grenzen bleiben, wenigstens in Urzeiten, ungeschriebene Gesetze. Der Mensch kann sie ahnungslos überschreiten und so der Sühne verfallen. Denn jeder Eingriff des Rechts, den die Verletzung des ungeschriebenen und unbekanntes Gesetzes heraufbeschwört, heißt zum Unterschied von der Strafe die Sühne.³³

As in *Die Religion des Kapitalismus*, Benjamin aligns the modern bourgeois society with pagan and archaic *Urzeiten*. Similarly, in the 1934 Kafka essay *Das bucklige Männlein* Benjamin emphasises the triumph of the archaic within the modern: “Das Zeitalter, in dem Kafka lebt, bedeutet ihm keinen Fortschritt über die Uranfänge. Seine Romane spielen in einer Sumpfwelt. Die Kreatur erscheint bei ihm auf der Stufe, die Bachofen als die hetärische bezeichnet.”³⁴ If in archaic times laws as spiritual guidelines have been kept secret from the populace, then this holds also true for modern Kantian *Recht*. As we have seen above, Kant forbids any exploration into the origins of both state power and state law: the subjects of the state must not question the validity of the violence that enforces positive law; rather they have to be aware of the debt they owe to the *Recht* (“ihr schuldigen Gehorsam zu bezweifelndes Recht”). In *Potemkin* Benjamin discusses the enforced secrecy imposed upon spiritually guiding laws by the powers of *Recht*: “Gesetze und umschriebene Normen bleiben in der Vorwelt ungeschriebene Gesetze.”³⁵ In the context of an examination of Kafka’s *Der Prozeß*, Benjamin contrasts the unwritten secret laws of both the modern state and archaic ruling classes with particular descriptive spiritual guidelines (“umschriebene Normen”). In *Potemkin* Benjamin defines these norms as Mosaic laws. In distinction to archaic unwritten laws, modern laws are written, but nevertheless kept secret: “Hier [in the modern bourgeois capitalist state] steht zwar das geschriebene Recht in Gesetzbüchern, jedoch geheim, und auf sie gestützt, übt die Vorwelt ihre Herrschaft nur schrankenloser.”³⁶ In this way on account of both the Kantian prescription of the inexplorability of violence and law and its consignment to the ruling classes that uphold the modern state, modern *Recht* affirms the unwritten laws that lead the populace inevitably into guilt, for they have no guidance in their actions that could enable an avoidance of guilt and the ensuing punishment/atonement for it. In another 1934 Kafka essay, in *Ein Kinderbild*, Benjamin discusses Kafka’s narrations as mirrors of the archaic as well as of the the modern in that they open up a world corrupted by those who hold power and in doing

so abolish the accessibility of law as spiritual guidelines for empirical action.³⁷ Kafka's stories constitute a "Haggadah" (the parable) without "Halachah" (the doctrine, the teaching, the guidance, the law). They are parables without a spiritual point of reference. For this reason Kafka is a "Paraboliker" without being a "Religionsstifter":³⁸ the signs of of his parables are empty of any spiritual, redemptive signification, they exclusively refer to the corrupt politics of an immanent capitalist religious system. Even those who – like the "Mann from Lande" in "Vor dem Gesetz" – try to study the law are denied access by the pillars of such a system, by the "Türvorsteher":

Das Recht, das nicht mehr praktiziert und nur studiert wird, ist die Pforte der Gerechtigkeit. Die Pforte der Gerechtigkeit ist das Studium. Und doch wagt Kafka nicht, an dieses Studium die Verheißungen zu knüpfen, welche die Überlieferung an das der Thora geschlossen hat. Seine Gehilfen sind Gemeindediener, denen das Bethaus, seine Studenten Schüler, denen die Schrift abhanden kam.³⁹

Benjamin describes here the loss of both Haggadah (the practised, acted upon law as illustrated by Talmudic parables/narrations) and the ignorance of Halachah (of the spiritual guidance that biblical/Talmudic law offers). In a society in which spiritual guidance proffered by law is ignored, a dedication to the study of this non-practiced law might work for justice (Gerechtigkeit). Yet even the contemplative life of study, rather than praxis, has lost its validity in a society which has become so corrupted that even the texts of the scriptures have not escaped corruption. One such 'philological' corruption can be found in Kant's reversal of St. Paul's spirit-letter opposition. As has been shown in the preceding section, Kant erases the Jewish tradition within Paul's writing by abolishing a notion of law that guides human action in the empirical world. Why, however, does Benjamin follow a Kantian transcendental method?

Benjamin sees no validity in a rabbinical Jewish tradition on account of the erasure and corruption of such tradition through the capitalist religion of post-Reformation Christianity. Yet, he perceives in this very process of corruption and fear a sign for hope: "Was die Korruption im Recht ist, das ist in ihrem Denken die Angst. Sie verpfuscht den Vorgang und ist doch das einzig Hoffnungsvolle in ihm."⁴⁰ Utter corruption of the spiritual guidance by means of which empirical life could avoid guilt through just actions according to the "Halachah" also leads to the utter destruction of a corrupted empirical life and to its resurrection in a Messianic age. Thus, in *Zur Kritik der Gewalt* Benjamin concurs with Kant's critique of the "pharisäischer Wahlspruch" – as has been discussed in the last section – but he agrees with it only to undermine its anti-Judaic connotations:

Falsch und niedrig ist der Satz, daß Dasein höher als gerechtes Dasein stehe, wenn Dasein nichts als bloßes Leben bedeuten soll [. . .]. Eine gewaltige Wahrheit aber enthält er, wenn Dasein (oder besser Leben) [. . .] den unverrückbaren Aggregatzustand von "Mensch" bedeutet. Wenn der Satz sagen will, das Nichtsein des Menschen sei etwas Furchtbareres als das (unbedingt: bloße) Nichtsein des gerechten Menschen. [. . .] Der Mensch fällt eben um keinen Preis zusammen mit dem bloßen Leben des Menschen, so wenig mit dem bloßen Leben in ihm wie mit irgendwelchen andern seiner Zustände und Eigenschaften, ja nicht einmal mit der Einzigartigkeit seiner leiblichen Person.⁴¹

"Mere life" means empirical life without any spiritual guidance (through halachah as doctrine, as teaching). Benjamin defines the religion of capitalism as a an immanent cult that does not provide any guidance for empirical life: "[. . .] der Kapitalismus [ist] eine reine Kultreligion [. . .] er kennt keine spezielle Dogmatik, keine Theologie."⁴² In a world determined by the doctrine-less religion of capitalism, created life has become corrupted into mere life that is incapable of any halachic direction, for like Kafka's Haggadhas (here in the sense of simple stories) it has become completely ignorant of any spiritual guidance. Faced with such modernity Benjamin agrees with a Kantian transcendental destruction of mere life as the empirical without any creaturely relation to the divine, but not with the annihilation of life as God's creation. Benjamin adopts Kant's transcendental method. He uses it, however, for his intense messianism, thus undermining the Kantian ideal of autonomous reason. In *Über das Programm der kommenden Philosophie*, Benjamin in fact delineates the possibility of a transcendental experience which is religious rather than mathematical:

Auf Grund des Kantischen Systems einen Erkenntnisbegriff zu schaffen, dem der Begriff einer Erfahrung korrespondiert, von der die Erkenntnis Lehre ist. Eine solche Philosophie wäre entweder in ihrem allgemeinen Teile selbst als Theologie zu bezeichnen oder wäre dieser, sofern sie etwa historisch philosophische Elemente einschließt, übergeordnet.⁴³

This theological notion of experience finds its fulfilment in an intense messianism which Benjamin most strikingly affirms at the end of *Zur Kritik der Gewalt*. As we have seen, he rejects law as violence in its Kantian capitalist sense, before focusing on theological experience which consists in an intense messianism. This rejection of Kantian law conceals a melancholic farewell to rabbinical Jewish law as voiced in the 1934 Kafka essays. As such, the Kafka essays could be read as *Zur Kritik der Gewalt's* missing link. In them Benjamin discusses what he represses in his rejection of Kantian *Recht*: Mosaic and rabbinical Jewish law. In *Zur Kritik der Gewalt* Benjamin contrasts Kantian *Recht* with Jewish *Gerechtigkeit*. In this context he only mentions Mosaic law's interdiction against murder. By referring to the Mosaic injunction against murder, Benjamin tries to reconcile his intense Messianism with the Hebrew Bible. He differentiates between the violence of Kantian immanent law

which upholds the post-Reformation religion of capitalism and the Divine violence of intense messianism. The latter is “vernichtend zu nennen [. . .] in Rücksicht auf Güter, Recht, Leben u. dgl., niemals absolut in Rücksicht auf die Seele des Lebendigen.”⁴⁴ Yet Benjamin endorses immanent violence, for it could enact Divine one. In this he qualifies the Mosaic injunction against murder, arguing that only God can act as a judge as regards the justification of killing mere life that is not just (“gerecht”). However, as Benjamin argues in *Kapitalismus als Religion*, the world shaped by post-Reformation Christianity has indeed lost any form of theology that could enact just life, rather than mere life, and as such it necessitates a Kantian anti-empirical transcendentalism that is messianic. The hopelessness that Kafka's Haggadahs depict on account of their loss of any Halachah at the same time manifests the hope in the destruction of such unjust life by the violent and loving redemption of a messianic revolution. This very destruction is Kantian, that is to say, transcendental in method, while it destroys that which Kant helps to bring about by revolutionising (or, as I have shown above, corrupting) non-pagan, Jewish elements in the Bible. Benjamin's radical subversion of Kant's philosophy of law as justification for state-power becomes apparent at the end of *Zur Kritik der Gewalt*. It is here that Benjamin justifies any form of violence that is anarchic, that is to say, disconnected from any positive law:

Von neuem stehen der reinen göttlichen Gewalt alle ewigen Formen frei, die der Mythos mit dem Recht bastardierte. Sie vermag im wahren Kriege genau so zu erscheinen wie im Gottesgericht der Menge am Verbrecher. Verwerflich aber ist alle mythische Gewalt, die rechtsetzende, welche die schaltende genannt werden darf. Verwerflich auch die rechtserhaltende, die verwaltete Gewalt, die ihr dient.⁴⁵

Violence as a form of messianic justice rather than of immanent law that supports the Kantian religion of capitalism, manifests itself in anarchic destruction which does away with the establishment and the keeping of laws that could set limits to the revolutionary destruction preceding a messianic resurrection of mere life into just life. Benjamin's intense messianism must not be confused with an expectant messianism, it is intense to the point that it welcomes imminent and immanent revolutionary, anarchic violence as a “göttliche Gewalt”. This kind of messianism is as immanent and political as the religion of capitalism, as defined by Benjamin. Indeed, Benjamin makes it clear that in contemporary society a relation to God can only be established through political violence:

Das Soziale ist in seinem jetzigen Stande Manifestation gespenstischer und dämonischer Mächte, allerdings in ihrer höchsten Spannung zu Gott, ihrem aus sich selbst Herausstreben. Göttliches manifestiert sich in ihnen nur in der revolutionären Gewalt.

[. . .] In dieser Welt ist höher: göttliche Gewalt als göttliche Gewaltlosigkeit. In der kommenden göttliche Gewaltlosigkeit höher als göttliche Gewalt.⁴⁶

Here Benjamin continues Kant's transcendental dualistic method in establishing a dichotomy between the this-worldly and not the Kantian (Christian) other-worldly, but the new world of a messianic/communist age. However, this new society depends on the violent self-transcendence of this-worldly capitalism in its destruction. From this perspective Benjamin's fascination with both Kant's transcendentalist, anti-empirical method, and with the universalisation of the feeling of despair generated by the religion of capitalism, makes sense. As in Marxist philosophy, in Benjamin's revolutionary Messianism, capitalism is a necessary step towards a redeemed society. As such Benjamin even welcomes the *Zertrümmerung* ultimately brought about thanks to the immanent religion of capitalism. The feeling of despair generated by capitalism evokes anarchic violence and in doing so ushers in a messianic/communist society. In this way the destruction of corrupted "mere life" should resurrect life and with it the "leibliche Person" in a fully redeemed, messianic age. Nonetheless, Benjamin employs the word "Gewalt", thus not concealing the violent aspects of such messianic/anarchic revolution. In *Zur Kritik der Gewalt* Benjamin represses, however, a sense of despair at the loss of a valid Jewish tradition, thanks to whose combination of spiritual and empirical laws the Messianic consists in progressive reform rather than in sudden and all-embracing violence. The "bucklige Männlein" to which Benjamin refers in 1934 is conspicuous by its absence in the *Zur Kritik der Gewalt* of 1921:

Dies Männlein ist der Insasse des entstellten Lebens; es wird verschwinden, wenn der Messias kommt, von dem ein großer Rabbi gesagt hat, daß er nicht mit Gewalt die Welt verändern wolle, sondern nur um ein Geringes sie zurechtstellen werde.⁴⁷

Here Benjamin melancholically alludes to a rabbinic past. The words of the rabbi are literally past tense ("gesagt hat"). Indeed, Benjamin depicts Kafka's narrations as brooding over this past of which the presence has no proper knowledge. Even this brooding as "Studium" does not bear fruit, for the texts themselves are corrupted. The Messiah, however, still commands present tense ("kommt") and it is this presence of hope within the hopeless that enables to Benjamin to read the signs of a Kantian religion of capitalism in the light of their destruction towards social redemption.

Notes

1. 'Critical of Kant's moral system, the essay [*Zur Kritik der Gewalt*] nonetheless appropriated his conceptual framework, as signaled by the fact that it found its methodological point of departure in transcendental critique (*Kritik*). Hanssen *Walter Benjamin's Other History. Of Stones, Animals, Human Beings, and Angels* (Berkeley: University of California Press, 1998), p. 130.
2. Ball's *Zur Kritik der deutschen Intelligenz* is on the list of books read by Benjamin. Benjamin *Gesammelte Schriften*, Vol. VII, 1, p. 443.
3. Ball *Zur Kritik der deutschen Intelligenz* (Frankfurt a.M.: Suhrkamp, 1980), p. 71.
4. *Ibid.*, p. 69.
5. Benjamin *Gesammelte Schriften* VI (Frankfurt a.M.: 1985), p. 101.
6. For a discussion of Benjamin's "Identifikation mit dem Angreifer", see Walter Glogauer "Widerspruch, Paradoxie oder 'Rettung' Zum Begriff der Wahrheit in Walter Benjamin's *Ursprung des Deutschen Trauerspiels*, *Neophilologus* 69 (1985), pp. 115–125, p. 119.
7. Kant *Schriften zur Ethik und Religionsphilosophie* 2 (Wiesbaden: Insel, 1956), p. 735.
8. *Ibid.*, p. 738.
9. 'Die Moral, so fern sie auf dem Begriff des Menschen, als eines freien, eben darum aber auch sich selbst durch seine Vernunft an unbedingte Gesetze bindenden Wesens, gegründet ist, bedarf weder einer Idee eines anderen Wesens über ihm, um seine Pflicht zu erkennen noch einer anderen Triebfeder als des Gesetzes selbst, um sie zu beobachten.' (*Schriften zur Ethik und Religionsphilosophie* 2), p. 649.
10. Benjamin, *GS*, Vol. VI, p. 102.
11. '[. . .] in einer metaphysischen Rechtslehre [. . .] bloß auf die Form gesehen werden muß, dergleichen der Begriff des Geldes, im Gegensatz im gegensatz mit aller anderen veräußerlichen Sache [. . .]' *Schriften zur Ethik und Religionsphilosophie* 2, p. 400.
12. Benjamin, *GS*, Vol. VI, p. 102.
13. "[. . .] the morphology of Paul' dualism has to be carefully delineated, *because it does not imply a rejection of the body.*" Boyarin *A Radical Jew. Paul and the Politics of Identity* (Berkeley: University of California Press, 1994), p. 59.
14. Benjamin, *GS*, Vol. VI, p. 56.
15. Benjamin, *GS*, Vol. VI, p. 99.
16. Peter Ochs 'Epilogue' *Modern Theology* 11 (1995), pp. 219–227, p. 223.
17. For a discussion of this point see W. D. Davies *Paul and Rabbinic Judaism: Some Rabbinic Elements in Pauline Theology* (London: Society for the Promotion of Christian Knowledge, 1965), Jame D. G. Dunn *Jesus, Paul and the Law: Studies in Mark and Galations* (Louisville, KY: Westminster/John Knox Press, 1990) and E. P. Sanders *Paul and Palestinian Judaism: A Comparison of Patterns of Religion* (Philadelphia: Fortress Press, 1977).
18. For a discussion of Kracauer and Simmel's critique of Kantian law, see my article "Literature and Theory. Siegfried Kracauer's Law, Walter Benjamin's Allegory and G. K. Chesterton's *The Innocence of Father Brown*", forthcoming in *Orbis Litterarum*. For a discussion of Steiner's interpretation of Jewish law as taboo in distinction to Kant's *Gesetz*, see my article "The Anthropologist as the 'Primitive': Franz Steiner's *Taboo*", in the *Journal of the Anthropological Society of Oxford*, 27 (1996), 197–215.
19. For Kant's discussion of this point, see *Schriften zur Ethik und Religionsphilosophie* 2, p. 318.
20. *Ibid.*, p. 453.
21. *Ibid.*, p. 735.

22. Ibid., p. 737.
23. Boyarin, p. 150.
24. Kant *Schriften zur Ethik und Religionsphilosophie 2*, p. 735.
25. Ibid., p. 678.
26. Ibid.
27. Ibid.
28. Ibid.
29. Benjamin, *GS*, Vol. VI, p. 55.
30. Ibid.
31. Kant *Schriften zur Ethik und Religionsphilosophie 2*, p. 437.
32. Benjamin *Gesammelte Schriften*, Vol. 2.1 (Frankfurt a.M.: Suhrkamp, 1977), p. 198.
33. Ibid., pp. 198–199.
34. Benjamin, *GS*, Vol. 2.2, p. 428.
35. Benjamin, *GS*, Vol. 2.2, p. 412.
36. Ibid.
37. For a discussion of the accuracy of Benjamin's discussion of the issue concerning the keeping secret of law by the ruling classes, see my article 'Law and Zionism: Franz Kafka and Franz Beermann Steiner', forthcoming in *Litteraria Pragensia*.
38. Benjamin, *GS*, Vol. 2.2, p. 424.
39. Ibid., p. 437.
40. Ibid., p. 431.
41. Benjamin, *GS*, Vol. 2.1, p. 201.
42. Benjamin, *GS*, Vol. VI, p. 100.
43. Benjamin, *GS*, Vol. 2.1, p. 168.
44. Ibid., p. 200.
45. Ibid., p. 203.
46. Benjamin, *GS*, Vol. VI, p. 99.
47. Benjamin, *GS*, Vol. 2.2, p. 432.