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# Kafka on Trial: Cultural Appropriation and the Politicization of Literature

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## Abstract:

A century after Franz Kafka wrote his famous short story *The Judgment*, a judgment befell his own literary corpus: The legal dispute over the unpublished writings of the Prague author and his executor Max Brod ended with a 2012 ruling by a Tel Aviv court, awarding their ownership to the National Library of Israel, in support of its claim that Kafka's writings are a cultural asset which belongs to the Jewish people, and as such, to the Jewish state. The highly politicized use of Kafka's Jewishness and Israel's appropriation of his works is problematic. The act of claiming a German-speaking Czech author as an icon representative *specifically* of Jewish culture displaces him from an original context, and by extracting him from it, overrides the embeddedness of Jewish contributions to European culture in the early 20th century. The question that underlies this trial, namely, "to whom does Kafka belong?", is deeply misguided, not because his Jewishness is disputed, but because the sheer notion of homogenous cultural identities overlooks the main concern of the author's literary work. There is irony and sadness in a discourse that insists on the belonging of an author whose entire oeuvre explores the human experience of non-belonging: Karl Roßmann goes missing in *America*, failing to assimilate in the New World; Gregor Samsa metamorphoses into a bug, becoming unable belong to a familial community; and *The Castle's* protagonist K. quite explicitly refuses both to integrate *and* to emigrate, deliberately choosing a form of non-belonging as his identity. This paper explores the implications of the recent court ruling on Kafka's manuscripts and contextualizes Kafka's literature as one that challenges traditional notions of identity formation.

**Key words:** Franz Kafka, trial, manuscripts, National Library of Israel, Marbach Literature Archive

Exactly a century after Franz Kafka wrote his famous short story *The Judgment*, a judgment befell his own literary corpus: An international legal dispute over his remaining unpublished writings culminated in a long-running and exhaustive trial which ended in a controversial verdict.<sup>i</sup> In October of 2012 a Tel Aviv court granted ownership of Kafka's surviving manuscripts to the National Library of Israel, in support of its bold and hotly debated claim that Kafka's literature is a "cultural asset belonging to the Jewish people," and thus, to the Jewish state.<sup>ii</sup> The question of Kafka's belonging—to which this verdict for some provides a definitive answer—is, I argue, deeply misguided, as is the National Library's proprietary attitude in this case. Its highly politicized use of Kafka's Jewishness in this trial erroneously insists on conceptions of homogenous cultural identities. This is problematic in general, but particularly unfitting in the case of Kafka. Israel's attempt to appropriate Kafka ironically overlooks the main concern of his literature, namely, the human experience of non-belonging.

Franz Kafka was born in 1883 and spent nearly his entire short life in his hometown Prague. He studied law and German-language literature at the German University of Prague. There, in 1902 he met Max Brod, who would become his best friend, a life-time confidant and eventually his executor, and who ten years later would introduce Kafka to Felice Bauer, his muse and two-time fiancée. Although Kafka's life is well documented, he appears an elusive figure, with ambivalent relationships and ideological positions. This is particularly true of his Jewishness, on which this trial centered. Kafka was indeed born into a Jewish family, a secular one, and he remained irreligious throughout his life. As an adult he took Hebrew lessons, attended Jewish theatre productions, and lectures on Zionism. But the Zionist enterprise, contrary to the claims of the National Library and its supporters, was not one to which Kafka was committed.<sup>iii</sup> Kafka's only true commitment was his writing. Late in life, he came to think of both Zionism and anti-Zionism as pursuits, which he had briefly attempted, but only to give them up (Kafka 1994, 206).<sup>iv</sup> Kafka never travelled to Israel, nor was there an Israel to go to, since he died a quarter century before the creation of the Jewish state. Numerous times however he fantasized about travelling to the faraway land of Palestine, but never made concrete plans. Instead it was Berlin that became his home away from home, the only place he ever attempted to live independently. And like the never attempted journey, so too the prospect of leaving the parental home and living with

a woman became a desirable one only once his tuberculosis had advanced and his death had become immanent. This eternal bachelor, who resisted a life dictated by social norms and traditions, died in 1924 at the age of 40.

Kafka's literary imagination finds a universal appeal. Arguably this is in part because the works he left behind are uniquely devoid of clear national, religious, or cultural markers. And the vague allusions to religious elements, if one must search for them, are more often Christian than Jewish. Thus, the National Library's act of claiming a German-speaking, secular Czech-Jewish author as an icon representative *specifically* of Jewish culture—a culture, that by the very logic of the trial itself belongs to Israel—does a disservice to the message of Kafka's oeuvre, which I read as a universal literature of non-belonging. Here are a few examples to illustrate. Kafka's first novel hero, the teenage Karl Roßmann is disowned by his family and sent into exile for fathering an illegitimate child. *America* traces his journey to New York, his failure to assimilate in the New World, and his eventual disappearance, which the German title *Der Verschollene* so vividly conveys. Kafka's short stories depict similar experiences of alienation and disconnect. In one of his earliest pieces, *The Metamorphosis* (1912), Gregor Samsa wakes up transformed into a beetle and only by being confined to a bed, escapes the social confines and expectations of the modern society. No longer able to work, he becomes a liability and loses his place in the family. While his unproductive body is swept away with trash, the parents rejoice in new and fresh prospects of integration, preparing Gregor's younger fertile sister for marriage.<sup>v</sup> Similarly the Hunger Artist, one of Kafka's latest characters, appears to come if not from another place, then from another time, in which his artistry was cherished and celebrated. He does not belong in the circus where his starved body is displayed, and is quickly replaced with a muscular panther, who can entertain its audience better. This Hunger Artist vanished not of hunger, for he feels none, but because the conceptual space to which he belongs ceases to exist. And Kafka's final novel attempt, *The Castle*, depicts one man's inability to arrive and refusal to return. The self-proclaimed foreigner K. quite explicitly refuses both to integrate into the village community *and* to emigrate, deliberately choosing a form of non-belonging as his identity and life path.<sup>vi</sup>

Now let us turn to the rather diasporic journey of Kafka's manuscripts, and the details of the latest trial. Kafka famously instructed Max Brod in two separate letters to burn the remainder of his writings unread. Fortunately for us, Brod disregarded Kafka's request, and only months after his death began making arrangements to publish his three unfinished novels. *The Trial*, the most famous of them, was released in 1925; *The Castle*, and *America* in the two years thereafter. With the Nazi occupation of Prague in March of 1939, Brod fled for Palestine. He crossed the Czech border mere minutes before it was closed, taking with him not much more than a suitcase of his own and Kafka's remaining papers. In the years that followed, Brod deposited these manuscripts in vaults in Switzerland and in Israel, and kept some in his residence in Tel Aviv. Interest in Kafka grew in the 1950s, and with it, the eagerness of libraries and private persons to purchase his manuscripts. In 1955, Felice Bauer sold the letters Kafka wrote to her to his former publisher, Salmon Schocken. In 1961, the Bodleian Library in Oxford acquired a substantial portion of Kafka's manuscripts, including the novels *America* and *The Castle*, works that Brod had handed down to Kafka's nieces, and others in Schocken possession.<sup>vii</sup>

And just as writing was Kafka's life, so the dissemination of his literature became Max Brod's life's work. And when he died in 1968, he bequeathed the remaining Kafka manuscripts in his possession to his secretary and long-time companion Esther Hoffe. In his will of 1961, Brod stipulated that Kafka's works should eventually be entrusted to a public archive "in Israel or abroad," naming the Hebrew University of Jerusalem (now the National Library of Israel) and the Municipal Library in Tel Aviv as two suitable options among many (Batuman 2010, 37). The National Library of Israel thus immediately contested both Hoffe's inheritance, and her role as executor to Brod's will, in an attempt to claim the manuscripts for itself. But the courts ruled in Hoffe's favour, finding that Brod's will "allows Mrs. Hoffe, for the rest of her life, to proceed at her own discretion" (Schult 2009).

The pace at which Hoffe honoured Brod's wishes is arguably rather slow, but her execution of Brod's will is also undoubtedly more to the letter than Brod's execution of Kafka's. Brod, not only published Kafka's works against his wishes, but among the very first of these were Kafka's two will letters, which forbade the circulation of his other works. These appeared in a German magazine in the month following Kafka's death.<sup>viii</sup> Esther Hoffe was much slower. Twenty years after Brod's death, in 1988 that is, Hoffe auctioned the original manuscript of *The Trial*. The highest bidder was the Marbach Literature Archive in Germany, which had by the late 80s acquired a substantial portion of Kafka's writings, much like the Bodleian Library in Oxford. In later years, Hoffe entered further negotiations with Marbach to place Kafka's remaining writings there, but even at 101 years of age, she did not live long enough to finalize these arrangements. Following her death in 2007, Hoffe's two elderly daughters inherited Kafka's papers that Max Brod brought with him to Palestine some 70 years earlier.

In what has been appropriately characterized as a rather Kafkaesque turn of events, the National Library of Israel filed an injunction, challenging the legality of Esther Hoffe's will, and once again claiming exclusive rights to the manuscripts her daughters were now to inherit. The ruling, which gave right to the National Library, left the Hoffe sisters and the German Literature Archive in Marbach empty-handed, and Kafka scholars across the globe in an uneasy predicament, reflecting on the irony of not only putting Kafka's identity on trial, but also on deciding to whom

his literature of non-belonging should belong. This time around, the National Library of Israel insisted that Hoffe was indeed to be seen as Brod's executor, albeit merely that, but not his beneficiary (and thus the owner of Kafka's manuscripts).

Backed by Marbach's own lawyers, the sisters argued that their mother's and now their own plans to place the manuscripts with this German Literature Archive, which already houses a representative collection of Kafka's works, would be fully in line with Brod's ultimate wish to make Kafka available to the world. The manuscripts would be more readily accessible to scholars were they placed with Marbach, the sisters argued, rather than with the National Library of Israel, whose "storage capacities" as its own Library Director Shmuel Harnoi admits, "do not meet international standards" (Schult 2009). Attorneys for the National Library rebuffed this claim, making the case that ownership of the manuscripts should be granted to the National Library itself, the only remaining specifically named claimant by Brod, after the Municipal Library of Tel Aviv renounced its claim to the papers.

Both the National Library of Israel, and the German Literature Archive in Marbach had the desire to house Kafka's works. And no one would object that Kafka's writings would be better off in any reputable archive, as both of these contenders are, than the private home of the elderly Eva Hoffe, who purportedly shares it with dozens of cats. But the choice between Israel and Germany as Kafka's final destination does strike one as paradox, and arguments put forth in advocating one over the other are intensely politically motivated. Kafka is recognized by the scholarly community as a founding author of European modernism. His works arose from and exist within this context, so that the premise that Kafka is a Zionist or religious author, more relevant to Jewish literature than to European modernism, goes against more than half a century of scholarship.

Moreover, critics outside of Israel agree that Marbach is indeed better equipped to house Kafka's papers than is Israel, and more convenient for researchers since it already owns a Kafka collection, containing the most prized manuscript of *The Trial*. Critics further agree that Kafka's works are undeniable less accessible to the world being located in Israel than in Germany. This, the scholarly community hopes, will change in time, but as Judith Butler (2011) correctly points out, currently researchers from Palestine, and the Middle East, or from areas not considered friends of the Israeli state, as well as all of those who oppose Israel's foreign affairs policy and on moral or ideological grounds boycott its institutions—including Judith Butler herself—will have very limited or no access to these files. It is fair to say that this affects a large number of people.

On the other hand, the rather obvious contention is Germany's moral stance when it comes to anything Jewish. The idea of giving Kafka to the Germans is puzzling not only to Holocaust survivors. But as one of them, Max Brod's acquaintance, and now emeritus Professor of History at the Hebrew University of Jerusalem, Otto Dov Kulka, objects, "They say the papers will be safer in Germany. The Germans will take very good care of them. Well, the Germans don't have a very good history of taking care of Kafka's things. They didn't take good care of his sisters," Kulka remembers, referring to Kafka's three sisters who were killed in the Holocaust, one of whom he met in a concentration camp (Batuman 2010, 40). Such historical considerations possibly speak against a German literature archive, but not necessarily in favour of an Israeli one. But as fate would have it, the Bodleian Library of Oxford, which to all seemed the most obvious choice of the three, had neither Marbach's money to purchase such a valuable collection, nor arguments for claiming ownership as the National Library of Israel. Prior to this trial, the National Library had no comparable holdings of Kafka. It is true that our eternal bachelor would not be misplaced, sharing a shelf with other Jewish scholars, his literature nevertheless strikes us as more relatable to his contemporaries of European modernity, such as Thomas Mann, Robert Musil, or Hugo von Hofmannsthal, whose many works are located at Marbach. And while the objection that the National Library of Israel is unfit to care for Kafka's works is, in my opinion, rather overstated, the fact that in arguing its case, it politically employs Kafka's Jewishness, and decontextualizes his positions on Zionism—which Kafka rejected as much as its alternative—is problematic, not to mention that these factors became genuine considerations in the final ruling.

Whether Kafka's works could even be properly seen as pre-Holocaust Jewish literature is itself a matter of dispute. And in any case, the premise that Israel represents all Jews, on which the National Library's case rests, is an assertion that anti-Zionists outright reject. Judith Butler (2011) has famously challenged the premise that Israel can claim ownership of any pre-Holocaust Jewish literature as its cultural assets, a position which in her view is of global consequence: "If the diaspora is conceived as a fallen realm, unredeemed, then all cultural production by those who are arguably Jewish according to the rabbinic laws governing the Law of Return will be subject to posthumous legal appropriation, provided that the work is regarded as an 'asset.'" Both, the condition that Jewish diaspora is a failed undertaking, and the resulting form of cultural appropriation strike Butler and anti-Zionists as absurd. Israel's appropriation of culture produced by European Jewry displaces the works from their original context, and overrides the embeddedness of Jewish contributions to European culture in the early 20th century. What we see today is a counter-movement, "to preserve Jewish heritage and culture in Europe, and make them part of living and breathing communities," a project, which as Antony Lerman (2010) correctly claims, remains "immensely important both for Jews themselves and for their place in European society."

Competing claims to cultural ownership aside, the logic of the trial could not be more Kafkaesque. For Israel to rule that Kafka belongs to Israel, strikes me as reminiscent of courts in Kafka's other, fictional *Trial*, where the final verdict is determined as an outcome of the investigation but is claimed *a priori*. In what position, one might ask, is an Israeli court to decide, neutrally and without bias, the ownership of Kafka's documents when the National Library of Israel—a major institution of the very state of Israel, is a plaintiff in the same case? Is the government of Israel itself not just as invested in preserving Kafka as an artifact of Jewish cultural heritage as is its National Library? This is not to say that Kafka's works are misplaced in Israel. Kafka's placelessness makes each country as poor a choice as the other. Nor is it to question the jurisdiction of the Tel Aviv court to try this case. There exists, after all, no international court for cultural artifacts, one that would ponder over homeless manuscripts like Kafka's. Rather, my point is that the question that underlines this trial—who owns Kafka?—like the judicial framework within which this question was to be answered, rests on rather unstable grounds. The National Library's weakest argument and at once its strongest point of contention was that Kafka's writings are "Israel's heritage," an asset that cannot be bought or sold. Yet at the same time, one that can be owned, but only by Israel. The trial was a major achievement for the National Library of Israel, but it was not one for Kafka. While his unseen works were being removed from dusty boxes in the Hoffe home, and shelved in Israel's National Library, Kafka's literary corpus too was forced into a conceptual box with the label of "Jewish literature," more or less exclusively. But owning Kafka comes at the high price of thwarting Kafka, starving his oeuvre of its global contexts, universal subject matter, and international appeal. Indeed, there is irony and deep sadness in a discourse that insists on the belonging of an author whose entire life's work explores the human condition of non-belonging, an experience that has gained new dimensions in our global age. Perhaps we would all be better off conceiving of literature not as cultural artifacts that are owned by certain cultures or groups of people, but as documents of and explorations into human experience, that first and foremost belongs to mankind, which we produce for the good of all humanity.

#### **About the author:**

Lara Pehar is a doctoral candidate at the University of Toronto. Her dissertation *Kafka: A Blueprint on Desire* formulates a theory of desire that emerges from Kafka's novels, stories, and letters. The project has been generously funded by the Social Sciences and Humanities Research Council of Canada.

Recent publications include "K.'s Schloß-Geschichten and the Making of a Hypertext," published in the forthcoming special issue of *The Journal of the Kafka Society of America* and "Kafka in Kanada," documenting the reception of the author in Canadian society, published earlier this year in *Der Kafka Atlas: Ein Online-Projekt zur weltweiten Rezeption Franz Kafkas*, and available at <http://www.geisteswissenschaften-in-sachsen.de/kulturraeume/kafka-atlas/laender-artikel/kafka-in-kanada>.

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<sup>i</sup> For a through report on the details of the case, see: Batuman 2010.

<sup>ii</sup> Statement made by David Bloomberg, Chairman of the National Library, quoted in: Cohen 2010.

<sup>iii</sup> Mark Gelber, Literature Professor at Ben-Gurion University of Negev, quoted in: Batuman 2010, 39.

<sup>iv</sup> “My life has thus far been a march in standing...I have not shown the faintest firmness of resolve in the way of living. It was as if I, like everyone else, had been given a point from which to prolong the radius and draw a circle. But instead I repeatedly made an attempt to define the radius, only to break it off immediately (Examples: piano, violin, languages, German studies, anti-Zionism, Zionism, Hebrew, gardening, carpentering, literature, marriage attempts, an apartment of my own)” (my own translation). “Mein Leben [war] bisher ein stehendes Marschieren...Es war nicht die geringste sich irgendwie gewährende Lebensführung von meiner Seite da. Es war als wäre mir wie jedem andern Menschen der Kreismittelpunkt gegeben, als hätte ich dann wie jeder andere Mensch den entscheidenden Radius zu gehen und dann den schönen Kreis zu ziehn. Statt dessen habe ich immerfort einen Anlauf zum Radius genommen, aber immer wieder gleich ihn abbrechen müssen (Beispiele: Klavier, Violine, Sprachen, Germanistik, Antiozionismus, Zionismus, Hebräisch, Gärtnerei, Tischlerei, Literatur, Heiratsversuche, eigene Wohnung)” (Diary entry from January 23, 1922, in: Kafka 1994, 206.

<sup>v</sup> For such a reading of *The Metamorphosis*, see: Zilcosky 2011.

<sup>vi</sup> “What else could have drawn me to this barren land, if not the desire to stay here?” / “Was hätte mich denn in dieses öde Land locken können, als das Verlangen hierzubleiben?” (Kafka 2005, pages TBC; my own translation).

<sup>vii</sup> Kafka’s letters to Felice, which to this day remain in the hands of the Schocken family, were first published in 1967 in German, and in 1973 in English translation.

<sup>viii</sup> The two letters, which Max Brod found among Kafka’s papers after his death (the first one from Fall or Winter of 1921, the second from November 29, 1922) were published in the Berlin-based magazine *Weltbühne* on July 17, 1924.