

# Zionism before the Law: The Politics of Representation in Herzl and Kafka

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**ABSTRACT:** The author explores a semantic field shared by two authors who were associated with Zionism to different degrees: Theodor Herzl and Franz Kafka. Rather than suggesting influence or borrowing, she shows that Herzl and Kafka employed the tropes of the legal profession, particularly that of the *Gestor*, or advocate. The first part presents the workings of Herzl's legal imagination, focusing on a series of lawyers fashioned in his plays and contrasting them with a key figure from Herzl's Zionist manifesto *The Jewish State*: the *Gestor*. In both cases, different concepts of representation—literary or artistic and legal or political—are crucially intertwined. The most interesting point of contact with Kafka's work is not in any of his explicit references to Zionism but rather in his novel *The Trial*, where a similar dynamic of different senses of representation is put into motion.

**Keywords:** *Gestor*, *Theodor Herzl*, *The Jewish State*, *Franz Kafka*, *lawyers*, *representation*

In an oft-quoted diary entry from January 1914, Franz Kafka offers a paradoxical image of Jewish identity:

What have I in common with Jews? I have hardly anything in common with myself and should stand very quietly in a corner, content that I can breathe. (*Tagebücher* 622)<sup>1</sup>

Kafka's comment pushes the very idea of cultural, ethnic, racial or religious group identification to its limits by questioning self-identification itself. In its Groucho-Marxian logic, it evokes the fact that the commonality posited by group identification is a two-way street, in which the individual is part of the club but the club also becomes identified with

the individual. Kafka's retreat to the corner—and other similar statements—presents a conceptual challenge that has made its mark on the rich and growing literature on Kafka's relation to Jewish culture and his association with Zionism. It seems like reading the Jewish Kafka is sometimes practiced as an exercise based on the making of fine distinction and the positing of precise borders fueled by a logic according to which texts, themes, and figures ultimately either are or are not Jewish. On the one hand, Jewish culture and Zionism are recognized as present in ever more subtle or "discrete" modes in his writing, as if in spite of his attempts at assimilation to German literature (e.g., Robertson 101); on the other, Kafka's encounter with and reappropriation of Jewish texts and themes becomes the cipher to his entire literary production, his apparent assimilation notwithstanding (e.g., Baioni). This "reassimilation" to the Jewish sphere is at its most distinct, perhaps, in descriptions of Kafka's sensibility as Talmudic (partially surveyed in Eyl). But as Scott Spector has recently argued, German-Jewish culture exerts a powerful fascination on scholars and readers perhaps because it repeatedly eludes this logic, because "in their own lives and consciousnesses, actual Jews did not experience their relationship to Jewishness (or to Germanness for that matter) in the zero-sum-game terms of the politics of assimilation" (Spector, "Forget Assimilation" 352).

In what follows I join Spector and other Kafka scholars who have recently opened the question of the Jewish identity of Kafka's writings to a scrutiny that attempts, in different ways, to go beyond the logic of assimilation (Liska; Spector, *Prague Territories*; Suchoff). I do so here by tracing a thought figure that Kafka shares with Theodor Herzl. Although the relation between the two has recently been fruitfully examined (e.g., Wagner, "Ende" and "Leaders"), this may seem like an odd choice. This is not only because Herzl was the leader of the political-Zionist camp in opposition to the cultural Zionism that Kafka was exposed to through friends like Max Brod and Hugo Bergmann (Spector, *Prague Territories* 135 ff.), but also because Herzl's writings raise the question of Jewish identity to an equal extent as Kafka's, despite the fact that he himself applied the zero-sum logic of the politics of assimilation most rigorously in his own political writings.

Notoriously "un-Jewish" in his political sensibilities, this "Moses of the fin-de-siècle" is often described as a product of Austro-Hungarian liberalism and its discontents, rather than any traditional Jewish discourse (Arendt; Dethloff; Schorske). Herzl's numerous biographers assume different positions regarding Herzl's Jewish roots but are

ultimately in agreement that their role in his formation was circumscribed. In particular, Herzl's Jewish nationalism seems fundamentally divorced from Jewish tradition, as his contemporary critics—most prominently the cultural Zionist Ahad Ha'am—were quick to note and scholars have continued to diagnose (on Ahad Ha'am, see Zipperstein 194 ff.; arguably, a contemporary version of the argument is made by Boyarin). And the same holds true specifically for Herzl's engagement with ideas related to the law and the state—what we might describe as his legal imagination—as evidenced by his Zionist manifesto “Der Judenstaat,” *The Jewish State* (1895). In this groundbreaking political statement, Herzl is not in search of particularly Jewish terms that would furnish the building blocks for a new Jewish politics, but instead speaks the language of his legal education. He had studied law in the late 1870s and early 1880s with such eminent Viennese professors as Lorenz von Stein and Ottokar Lorenz, a circle in which a Hegelian, historical approach to law was the dominant paradigm (Schoeps 29). Indeed, Roman law seems to have been the field that made the deepest impression on Herzl the student, a fascination that was incorporated into his Zionist political agenda. Thus, in *The Jewish State*, Herzl presents a theory of emergent statehood that revolves around the Roman concept of the *Gestor* as a representative of the needs and interests of a larger group (Harel 142–43).

This article begins by situating the *Gestor* in relation to Herzl's literary lawyers and lawmakers, figures who have been largely ignored by scholarship. This not only reveals a previously unrecognized red thread that goes through his work, showing the *Gestor* to be one legal figure among many employed by Herzl; it also opens the way to an analysis of the relation between different kinds of representation—legal or political on the one hand and literary or artistic on the other—that will lead us back to Kafka and to some of the key terms that emerge in Walter Benjamin's reading of Kafka (*Gesture*, *Halakhah*, *Aggadah*). In both cases, I move back and forth between the Zionist (or, as it were, “para-Zionist”) and the non-Zionist texts deliberately, to emphasize the conceptual commonalities that tie them together and elude a binary logic of assimilated texts in contrast with Jewish texts.

## I. HERZL'S LEGAL HISTORICISM

The historical perspective that Herzl had acquired as a student permeates his literary legal imagination, which fashions the law as a thing

of the past. Historical figures such as Solon, the Greek lawmaker who figures in an eponymous short story, or Philippus, the medieval legal scholar who is the protagonist of Herzl's only historical drama, *Die Glosse* (1895), are favorably depicted as sober yet idealistic legislators and moral guides. The play describes a medieval scholar engaged in writing a glossary on the Roman law, staging his comments on the marriage law as a song more persuasive than the amorous verses of a troubadour. In the tale that opens Herzl's *Philosophical Tales*, "Solon in Lydien" (1900), Solon the Greek lawmaker is pitted against Aesop the author of parables at the court of King Kroisos of Lydia; once again, the law gains the upper hand.<sup>2</sup>

The story is a moral tale about a young man who invents a machine that would end hunger, an invention that predictably causes more harm, in the form of bored and restless citizens, than good. It ends not by projecting into the future and presenting a humanity that has solved these problems by using technology wisely—this is the utopian narrative that Herzl was soon to construct in his Zionist utopia *Altneuland* (*Old-New Land*; 1902)—but rather by putting the past back in order. Unlike Aesop, who sees hope in the new technology, Kroisos and Solon sadly agree that work is necessary for humanity—"It's good for them. They'll make something of it" (*Philosophische Erzählungen* 22). They kill the young and noble Eukosmos and the world of ancient Greece returns to its old self.

The moral of the story is thus not only that change is a precarious business, an unpredictable agent that may be engaged with only at great risk (a surprisingly conservative message in itself, coming from a man who was at the time propagating radical change as a Zionist), but also that the man of law has a more adequate grasp of these risks than the teller of fables. In other words, the story valorizes *Halakhah*, the law, rather than *Aggaddah*, the body of nonlegal discourse that accompanies legal discussions in the Talmudic tradition, in which the parable is a prominent genre. These are probably not the terms that Herzl himself would apply to this text, having "assimilated" the discourse of continental law as a replacement for the Jewish *Halakhah*; however, their theorization by another Zionist author will prove helpful in tracking the logic of Herzl's legal imagination.

The Hebrew poet and cultural Zionist Haim Nahman Bialik uses these terms as universal literary categories, beyond the scope of the Talmud, in his 1916 essay "Halakhah and Aggadah," which is an argument in favor of *Halakhah* as an imaginative category or a resource

for literature. Bialik describes the mutual implication of *Halakhah* and *Aggadah* as a dialectical relation:

As a dream seeks its fulfillment in interpretation, as will in action, as thought in speech, as flower in fruit—so *Aggadah* in *Halakhah*. But in the heart of the fruit there lies hidden the seed from which a new flower will grow. The *Halakhah* which is sublimated into a symbol—and much *Halakhah* there is, as we shall find—becomes the mother of a new *Aggadah*, which may be like it or unlike. A living and healthy *Halakhah* is an *Aggadah* that has been or that will be. And the reverse is true also. The two are one in their beginning and their end. (Bialik 47)

This relation can be applied by extension to the typology of characters that appears in Herzl's legal tales: the man of law is the one capable of sublimation and symbolization, and he becomes the hero of the day and the seed from which Herzl grows his own parable.

Bialik's essay appeared in Martin Buber's journal *Der Jude* in Gershom Scholem's German translation soon after its original publication (Scholem 74); this was of course too late for Herzl, who died in 1904, to read it, and it is futile to speculate whether he would have bothered to read this organ of the cultural Zionism that represented the opposing camp of the movement. It is equally unavailing, though perhaps more tempting, to wonder whether Kafka encountered the essay in *Der Jude*, which he read regularly and in which he published, and whether he found Bialik's comments on the law relevant to the notes of *Der Proceß* (*The Trial*), which he had composed just a few years earlier. The essay was certainly read by Walter Benjamin, who received the translation from his friend Scholem and used it in his essay on Kafka, to which I shall briefly return at the end of this article. But to return, in the meantime, to Herzl: Bialik's insistence that the task of establishing a new Jewish national literature in Hebrew will prove impossible unless the literary imagination allows itself to feed on the spiritual resources associated with the law and the regulation of daily life seems curiously fulfilled in Herzl's German literary work, where, as we shall see, concepts travel productively between the two domains.

If Herzl's historical lawyers are idealized figures, his contemporary lawyers embody, in different ways, a dead end. One of a group of contemporary lawyers, the protagonist of *Das Neue Ghetto* (written 1894, published 1897), Dr. Jacob Samuel, is an idealistic young Jewish lawyer on the verge of assimilation. As a lawyer, he seeks to mediate between the conflicting loyalties that are produced by this situation: to both his Jewish family and the new environment in which

he is being acculturated. But the play concludes that even the lawyer cannot serve as mediator and that Jews are confined to the “new ghetto” that gives the play its name. In other words, Herzl’s Zionism is rooted in the sense that his contemporary Jewish men of law, unlike their ancient and medieval models, lack the ability to produce a happy ending to their story.

But if a gulf divides these contemporaries of Herzl from the earlier men of law—a gulf that makes the nobility and wisdom of a Solon or a Philippus unavailable to the frustrated (and sometimes foolish) lawyers of the present—it is important to note that those ancestors themselves are positioned on a threshold. That is, they are interesting to Herzl as men of law precisely because *as such* they are in the midst of a transformation, or a change of conditions. The narrative of “Solon in Lydien” begins when the lawmaker has to leave his native Athens and wander in exile because his laws—being still too new—have not been accepted by anyone. “My laws are not good yet,” he explains “But neither are they bad yet. Young laws are somewhat similar to wine. They must ripen after they are done” (*Philosophische Erzählungen* 3). And a similar dynamic applies to the second historic-legal text that I mention above, *The Glossary*. For those who surround Philippus as well, the law is a novelty, and one not easily digested. Philippus is of interest to Herzl because he stands for a transformation in the world of law, a transformation auguring modernity: the events of the play take place in medieval Bologna, where the study of Roman law was revived from the eleventh century onward, and from which it spread to the rest of continental Europe to form one of the foundations of civil law (Bloch 109–20; Rokem).

The same logic seems to operate when Herzl uses the term *Gestor* in *The Jewish State*, a text published in 1896, one year after *The Glossary* and a few years before the *Philosophical Tales*. The Roman legal concept that Herzl creatively borrows for his purposes has had centuries to ripen and is ready for use by Zionism, to use the term of Herzl’s Solon (“They must ripen after they are done”). In this sense, Herzl is truly a product of Lorenz von Stein’s nineteenth century, which Reinhart Koselleck describes as Janus-faced in its interest in both history and progress (Koselleck 57). Following the example of Stein, as Koselleck describes him, Herzl presents his Zionism in *The Jewish State* as a combination of prognosis and projection, an argument that is based in historical necessity and turns to historical concepts to ground its predictions for the future.

## II. THE *GESTOR* BETWEEN *DARSTELLUNG* AND *VERTRETUNG*

*The Jewish State* is a text animated by the energy of practical solutions to confounding problems; the greatest difficulty standing in the way of fulfillment of the Jewish national aspiration is to understand just how simple the business really is, Herzl seems to be saying. The *Gestor* is one of those sensible, simple tools the author pulls out of the hat to resolve the dilemmas of Jewish nationalism. The essential problem addressed by the concept of the *Gestor* is the lack of some of the crucial conventional parameters of nationalism—a shared territory, a shared language—in the Jewish case. How are the nationalists to establish themselves as the legitimate representatives of the people? Herzl translates dispersion into handicap and offers a Roman-legal solution that casts the relations between the collectivity and its representatives in the mold of the lawyer-client relation:

When the property of an incapacitated person is in danger, anyone may step forward (*hintreten*) and save it. This man is the *Gestor*, the director of someone else's affairs. He has received no warrant—that is, no human warrant. His warrant derives from a higher necessity. (*Jewish State* 138; "Judenstaat" 243)

The *Gestor* is the person—any person—who steps forward (*hintreten*) to represent the interest of someone else.

Herzl continues to explicate this representation as stepping forward in terms of a performance on a stage, describing Zionism as a kind of *Gesamtkunstwerk*:

The undertaking of that great and ancient *Gestor* of the Jews in primitive days bears much the same relation to ours as some beautiful old *Singspiel* bears to a modern opera. We are playing the same melody with many more violins, flutes, harps, violincellos, and bass viols; with electric light, decorations, choirs, beautiful costumes, and with [the first singers of their day]. (*Jewish State* 140; "Judenstaat" 245)

Political and artistic representations thus coalesce into the body of the performer-representative, a convergence fascinatingly marked by the etymological relation between the words *Gestor* and *gesture* and further emphasized by reference to a walking body in Herzl's use of the verb *hintreten* and in the closely related political concept of representation, *Vertretung*.

The etymology, it should be emphasized, is not coincidental to Herzl's use of the term *Gestor*, but rather what allows him to employ

it so creatively. I would argue that it continues to implicitly motivate Herzl's rhetoric even in a later passage in *The Jewish State*, devoted to the constitution of the future Jewish state. The *Gestor*, which has presumably done its job and is superseded by the existing state, is not mentioned in this passage. But the stepping and performing body that emerges in the description of the *Gestor* continues to perform here, in the acrobatic image of a collectivity being pulled upward by the energy of single ambitious individuals:

Politics must take shape in the upper strata and work downwards. But no member of the Jewish State will be oppressed, every man will be able and will wish to rise in it. Thus, a great upward tendency will pass through our people; every individual by trying to raise himself, raising also the whole body of citizens. (*Jewish State* 145; "Judenstaat" 249)

The *Gestor*—and the imagery that ensues from this figure—thus does very subtle conceptual work in *The Jewish State*. Its ostensible purpose is to depersonalize the question of leadership. The *Gestor*, as Herzl emphasizes, is an abstract person: "This *Gestor* cannot, of course, be a single individual. Such a one would either make himself ridiculous, or—seeing that he would appear to be working for his own interests—contemptible" (*Jewish State* 139; "Judenstaat" 245). Yet its etymology seems to invite the gesturing body back into the text again and again: "[Not all heads can be brought under one hat, as the saying goes; the *Gestor* will therefore simply wear the hat] and march in the van" (*Jewish State* 138; "Judenstaat" 244; translation altered).

Hannah Arendt identifies a related ambiguity in her critical reassessment of Herzl's manifesto on the fiftieth anniversary of its publication.

With the demagogic politicians of his own and more recent times Herzl shared both a contempt for the masses and a very real affinity with them. And like these same politicians, he was more an incarnation than a representative of the strata of society to which he belonged. [. . .] he did more than merely discern in these intellectuals the real *Luftmenschen* of Western Jewry—that is, Jews who, though economically secure, had no place in either Jewish or gentile society and whose personal problems could be solved only by a reorientation of the Jewish people as a whole. Herzl actually incarnated these Jewish intellectuals in himself in the sense that everything he said or did was exactly what they would have, had they shown an equal amount of moral courage in revealing their inmost secret thought. (376–77)

In other words, Herzl's rhetoric of leadership wavers between *Vertretung* as "speaking for" a certain class and *Vertretung* as incarna-



tion, as an actual stepping in the very footsteps of a group or class. Arendt's observation further indicates that both forms of *Vertretung* are closely tied with other forms of representation—as indicated by Herzl's positioning of the *Vertreter* as a *Darsteller* on an operatic stage—namely discerning and describing (or redescribing) that class as *Luftmenschen*.

Herzl's postulation of a Jewish body politic to be represented by the *Gestor* is formulated in explicit resistance to, among other things, the Marxist idea of the proletariat as the representative of the people (Dethloff, "Wie Herzl verstanden werden wollte" 34). Nevertheless, his rhetorical fashioning of the *Gestor* as representative in two senses—political and theatrical—recalls Marx's parallelism between political and literary representatives (*Vertreter*) in "Der achzehnte Brumaire des Louis Bonaparte" (Marx 142). This text, described by Jeffrey Mehlman as a "systematic dispersion of the philosopheme of representation" (Mehlman 37) and by Gayatri Spivak as exposing the "complicity of *Vertreten* and *Darstellen*, their identity-in-difference as the place of practice" (Spivak 277), establishes an entire figurative semantic field related to representation, a field in which later authors such as Herzl and Kafka continue to sow.

Thus, for example, Marx frequently uses terms such as "politische Bühne" (political stage) and "öffentliche Bühne" (public stage), a dead metaphor which is concretized in passages such as his depiction of Louis Bonaparte as the last actor who remains on the stage when the national assembly retreats from the scene in what he describes as an unpolitical manner (Marx 148). Like Herzl, Marx drives the performance of the political representatives that he describes into the realm of an acrobatic circus act, in which the different parties climb on each other's shoulders:

The proletarian party appears as an appendage of the petty-bourgeois-democratic party. [ . . . ] The democratic party, in its turn, leans on the shoulders of the bourgeois-republican party. The bourgeois republicans no sooner believe themselves well established than they shake off the troublesome comrade and support themselves on the shoulders of the party of Order. The party of Order hunches its shoulders, lets the bourgeois republicans tumble, and throws itself on the shoulders of armed force. It fancies it is still sitting on those shoulders when one fine morning it perceives that the shoulders have transformed themselves into bayonets. Each party kicks from behind at the one driving forward, and leans over in front toward the party which presses backward. No wonder that in this ridiculous posture it loses its balance and, having made the inevitable grimaces, collapses with curious gyrations. (Marx 135)

Of course, in Marx's case we find not Herzl's (perhaps naïve) optimism that the climbing movement upward will pull everyone to the top together, but rather a dystopic farce of mutual reliance. Nevertheless, the rhetorical confluence—the fact that Marx has constructed the rhetorical stage on which Herzl positions the Zionist opera of his Zionist manifesto, with the *Gestor* in the leading role—deserves closer consideration. What is at stake in this rhetorical move? What do the *Gestor* and other figures of representation do?

### III. LAWYERS ON THE STAGE

Herzl the playwright here offers an important clarification of the concerns of Herzl the statesman. The relation between the two roles is often narrated as a plot of *Bildung* and substitution: the stage of world politics comes to replace the stage of Vienna's Burgtheater that Herzl had intended to conquer as a young playwright (Fränkel). In a more recent version of this narrative, Bernhard Greiner casts the non-Zionist plays as “escapes from the social” in contrast with the Zionist “fulfillment writing” (Greiner 150 ff.).<sup>3</sup> As will become clear from my reading of Herzl's plays, I believe this approach has its limits. Herzl's theatrical lawyers—men who are both *Darsteller* (as actors) and *Vertreter* (as lawyers)—grapple with the mutual implications of the two terms, mirroring and challenging the figure of the *Gestor*.

Herzl penned a legal comedy as early as 1882, while he was still a law student. This comedy, *Die causa Hirschhorn* (*The Hirschhorn Case*), is an investigation of the obfuscating effects of legal language. The two feuding clerks who are the main characters of the play have been put in joint charge of the Hirschhorn case while their employer is away; however, they have not only neglected to read the file but also misplaced it before the widow Hirschhorn materializes in their offices wishing to consult about the case. The central joke around which the comedy revolves is thus the double meaning of the words “causa Hirschhorn” which can point at both the awkwardly missing files and the equally awkwardly present client.

Fearing their ignorance of the facts of the case may be revealed, they decide to rely on the rhetorical delay and confusion tactics of their métier: “We'll give her evasive answers. [. . .] That's the true Lawyer's-trick. Evasive answers! The entire secret of our trade lies therein!” (*Hirschhorn* 9). As Greiner suggests, this inaugurates a play-within-the-play, and the consequences are grave (152). Not sur-

prisingly, the rhetorical mist that the two spread gets out of hand. It seems to infect everyone in the office: the two clerks are engaged in an endless conversation about their own conversation and their own misunderstandings, whereas their footman parrots their legal phrases using the roundabout legal expressions to hide the fact that he has hidden the crucial Hirschhorn file and is entertaining himself with the clerks' embarrassment. The play stages the gradual breakdown of language in its ability to refer to objects in the world. The clerks are incapable of clarifying even their use of a simple pronoun; Herzl here plays on the potential confusion of *Sie* (you) with *sie* (her): "Ich liebe sie"—"I love her"—one of them exclaims, and the other retorts: "Unfortunately, I cannot reciprocate these feelings," let alone enter a true dialogue with their client (*Hirschhorn* 11).

As Herzl's political consciousness evolved in the 1890s, his playful skepticism regarding the lawyer-client relationship was transformed and politicized as well. The protagonist of *The New Ghetto* is thus not simply, as I have described him above, a lawyer who has encountered a dead end, but a lawyer for whom representation has become a painfully entangled matter. Dr. Jacob Samuel, Herzl's tragic hero of stunted assimilation, tries to do right by absolutely everybody around him: he enthusiastically attempts to use his legal knowledge to help both the striking workers of a mine in Bohemia and the aristocrat who owns the mine, not to speak of his own Jewish family, which has business ties to the mine and receives his aid as well, though perhaps not his enthusiasm. The conflicting loyalties inevitably explode in his face, and Samuel ends up getting killed in a duel with the owner of the mine, who believes that he has been cheated. The play thus situates Samuel at the nexus of several conflicting discourses: the stereotypical representation of Jewish bankers and stock-speculators, the language of familial piety and the obligations toward parents and wife, the requirements of honor and *Satisfaktionsfähigkeit*, and finally the moral commitment to help the ailing workers, the description of whose suffering is taken straight out of Zola's *Germinal*, which was published a decade earlier. It is the impossibility of speaking all of these languages at the same time that kills Samuel.

Herzl penned the play at a moment of great pessimism in the trajectory of his engagement with what he called "the Jewish question." Disillusioned with assimilation, Herzl saw no redemption for his Jewish protagonist but a noble death. The political solutions that he dreamt up in his diary during this period are similarly abor-

tive, for example the oft-quoted plan for a Jewish mass conversion to Catholicism. The narrative that follows is almost too familiar to rehearse: after his experiences in Paris in the mid-1890s, Herzl conceives of a political solution, writes *The Jewish State* (published in 1895), and throws himself into a life of action, organizing the Zionist congresses from 1897 onward and acting as a self-appointed diplomat of the Jewish cause throughout Europe and the Middle East. But there are details that riddle and complicate this neat narrative, for example the fact that Herzl continued to examine the figure of the lawyer and the dilemma of conflicting loyalties that had confronted his protagonist Samuel in his literary writing, without tying it to the Jewish question. In other words, there were elements of Samuel's dilemma that had not been solved sufficiently through Zionism. Indeed, because his Zionist manifesto had put the task of representation on the shoulders of the *Gestor*, these dilemmas had perhaps even been compounded.

Reading *Unser Käthchen* (*Our Katie*), a comedy written in 1899, is a truly puzzling experience for any student of Herzl's career. How, one is bound to wonder, did he even find time to pen this lengthy comedy between his Zionist activities and his employment as the *feuilleton* editor of the *Neue freie Presse*? And why, if his passions and commitment were completely consumed by the political solution to the Jewish question, would he bother? The narrative of the play is simple, though its presentation is lengthy and fairly convoluted. At its center stand Sophie and her two daughters, Martha and Katie; three exemplars of Herzl's misogyny (and of his famously unhappy family life), these women are living proof that marriage is a bad idea: spoiled, superficial, self-centered, and disloyal. In the first scene of the play we discover Sophie's secret: her second daughter, Katie, was fathered by an old lover, who is now back in town and haunting her. As in the case of *Die causa Hirschhorn*, the possible multiple significations of the title (who is the "we" behind "our" Katie?) indicate the complications that will inconvenience the characters on the way to the conventional comic resolution.

Herzl sets up the scene for a comedy of mistaken identities: he instructs us on the first page that Sophie and Katie are to be played by the same actress, and the characters make "meta-identical" jokes such as: "Identity! That's something legal. When you can be certain that a person is one and the same person, we call it Identity. For that you get a witness-fee" ([sic]; *Käthchen* 85). But the play does not

seem to cash in on this theme—no one ever confuses Sophie and Katie—and is instead derailed by a different set of concerns, which is tied to the figure of the *Gestor*. While Sophie ultimately manages to keep her own marriage intact, prevent the divorce of her older daughter and find a suitable match for the younger one, what Herzl achieves in writing the play is a clearer understanding of the entanglement of *Darstellung* and *Vertretung*, an entanglement that was purely implicit in the rhetoric of *The Jewish State*.

Unlike Greiner, I do not focus on the distinction between Herzl's Zionist "fulfillment writings" and the non-Zionist writings—and specifically this comedy—that "fail to attain the social" (Greiner 157 ff.) but rather on the continuity between them, and on the ways in which the non-Zionist comedy enables a fresh consideration of distinctly Zionist problems. The first scene of *Our Katie* is in fact a revision of *The New Ghetto*, rearticulating the dilemma of the lawyer who represents multiple sides of one dispute in starker terms. And though the characters of this later play have been stripped of their Jewish identity, their predicament too is tied to the project of *The Jewish State*, specifically to the figure of the *Gestor*. The first scene takes place in the office of Dr. Friedrich Möhring, a lawyer, who is having an unusually busy day: one after the other, he receives visits from all the members of one family, who all enlist his services as a lawyer in the entanglement that is their family life. On the way to the imbroglio that will inevitably follow—just as Jacob Samuel's multiple commitments explode in his face—Möhring learns a lesson about the interdependence of the multiple senses of representation. Each of the appointments follows the same logic, in which the parties exchange a representation (*Darstellung*) of the state of affairs for a representation (*Vertretung*) of the client by the lawyer. As Möhring repeats twice, using the term *Darstellung* in both cases, in his encounter with Sophie's son-in-law and nemesis: "So, the next order of business is for you to give me a full representation of your complaints. [. . .] You will give me an exact representation" (*Kätchen* 26).

Möhring does in fact hear the story—the *Darstellung* of the state of affairs—twice, from both parties involved. Soon after the son-in-law leaves the lawyer's office, his wife Martha enters with the exact same intentions, telling the exact same story of a marriage gone sour. Möhring at first fails to hear the echo, and hence fails to recognize the connection and agrees to represent (*vertreten*) her, with idealistic enthusiasm:

Happily, honored Lady! It is so seldom in our occupation, that we can protect the truly weak. Usually we must be the protectors of the strong. [. . .] But to serve the just as a weapon—that is seldom, and it warms my heart. (*Kätchen* 34)

But when he sees her card, the realization that he has entangled himself in a mirroring representation is soon to follow; as he explains to his footman:

This will escape through our fingers. [. . .] Clients number two and three [. . .] they will devour each other—because I cannot represent them both. [. . .] I am the lawyer of both sides. (*Kätchen* 35–36)

However, when he arrives at the family home to explain the mix-up to both parties and withdraw from the double *Vertretung*, Möhring finds himself once again entangled in the mutual implications of both senses of representation.

When he encounters the father of the family, Sophie's spouse, he is tempted to cross the line and tell stories rather than listen to them. Herr Hedinger tells Möhring that as a lawyer he must have interesting stories to tell, because "Lawyers have an insight into the intestines of society." Friedrich is happy to oblige, boasting: "At the moment I have, for example, a case which is an entire novel" and unknowingly tells him the story of his own wife, her lover, and the child out of wedlock, and betrays her secret (*Kätchen* 70). This furnishes the plot with the last big complication that the lovers must face before their engagement and the play's happy ending is possible. But it is also a watered-down paraphrase (before the fact) of an argument made by Bialik in "Halakhah and Aggadah": that the field of the law, in its involvement with human life, carries grains of parable. Furthermore, in relation to *The Jewish State* this last episode reads as a cautionary tale on the risks attending the *Gestor*: *Vertretung*, the play shows, involves the representative in circles of commitment that he is unable to track, and the stories told about these commitments lead to unexpected consequences.

#### IV. KAFKA'S REPRESENTATIVES

One way to proceed from this observation would be to turn to *Altneuland*, the Zionist novel in which Herzl revises his political model somewhat, replacing the *Gestor* with democratic elections, and emphasizing the community as much as its representatives. Neverthe-

less, the engagement with multiple forms of representation—literary, theatrical, legal, and political—is carried into the novel in interesting ways. Instead, I return, finally, to Kafka. I thus propose to take a risk and compare the incommensurable, reading Herzl’s relatively minor literature in relation to Kafka. I should probably clarify at the outset, then, that my point is not to present Herzl’s texts as a newly recovered “source” for Kafka. Thus, neither the fact that we know that Kafka read *The Jewish State* (Wagner, “*Ende*”) nor the fact that we can assume that he was not acquainted with *Our Katie* is crucial for my argument. Nor do I argue that the comparison serves as a demonstration in any foolproof sense that Herzl and Kafka both read the same texts, or shared an essentially Jewish worldview further shared by Bialik as well. Rather, in Kafka we find the most interesting elaboration of the terms that have driven my reading of Herzl: *Gestor* and *gesture*, *Darstellung* and *Vertretung*, *Halakhah* and *Aggadah*. The effect of reading Herzl with Kafka should nevertheless go in both ways: it will serve us both to complicate Herzl, indicating the ambiguities inherent in the dynamics of *Darstellung* and *Vertretung* with which he engages, and to focus our view of Kafka, and in particular our view of the question of his engagement with Zionism, by forcing us to limit the discussion to only one very particular moment or aspect of his writing, rather than attempting to encompass a larger political principle of his work, which would in any case be futile.

During a trip to Vienna in the fall of 1913, Kafka attended the sessions of the Zionist congress. In Kafka’s description the congress appears as a hollow carnival:

Zionist Congress. Types with small round heads, firm cheeks. The workers’ delegate from Palestine, permanent uproar. Herzl’s daughter. The former director of the Gymnasium in Jaffa. On the stairs, erect, scruffy beard, coat. Fruitless German speeches, much Hebrew, most work done in small committees. Lise W. is merely dragged along by the whole thing without participating, tosses paper balls into the hall, hopeless. (*Letters to Felice* 319, *Tagebücher* 1063–64)

In this farce, the Zionist delegates, Herzl’s daughter, and Kafka’s own friend appear as wordless puppets, each performing their preset roles, whereas the German and Hebrew speeches seem to appear unattached to speakers and to pass without true listeners.<sup>4</sup>

In the story fragment “Blumfeld” (dated 1915), Kafka stages an uncanny repetition of the scene at the Zionist congress. The balls that Lise W. had thrown at the delegates are transformed into “two

small white celluloid balls with blue stripes” and reappear one evening without explanation in the apartment of Blumfeld, a lonely bachelor (*Stories* 185, *Nachgelassene Schriften* 232). Iris Bruce reads this text as a thinly veiled and biting satirizing portrait of the young Zionist leader Kurt Blumenfeld. She highlights the childish nature of the balls/disciples who relentlessly follow their leader. But her reading does not take into account the complex choreography that precedes the statement that the balls have entered Blumfeld’s service, and thus does not ask what it means for him to lead or represent them (Bruce 81–84).

The text begins with Blumfeld making his weary way up the stairs to his apartment and wishing he had a companion, perhaps a dog. But the possibility is quickly rejected, as the animal is deemed too threateningly different and yet potentially too close to its owner. A dog may fall sick and inconvenience him, Blumfeld reflects, and even if he does not, he will age “and then comes the moment when one’s own age peers out at one from the dog’s oozing eyes” (*Stories* 184, *Nachgelassene Schriften* 231). When Blumfeld arrives in his apartment, he finds a fulfillment of both his desire and his fear: the two blue-white balls appear as the ideal companions who will follow him around wherever he goes, but this also puts them in the position of the threatening mirror image. The relationship between Blumfeld and the uninvited balls is inaugurated with a curious dance through the apartment, in which the following of footsteps (*Vertretung*) is implicit. As Blumfeld turns to look back, he realizes that the balls

seem to be pursuing him; they have followed him and are now jumping close behind him. [. . .] Before turning around he instinctively kicks his foot out backwards, but the balls know how to get out of its way and remain untouched. [. . .] He shuffles along in his slippers, taking irregular steps, yet each step is followed almost without pause by the sound of the balls; they are keeping pace with him. To see how the balls manage to do this, Blumfeld turns suddenly around. But hardly has he turned when the balls describe a semicircle and are already behind him again, and this they repeat every time he turns. (*Stories* 186, *Nachgelassene Schriften* 235)

When this dance is reinterpreted as a power relation, a step-related verb maintains the tie to the matrix of representation-as-coordinated-step which we have seen at work in Herzl’s Zionist manifesto: “Like submissive companions, they try to avoid appearing in front of Blumfeld [. . .] now, however, it seems they have actually entered



into his service (jetzt haben sie bereits ihren Dienst *angetreten*)” (*Stories* 186, *Nachgelassene Schriften* 235; emphasis added). Blumfeld can thus be read not only as a caricature of the Zionist functionary but also as a comic impression of the *Gestor*, the person who steps forward.

But the most interesting correlative to the Herzl texts I read above occurs neither in one of Kafka’s explicitly Zionism-related diary entries, nor within the orbit of the blue-white balls that haunt Blumfeld, but rather in the modernist allegory of *The Trial*, on which Kafka had been working when he turned to write the Blumfeld fragment. Transforming Bialik’s concepts into his own, Benjamin describes Kafka as the author of an Aggadic commentary on an absent doctrine, or an absent Halakhah (Benjamin 803). Taking this as my point of departure, I interpret Kafka’s expressive use of gesture, another key point in Benjamin’s Kafka essay, in the context of the politics of representation and the gesturing *Gestor*, a representative by virtue of his stepping forward. The novel points to this legal figure by creating an inextricable relation between *Darstellung* and *Vertretung* and by materializing the figurative physicality of the latter concept.

If Herzl’s lawyers find themselves in a conundrum of one body representing conflicting parties, Kafka answers from the point of view of the represented who cannot stop at one representative, as Joseph K. learns from the merchant Block and experiences in his own dealings with the painter Titorelli. Through the dialogue with Titorelli the absurd proliferation of representatives—the fact that K. seems forced to add the painter to the lawyer as a representative—is associated with the complicity of *Darstellung* and *Vertretung*. Titorelli’s function as the one who represents the law is fractured into the work of producing portraits of its functionaries, on the one hand, and the work of explaining the law to K. on the other hand. But in their conversation, both *Darstellung* and *Vertretung* start unraveling as concepts. Titorelli’s practices as a painter emerge as anti-mimetic, his paintings are replicas and representations of each other rather than of some outer reality, and the promise that he holds as a legal representative ultimately turns out to be extremely limited (Sussman 129–31).

K.’s attempt to extricate himself from his relationship with the lawyer in the following chapter reads as a negotiation on the term *Vertretung* and the way that it should be “translated” or transplanted into a physical frame of reference (the term itself is repeated more

than eight times within three pages, all of these occurrences within the direct speech of the two characters). K. argues that the representative should carry the weight of the trial and protests that the opposite has been the case. He tells the lawyer that before he hired him he cared little about his trial:

But my uncle insisted that I ask you to represent me, and I did so to oblige him. After that, you would have expected the case to weigh even less heavily on my spirit than previously, because the whole idea of engaging a representative is to give oneself a little relief from the burden of the trial. But the very opposite occurred. I never had so many worries about the trial as I did from the time you began to represent me. When I stood alone I didn't lift a finger to help myself in my trial, but I was scarcely aware of it. Now, on the other hand, I had someone [to represent me . . .] but that is not enough, now that the trial is, secretly (as it were), actually closing in on me. (*Trial* 170, *Proceß* 171)

The lawyer sees the weight distributed differently:

I once read a beautiful description of the difference between representing a normal case and representing a case like this. It said: one lawyer leads his client by a slender thread until the verdict is reached, but the other lifts his client onto his shoulders and carries him, without ever setting him down, as far as the verdict and even beyond. (*Trial* 172, *Proceß* 173)

As the historical-critical edition indicates, Kafka first wrote “nimmt seinen Klienten”—“takes his client”—and replaced it with “hebt”—“lifts”—which perhaps indicates that Kafka consciously underscored the physicality of the gesture (*Historisch-Kritische Ausgabe* 53). As Malcolm Pasley and Stanley Corngold have shown, Kafka's revisions are often overdetermined signs of his work and thought process/*Proceß*. And this is perhaps another example: the lawyer enters the full scope of the term *Vertreten* only when he has made the additional effort of lifting his client up on his shoulders, and with that also reached the semantic field that Kafka shares with Marx and Herzl.

The negotiation does not lead to consensus, of course, but it can nevertheless serve as the point of entry of Herzl's *Gestor*, with the stepping and gesturing that are implicit in the description of this figure, into Kafka's text. In this reading, the circus act described by the lawyer belongs on the stage of politics, the same stage on which both Marx and Herzl position their characters. If Marx stages a political farce in the image of the parties that topple from each other's shoulders and Herzl choreographs a utopian image of stepping forward that is transformed into a collective ascension, Kafka's novel presents a

world and a politics that is at once more ambiguous and more threatening. The lawyer's parable of the law is exactly that: a parable of the order of the one that will follow it in the cathedral, "Before the law." The lawyer has read it in an unspecified "Schrift" at an unspecified time ("einmal"), and this chain of transmission (as in the Hebrew word for tradition: "masoret") indicates the multiple interpretations that attend the short parable, which ends by opening into an indeterminate space of "beyond" ("darüber hinaus.")

To be sure, in his violent execution, Kafka prepared an ending for K. that was not indeterminate or open. Nevertheless, the execution chapter, which Kafka composed during the earliest stages of his work on *The Trial*, contains elements of the lawyer's parable and, by extension, of the political stage of representation/*Darstellung/Vertretung* that I have traced in Marx and Herzl. When the representatives of the law arrive at K.'s door, he speculates that they are theatrical actors, perhaps tenor singers. In a violent variation of the circus act in which the lawyer/*Vertreter* carries his client on his shoulders, they carry K. by his shoulders:

They kept their shoulders close behind his, they did not bend their elbows but wound their arms around the full length of his, and seized K.'s hand below in a rehearsed, regimented, irresistible grip. K. walked stiffly between them, all three of them now formed such a close unit that, if one had been knocked down, they would all have fallen. It was the sort of unity that can usually only be formed by lifeless matter. (*Trial* 206, *Proceß* 207)

The collectivity thus briefly constituted by the three is a menacing foreshadowing of the murder the two representatives/actors are about to commit. But perhaps the very idea of a collective body also holds something of a promise, a promise that is reiterated in the collectivity embodied by the stranger seen leaning out of his window as K. is carried to the place of his murder:

Who was it? A friend? A good man? Someone who cared? Someone who wanted to help? Was it a single person? Was it [everyone]? Was there still help? (*Trial* 209, *Proceß* 210)

This single person who is everyone—the final representative of this novel, perhaps its only true *Gestor*—remains in the window and does not act beyond the silent gesture of his waving hands.

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## NOTES

1. The English translation is quoted from Spector, "Forget Assimilation" 357. I have used existing translations when available and supply page references to both the translation and the original; otherwise, translations are mine.
2. Interestingly, the play based on this text (dated 1901) is the only one in addition to the proto-Zionist *Das Neue Ghetto*, that was translated into Hebrew. It was performed by the Ohel Theater in 1949 (Hedomi).
3. In a curious byproduct of this binary construction, Greiner lists all of Herzl's non-Zionist plays—up to "I Love You" of 1900 and "Solon in Lydien" of 1901 (published in 1904, the year of Herzl's death)—as "Early Plays" (Greiner 160).
4. Bruce has reconstructed these speeches Kafka must have heard from the program of the congress (Bruce 73 ff.).

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