

The Triumph of Kafka

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*...to study and reflect on law offered
the greatest satisfaction... to implement it
was the saddest or most painful fate
that could befall one.*
—Ivan Klíma

An ordinary morning in Tel Aviv. Near the intersection of Allenby Street and Rothschild Boulevard, bicycles glide blithely past rows of paralyzed cars, whose average pace even sauntering pedestrians often outstrip. Though a pair of mourning doves nesting in a palm tree at the entrance to the Haganah Museum have fallen silent, they can be heard rustling in the fronds. Locals breakfasting on a terrace at Hatzuk Beach watch pelicans float listlessly on the swells. Along the shore, a few couples and clusters of people with paddles are already playing *matcot*, stooping to fetch the blue ball whenever it deserts its airborne arcs and flees across the white sand or into the surf.

But just east of the city, in Ramat Gan, something extraordinary is about to happen: any moment now, Judge Isaac Melamed will emerge from his chambers and render his decision.

For more than three years, phalanxes of lawyers and several nations have been entangled in the trial, involving the contents of a suitcase that arrived in Palestine over seventy years ago.

In some eyes, the affair has come to represent an archetypal contest between David and Goliath: a fragile old lady—her lonely life devoted to caring for stray cats—stands in danger of losing her precious legacy at the hands of an imperious power. This time, the giant Philistine was the State of Israel and its National Library. So, at least, her lawyers have argued, likening the

gloved government agents that rummaged through her belongings to the minions of “dark, despotic regimes.” No need to make the allusion more explicit: everyone knew the suitcase had left Prague and ended up in Tel Aviv on account of the Gestapo. One of her attorney’s assertions, that his client felt she was being raped, has been applauded by a number of feminists.

Others take a very different view. The papers once contained in that suitcase form a valuable part of a precious cultural legacy, and thus deserve a place on the shelves of the National Library in Jerusalem, among its five million manuscripts, incunabula, bound volumes and works of art. Where else would such documents be granted their due, be safely held in public trust, if not in the one nation specifically designated for the protection of the most persecuted people in history, who were both entitled and obliged to serve as custodians of an inheritance that ultimately belonged to the whole world? Yet that sacred commission was being thwarted by a selfish grimalkin who unlawfully sought to sell the precious manuscripts to the highest bidder, and was found to have entered into secret negotiations with a German museum.

And now, almost ninety years after his death, the fate of Franz Kafka’s papers is about to be determined. But since the matter involves both international prestige and a great deal of money, more than literary treasure is at stake.

Still, certain elusive questions remain ambiguous.

With the explicit demand that they be destroyed, Kafka left not only a sheaf of notebooks, sketches and letters to his friend Max Brod—he bequeathed him a dilemma: was the survivor’s solemn duty to honor the author’s dying desire, or to preserve his genius? In resolving that question, Brod became at once the writer’s champion and (out of devotion or self-interest?) his betrayer. For he edited and published many works his friend had never meant to release; yet had he not done so, Kafka would have remained an obscure, minor writer, only one degree shy of oblivion.

Fleeing from the Nazis in 1939, Brod settled in Tel Aviv, where a married woman became his secretary; that this term did not embrace the full extent of their relationship was something of an ill-kept secret.

He purportedly left all the papers to her upon his death... but had he designated her as beneficiary, or only as executrix? Twenty years later, she would auction Kafka's original manuscript of *The Trial* to the Archive of German Literature in Marbach, a transaction that harvested some two million dollars.

Before her death at the age of over a hundred, she willed the papers in turn to her two daughters, only one of whom, now nearly eighty, survives. Having never married, the lady has no family to care for her. This gentle, reclusive soul, her lawyers insist, possesses nothing but that paper security—hers to do with as she wishes.

The State in its wisdom, however, contests that claim. Kafka, after all, had been a Jewish writer, and did that not make him, ultimately, an Israeli writer? The National Library, moreover, possesses a document in Brod's hand. Addressed to his intimate secretary, it stipulates that her heirs are to have no part in his literary estate.

And so, amid accusations, injunctions, and frozen assets, the trial has proceeded, in order to determine who has the legal right to those letters, drafts and manuscripts, in the hand of one of the 20th Century's most significant writers, one who saw perhaps more clearly than anyone else the absurdity, the cruelty, of our enlightened era, in which mechanism and procedure would replace the feeble judgment of human beings.

But just as the issues were complex, so were there more than two contenders. At times, the question seemed to have become not simply who owned the manuscripts, but who owned Kafka himself.

Charles University in Prague had also entered into the fray. Kafka, they claimed, was not an Israeli but a Czech writer. And let us not lower ourselves to competing persecutions—a great culture in the heart of Europe, the modern Republic suffered long under the tyranny of the Austro-Hungarian Empire, of the Germans, of the Soviets. Surely the papers of Prague's greatest writer belong in the library of that city's university. In applying to the Tel Aviv court to be admitted as a party to the dispute, they discreetly refrained from noting that the University was already six hundred years old when the State of Israel was established.

The German Literature Archive in Marbach, which had already paid such a handsome price for *The Trial*, and entered into further negotiations with the surviving daughter, also filed with the Court. From the sidelines, professors in Heidelberg and Freiburg noted that Kafka was, after all, a German writer. What is the very flesh of an author's work if not the syllables of the language in which he writes? And Kafka wrote neither in Hebrew nor in Czech, but in the tongue of Goethe and Schelling, of Thomas Mann and Hermann Broch. Culturally, he had been a German Jew, like the Austrian Joseph Roth—whose papers, incidentally, now resided not in Israel but at the Center for Jewish History in New York. For reasons better left tacit, the Reichstag in Berlin did not become embroiled in the battle, but only sent a diplomatic cable affirming that Kafka's work belonged to the world, and expressing the sincere hope that the results of the trial would reflect that understanding.

San Diego State University in California also became tangentially involved, as the sponsor of a project devoted to recovering lost notebooks and perhaps as many as a hundred letters exchanged between Kafka and his lover, Dora Diamant.

Throughout the trial, the arguments marshaled by various parties ranged from the plausible to the spurious.

At some point, one of the lady's team of lawyers had responded with dismay to the insinuation that his client's interests were in any way mercenary. If anything, she had treated her legacy like a sort of portable shrine, a little cave of miracles. That was why she had dispersed the papers into a number of safe-deposit boxes, some in Tel Aviv, some in Zürich. Another of her attorneys, worried perhaps that such an action might appear suspicious, emphasized the fact that she lived on a street named in honor of Spinoza; as if drawing back a curtain, he swept out his arm with solemn majesty, hinting that the humble plaintiff somehow shared in the dazzling accomplishment of the lens-grinder of Amsterdam, whose vision encompassed the entire universe, uniting it to God Himself. That the great Jewish philosopher had been expelled from the synagogue as a result of his unorthodox views the attorney did not consider mentioning.

The Court, meanwhile, commissioned a special panel to examine those safe deposit boxes, both in Israel and Switzerland; their contents were to be itemized, thus providing a detailed inventory of any precious letters and notebooks.

More than once, a counsel for the State had stressed the promise made by the National Library's director-general: that all the documents would be made available to the public via the Internet, as a *global* trust. In time, he would adopt a more aggressive rhetorical strategy, suggesting that for the Library to be deprived of the papers would constitute an echo of Kristallnacht. Despite audible gasps of recognition and even a stifled sob at the back of the courtroom, a few of the younger, less religiously inclined members of the public—for whom neither history nor Abraham and his legacy were any more than vague notions worthy of respect, though not attention or assent—had to be told in murmurs how the Brownshirt thugs had ravaged the synagogues, immolating the sacred pages of the Torah, in some cases inflicting the foulest desecration.

"That's right," came an edifying whisper, "*urinated* on the Holy Book."

Despite his fervor, the same attorney maintained his patient, impassive dignity when, a moment later, someone (who was forcibly and swiftly removed from the courtroom) flung out a frantic, garbled question about the desecration of Palestinian children, the demolition of Palestinian homes.

A spokesman for the Czech University, whose Hebrew was surprisingly fluent, argued for the cultural centrality of his nation, a tradition transcending parochial interests of any kind. The birthplace of Kafka was indeed a nation proud of its own heritage, while cherishing the accomplishments of all peoples. Moreover, the University's renowned collection of Old Assyrian tablets and its prominent role in the Cuneiform Digital Library Initiative assured that the contested papers would benefit from "the most advanced technological milieu," as he put it. He neither mentioned nor was questioned about the rampant corruption to which his nation had become addicted since its liberation from the Soviet sphere and subsequent assimilation into the Free World.

The German representative disputed the National Library's claim that the Marbach Archiv had acquired the manuscript of *The Trial* illegitimately,

since an Israeli court had deemed the documents a private inheritance in 1974. Furthermore, he scarcely needed to argue for the Museum's reputation as a foremost repository of modern literature; the list he submitted of its holdings and the testimony of sister institutions sufficed to impress. Unbidden, he deftly addressed the obvious if implicit concern, earnestly wondering whether any other nation had so deeply and painfully assimilated the horrific lessons of racial hatred. Yes, Kafka's own sisters had perished in the Nazi catastrophe—and yet did not the burgeoning Jewish population of Berlin and its thriving culture testify to the hope that while there could never be *compensation* for the past, surely genuine repentance merited the opportunity for *redemption*?

By this stage, the judge initially assigned to the case had resigned, amid wild rumors of bias and bribery; the judge who replaced her, Isaac Melamed, knew these slurs to be not only groundless, but contrary to all evidence. His predecessor had in fact withdrawn precisely on account of her probity, to insulate the trial from scandal.

Yet Judge Melamed was immediately afflicted with his own set of detractors: had he not been appointed to this important case only to quell the flurry of demands from civil rights groups, and under pressure from the Shas party, that Sephardic judges be granted more authority? The clamor subsided, however, when the man who had launched the accusations was found guilty of embezzling millions of shekels.

At last the lawyers' arguments, by turns brilliant and absurd, were coming to a close, their summations (according to some uncharitable observers) too prolix to deserve the name. Before resting their respective cases, they would marshal a dizzying array of national and international laws, of ethical and emotional tactics; would appeal to precedents and prejudices; would resort to persuasive facts and devious fallacies.

And having announced that on this very morning he would issue his ruling, the Honorable Isaac Melamed emerged from his chambers and took his seat at the bench. A man of dignified bearing and stunning features, he paused before delivering the verdict, his stern yet tranquil gaze scanning the courtroom, glancing over faces by turns eager and impassive.

The gallery, often sparsely populated until now, was brimming with people eager to learn the outcome of the trial. Few if any members of the public, however, noticed that the judge's voice was quavering as he pronounced his decision.

"The crucial question in this case," he began, "has been to resolve the contested ownership of certain documents left by Franz Kafka, in the form of manuscripts, drafts, letters and drawings. Said remnants have been examined by the Court and found to be invaluable.

"The arguments for all parties have been heard. Having carefully sifted and weighed their diverse merits, the Court has determined that despite certain irreconcilable differences, counsels for both plaintiff and the defendant have demonstrated identical grounds for applying a single decisive principle. This concurrence—no doubt inadvertent—provides the basis for the Court's decision."

What? someone behind the panoply of lawyers bellowed, unable to restrain himself.

But those who turned to scold him with their glances were equally astonished at the judge's words. Had they misheard, had they misunderstood the legalese? Or did this judge fancy himself a son of Solomon? What was he going to do—call for the papers to be cut in half, then sagely await the moment when one of the parties would raise a piercing protest?

The judge continued: "Lawyers for the plaintiff Eva Hoffe have explicitly asserted two key precepts: First, that 'Any person has the right to decide how his assets should be used, no matter how "eccentric" his wishes might seem.' The second precept follows from the first: that the State must 'respect the deceased's wishes.'

"And on its own behalf, defense counsel for the State of Israel and the Israeli National Library has argued that Max Brod's explicit wishes—that the papers be transferred to a public archive—were never accommodated.

"The two parties are thus in fundamental agreement on the core principle; namely, that the desires of the deceased be regarded as inviolable.

“Their disagreement arises in the application of the term ‘deceased.’ While the plaintiff construes this to mean her mother Esther Hoffe, who willed that her daughters should receive the papers as their personal property; the State, on the other hand, regards ‘the deceased’ as meaning Max Brod, whose wishes Mrs. Hoffe failed to honor.”

So that was it, a sly reporter nodded. A foregone conclusion: the judge was only spouting verbiage before announcing that he had found in the State’s favor.

“In the Court’s judgment, however,” Melamed said, speaking more firmly than before, “it is manifestly evident that the ‘deceased’ in question, to whom the fundamental principle applies, has been misidentified. The person properly so designated is neither Esther Hoffe nor Max Brod, but rather the man who was doubly wronged—first by his lover, Dora Diamant, who defied his request that she destroy his letters, and then again after his death by Max Brod, to whom he had explicitly written, *‘My dear Max... all that is left in my estate must be burned completely, unread.’*”

“Justice demands that this egregious violation be finally rectified... The Court rules in favor of Franz Kafka.”

For several moments, no gasp nor cry of surprise broke the hush that seized the crowd. Perhaps it took a moment for some members of the public to realize the implications of the verdict. No doubt others, who understood immediately, were astonished into silence. Members of the public looked at one another with shock and amazement, scoffing soberly before the pandemonium broke forth.

The judge commanded silence, then pronounced his final sentence. “The contents of the suitcase, formerly in the possession of Max Brod, author of *Arnold Beer* and *The Redemption of Tycho Brahe*, heretofore in the possession of Eva Hoffe, and stored in bank deposit boxes in Israel and Switzerland, having been treated by representatives of the Court to a complete inventory, pursuant to my predecessor’s orders. The resulting list will be preserved and made available to the public via Internet servers at the National Library in Jerusalem, the Archive of German Literature in Marbach, Charles University in Prague, and San Diego State University. The extant papers

currently in the Court's custody are to be taken to a secure, undisclosed location, and there—in accordance with the express desire of Franz Kafka—burned to ashes.”

The claimants struggled to temper their outrage, and even sought to comfort one another, finding themselves now cruelly bound together. The lady was both dazed and furious, the National Library deeply disappointed, the State of Israel appalled. Within moments, attorneys hitherto at odds issued almost indistinguishable public statements, declaring that the verdict only served to illustrate, in the most ironic fashion imaginable, the absurd and arbitrary nature of bureaucracy, as Kafka had so brilliantly depicted in his work. Naturally, they vowed, appeals would be filed.

Months would pass before the last appeal was rejected. But over the next few days and weeks, countless others aired their views.

Some observers would cast Judge Melamed as a self-hating Jew, if not an outright anti-Semite, who had betrayed the cultural heritage of Israel. “We should thank God that this *tipesh frenk* didn’t preside at Eichmann’s trial,” one radio commentator muttered; “he would have found the monster innocent.”

It was reported in *Haaretz*, however, that the writer A.B. Yehoshua praised the verdict, remarking that Kafka was, in any case, not a complete but only a partial Jew.

Others denounced the judge’s decision as both legally incompetent and politically motivated, a cynical move designed to pander to Sephardic resentment over their alleged “marginal status,” and promote those tiresome claims that the country’s Ashkenaz majority strove to render them invisible. An immoderate Zionist suggested that the judge’s action only confirmed the obvious: that the Sephardim were as inept and barbarous as the late lamented satirist Kishon had famously presented them.

Still others blamed the Interior Minister for inciting ethnic tensions, since it was he who only recently, spouting nonsense about “moral obligation,” had urged that more Sephardic judges be appointed not only to the lower courts, but also that the sole representative of that group on the High Court should be joined by another.

A few lone voices, nonetheless, esteemed Judge Melamed's courage in daring to reach a manifestly unpopular verdict, his bold integrity in risking the wrath of the state, his honor in upholding the sanctity of the author's deathbed wishes.

Nor were the reactions outside Israel muted.

A popular American pundit would deem the judge a Communist, for having erased the sacred principle of private property.

Scholars the world over lamented or condemned the ruling, citing an "incalculable loss." One respected professor at Princeton, however, chose not to focus on the outcome of the trial, but to ridicule what he called "the benighted fiction of authorial intent."

Judge Melamed had anticipated the uproar, and his pensive nature would invite him to ignore the meager praise, inure him to the lavish indignation that lay in store. For months he had been in the spotlight, his every word and gesture scrutinized. Opinion was less than dust that returned to the earth, although the fact provided no occasion for his own conceit. Indeed, on this evening of the trial's conclusion, his burden was merciless, and promised to remain so.

Entering his house, no one greeted his arrival. His wife had gone to visit their daughter in Haifa, and home seemed suddenly vast and alien, a repository of the loneliness he had struggled all his life to evade. Unseen, he slumped into the chair that in the past had offered an oasis; that it now provided no trace of comfort went unwitnessed. He knew that when she called he would not tell her this.

The righteous judgment he had rendered failed to soothe. Again and again he envisioned the humble suitcase that had traveled from Prague to Tel Aviv two generations ago, and imagined the flames that would engulf its paper soul. Though he did not sob or moan, the tears continued for quite some while, and that night his grief had not subsided when at last he fell asleep.