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Anachronicity and Transgression of Law between the Millennia – Summum Ius, Summa Iniuria

Alina J. Wolski*

Abstract

This article aims to identify the new tendencies in the German law and literature movement of the 21st century. For this purpose, the novel *Spieltrieb* by the German judge and author Juli Zeh serves as an example. It is going to be analysed about the question of the literary expression of criticism of the German legal system. The aim is to combine three aspects: homelessness as a consequence of age, a world that follows new mechanisms and the role of law in these circumstances. Finally, it will be addressed to what extent the law and literature movement of the 21st century programmatically stands for the disintegration of society and law. Thereby, classical philosophical ideas are used, which can be found in the novel.

Key words: Globalisation, Juli Zeh, Philosophy, 21st century, German national law

Introduction

“Summum Ius, Summa Iniuria” - this quote precedes the habilitated lawyer Juli Zeh with her novel *Spieltrieb* (*Game Instinct*). It is, therefore, no surprise that elements of jurisprudence can be found in it. In this work, the author deals particularly with the interplay between law and a changing world in a new millennium. German law, legal codes that are older than half a century, are meeting the 21st century. The author locates this encounter at a private high school in Bonn. The situation finally ends in power games with blackmailing. This present work aims to examine the extent to which the new generation and the dawning age have overtaken or even exceeded the existing law.

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Concerning law and literature movements, regularly the question arises, why to deal with the interaction between law and literature.¹ The reason therefore is that “nothing guarantees that reading literature will actually help attain the goals of the moral uplift project.”² One, and maybe even the most convincing, answer to this question is the pursuit of learning about the law system and its weaknesses. Literature can be understood as the society’s mirror that incorporates social discourses. So, it seems important to analyse especially this kind of literature to understand not only legal processes but also the society’s opinion on this. In a democracy that is based on integrating different opinions it is indispensable to acknowledge the 21st centuries law and literature movement that is e.g. represented in *Spieltrieb*. In addition to that, Juli Zeh, as a professional lawyer, knows the German legal system like hardly any other writer. In her novel, she incorporates very concrete criticism on this system (or on the changing society - just as one would like to perceive). Pursuing the objective to gain knowledge about the legal system’s disadvantages to extract improvement proposals, *Spieltrieb* is an adequate novel to study.

In this respect, the analysis of the book will be carried out in two steps: After clarifying the philosophy underlying the denial and violation of the law, the circumstances, and intentions for action as well as the trigger for the legal conflicts in the novel will be worked out. The aim is to combine three aspects: homelessness as a consequence of age, a world that follows new mechanisms and the role of law under these circumstances. Finally, the conclusion will sum up whether Juli Zeh’s novel depicts the victory of the new generation over the law and portrays the court as incapable of judging during this time. The main concern is to work as closely as possible to the text and to consult secondary literature only where it is explicitly required.

2. Philosophical and Scientific Foundations

“Without philosophy, only criminals dare to condemn their fellow man. The others are legitimized by the world spirit.”³ Thus the philosophy in *Spieltrieb* is a central object. With the help of it, the pupils Alev and Ada are creating centres of power within the institution school. They use them as a means of legitimation for blackmail, violence and oppression. In the end, their position for the law is strongly influenced by their philosophy. For this very reason, it is necessary to look at these philosophical foundations at the beginning to understand the protagonists’ motivation for action. This introduction is less intended to be a philosophical summary of the theories – the aim is to explain them by using the novel as an example. After first discussing some of Ernst Bloch’s principles, the continuation of the idea of nihilism will then be considered. Finally, the basis of blackmail in the novel – Game Theory – will be discussed.

¹ Baron, Jane, *Law, Literature and the Problems of Interdisciplinarity*, Yale 1999, p. 1083.

² Ivi, p. 1066.

³ Zeh, Juli, *Spieltrieb*, München, btb 2013, p. 372. In the following quoted as: *Spieltrieb*. The quotes are originally in German as the novel is written in German. Therefore, the English quotes base on translations of this work’s author.

2. a. Ernst Bloch: To think means to exceed

Ernst Bloch's philosophy is important for *Spieltrieb* because Ada is enrolled at the Ernst-Bloch-Gymnasium, a fictional private school in Bonn's Godesberg district. In the context of the school's centenary celebrations, a lecture on the eponym is given in the assembly hall.⁴

In this way, the "Principle of Hope" is emphasized as programmatic, because Ernst-Bloch is a "place for really clever, really broken, really categorical people". Or to put it in Alev's words: "I think this institute has a reputation as a reprocessing plant for lost souls."⁵ Thus, the school has made the "Principle of Hope" its program: "Ernst-Bloch entertained [...] many of those who remained seated with lessons and the last chance."⁶

A further aspect that can be traced back to Ernst Bloch is the statement "Thinking means exceeding". Since the headmaster ascribes a "negative meaning"⁷ to the word "crossing over", he changes the school motto to "thinking means walking over". "Thinking also means denying [...] but not in class"⁸, he adds. But this is exactly what Ada and Alev do in class: they think further than it is required and contradict. They pass the arguments to each other in class, think in new directions and in their argumentation, they override everything that has been brought in. This also applies to morality. Ada is linguistically brilliant and makes full use of the fact that it "is not an aesthetic or formalistic gimmick. For if his thinking is really filled with a necessary impulse, a novelty of the matter itself is expressed in it. Thus, the linguistic form is an indication of the essence of the thing."⁹

The school's actors react differently to this game: the old History teacher, Höfi, is delighted with the curiosity. The German and Sports teacher, Smutek, also notices that the level of teaching increases. Only the headmaster, Teuter, is so disturbed by the approach of the two pupils that he unsuccessfully tries to expel Ada from school.

This play with words during the school lessons does not remain the only way of transgression. It increases until it finally takes on other dimensions: the theoretical transgression of morality becomes a practical one. Alev devises a game that takes power and Ada joins in. The two students satisfy the "need for the unusual"¹⁰ amid "average everyday life"¹¹ or end "the numb weeks" to remain in Juli Zeh's style. This explicit aspect is discussed in more detail in chapter "3.b. If this is all a game, we are lost".

⁴ *Spieltrieb*, p. 17.

⁵ *Spieltrieb*, p. 122.

⁶ *Spieltrieb*, p. 15.

⁷ *Spieltrieb*, p. 20.

⁸ *Spieltrieb*, p. 19.

⁹ Holz, Hans Heinz, *Der Philosoph Ernst Bloch und sein Werk „Das Prinzip Hoffnung“*, in Burghart Schmidt, *Ernst Blochs Prinzip Hoffnung*, Frankfurt am Main, Suhrkamp Taschenbuch Wissenschaft 1978, p. 112f.

¹⁰ Kimmerle, Heinz, *Die Zukunftsbedeutung der Hoffnung. Auseinandersetzung mit Ernst Blochs „Prinzip Hoffnung“ aus philosophischer und theologischer Sicht*, in Herbert Grundmann, *Abhandlungen zur Philosophie, Psychologie und Pädagogik*, vol. 34, Bonn: Bouvier Verlag, 1974, p. 26. In the following quoted as: Kimmerle: Hoffnung.

¹¹ Kimmerle: Hoffnung, p. 26.

2. b. Nihilism and its successor

“Nietzsche is our great-grandfather, whose legacy we are still missing today,”¹² and “We are the great-grandchildren of the nihilists,”¹³ Ada claims in a discussion in history lessons. For “the nihilists after all believed that there was something you could NOT believe in.”¹⁴ Through this theory, Alev and Ada legitimize all their actions. Ada claims that she does not mind having sexual intercourse with her teacher, only to blackmail him in an elaborate game to continue playing it and to keep it alive.¹⁵ Thus, the ability to adapt the attitude that there is nothing that matters, and even nothingness is not, is the basis for the subsequent blackmailing of her German teacher Smutek. This makes not only Smutek a prisoner but also Ada one of Alev’s figures. For “only he who discovers nothingness in himself is truly free and a player.” In doing so, they put Nietzsche’s first “No” into practice; in other words: they face the “fight against the feeling of guilt and the interference of the concept of punishment in the physical and metaphysical world.”¹⁶

The narrator, a judge called “Cold Sophie”, is asking herself the question: “If we no longer understand their reasons, because there are none?”¹⁷ She, too, represents the connection between game and law: “The judge would have to become the referee. With every attempt to apply what he has learned and to translate the law into justice, he would be guilty of the last remaining mortal sin: hypocrisy.”¹⁸ Thus, she seems to claim that the game resulting from the further development of the idea of nihilism overtaxes the law. She presents the role of the judge as trivial and almost as insignificant as that of a referee on the football field. One goal more or less is hardly decisive on an existential level. But if this image is applied to jurisprudence, which ultimately has the task of judging guilt and innocence, the consequences can be fatal. Therefore, “Cold Sophie” formulates the appeal “to officially acknowledge the failure of the law because human dignity demands it.”¹⁹ This is illustrated by her case, in which Alev, Ada, and Smutek take on the role of the protagonists.

Thus, there is not only a connection between law, play, and nihilism, but also to the dawning 21st century. For in *Spieltrieb*, the old generation is portrayed as the epochal event that Nietzsche saw it as.²⁰ Finally, the figures are symbols for the new generation, as it is demonstrated in chapter “3. a. 21st century as a reservoir of homelessness”. The central concept of a game, which has been used in this work in various contexts in an almost undefined manner, is only made possible by nihilism. For these reasons, the next chapter will be devoted to this issue.

¹² *Spieltrieb*, p. 277.

¹³ *Spieltrieb*, p. 309.

¹⁴ *Spieltrieb*, p. 309.

¹⁵ *Spieltrieb*, p. 282.

¹⁶ Kopf, Albert, *Der Weg des Nihilismus von Friedrich Nietzsche bis zur Atombombe*, (Nietzscheana, vol. 2), München: K.G. Saur Verlag 1988, p. 62. In the following quoted as: *Der Weg des Nihilismus*.

¹⁷ *Spieltrieb*, p. 7.

¹⁸ *Spieltrieb*, p. 7.

¹⁹ *Spieltrieb*, p. 10.

²⁰ *Der Weg des Nihilismus*, p. 13.

2. c. The Game Theory

“I’m calling about the prisoner dilemma,”²¹ Alev initiates a call to Ada about Game Theory. By this, he starts a “game theory exam”,²² in which the importance of this theory as a basis for Alev’s “game” is presented. A few days earlier he had asked Ada to read the “Evolution of Cooperation”,²³ a book about “the mathematical rules of human behaviour”²⁴. Now Alev asks her about the prisoner’s dilemma²⁵ and Ada answers as printed. She gives the example of the two prisoners to whom the judge proposes a deal:

“If you confess and rat on your buddy, you go free and the other gets five years in prison. If you both remain silent, the evidence is enough for two years each. If you both confess, you will each get four years. You can’t talk to each other. [...] You both calculate the solution with the highest possible advantage at the lowest possible risk. Which means they’re going to fry each other. You each get four years.”²⁶

The judge had chosen this method because he knows that “in a zero-sum game of two people, neither of them will cooperate, although together they can achieve the best result. Namely, only two years in prison.”²⁷ However, if the prisoners “want to continue to work together in the future”²⁸, “they would have to take into account the future, the possibility of revenge and the future damage caused by disappointed trust”.²⁹ Alev takes advantage of this in “his game”. Smutek is the teacher of both and he is supposed to teach the advanced course until the time of their A-levels. He is attached to Ada because she is the only person he can talk to and spend time with while running after his wife became depressed and his best friend – the History teacher Höfi – committed suicide. Here, homelessness is added to the game, which will be dealt with in chapter “3. a. 21st century as a reservoir of homelessness”. Thus, in his view, Smutek’s blackmailing is an “iterative series of decisions”³⁰, which is why “cooperation” is to be expected.

After the first blackmailing, Smutek thinks he understands that Ada and Alev are taking their power from the play instinct. “They wanted the end in itself, the will to power.”³¹ This comes along with the aspect of nihilism as the basis of the game. For now, it becomes clear that there is no deep meaning behind their blackmailing. It is not about money, nor is it about reputation. The purpose lies in the game, in employment and the defence against boredom. Just as Ada and Alev played a game in school lessons, marketing their philosophical theories, going beyond morality and contradicting old ideas, they also practice similar methods outside the classroom. Alev tries to transform the pure end of the game into a higher sense:

²¹ Spieltrieb, p. 277.

²² Spieltrieb, p. 277.

²³ Spieltrieb, p. 182.

²⁴ Spieltrieb, p. 182.

²⁵ Axelrod, Robert, *Die Evolution der Kooperation*, München: Oldenbourg Verlag 2000, p. 7. In the following quoted as: Evolution der Kooperation.

²⁶ Spieltrieb, p. 278 f.

²⁷ Spieltrieb, p. 279.

²⁸ Spieltrieb, p. 279.

²⁹ Spieltrieb, p. 279.

³⁰ Spieltrieb, p. 279.

³¹ Spieltrieb, p. 349.

“Only in the game is true freedom possible for mankind. Playing obliges to equality, since all players are granted the same conditions, realises the idea of legal certainty because a game can only take place within its own rules”.³²

The aspect of legal certainty is very interesting in this context. Alev claims that there is legal certainty because of the self-imposed clear rules within which the game is taking place. So far this is correct. But these rules alone seem to be posing a problem. For in the Federal Republic of Germany the highest “rules” that must be applied are those of the Constitution. Alev’s game must be located within these rules to be legally valid. Otherwise, it contradicts the legal security of the law system. But by mixing something that seems very banal, a simple game, and something that must be called by its name, namely a crime – explicitly blackmail – Alev is legitimizing the crime or is making it so unrecognizable that it is becoming unclear whether it is a crime at all. He is complicating his even further in that according to “Paragraph 174, Section 1, No. 1 of the Criminal Code”³³ it is forbidden to carry out acts on a person under the age of sixteen who is entrusted to a person for education, training, or care in the conduct of life, and this is punishable by up to five years imprisonment. Thus, Smutek, as the alleged victim, also becomes the perpetrator. But “the interests of the players do not completely conflict. Both players can drive quite well and receive the reward [...] for cooperation”³⁴ – what Smutek and Ada are finally doing. They win each other – but have they won or lost? Have they defeated Alev, who forced them to freedom? The question of whom to condemn is “Cold Sophie” asking too: “The loser of the game – or the winner?”³⁵ She finds no answer to this question.

3. A world out of the joint between the millennia

“Juli Zeh’s 21st-century students have lost their ideals,”³⁶ is *Die Welt* titling in a review of *Spieltrieb*. It almost seems as if the author wanted to characterize the dawning age and the new generation in her novel. The characters no longer have fixed lives, no values to which they can be guided and no role models to imitate. Zeh lets her game grow out of this situation. It, therefore, makes sense to look at three concrete aspects to take a closer look at the anachronism of law. After all, in Zeh’s universe, it is not the law that has changed and actively assumed an anachronistic character, but the environment that has overtaken it or taken a new path.

For this reason, the moral homelessness of the protagonists will be examined first and foremost. Special attention will be paid to Ada, Alev, and Smutek. Afterwards, the change of the world and its mechanisms will be examined based on the novel. The novel explicitly deals with the role attributed to the law under the conditions explained above.

³² *Spieltrieb*, p. 260.

³³ *Spieltrieb*, p. 284.

³⁴ *Die Evolution der Kooperation*, p. 13.

³⁵ *Spieltrieb*, p. 284.

³⁶ Arnold, Sonja, *Zwischen Nihilismus und Spieltheorie. Juli Zehs Roman Spieltrieb*, Freiburg: 2011. (<https://revistas.ucm.es/index.php/RFAL/article/viewFile/37062/35868>).

3. a. 21st century as a reservoir of homelessness

In the case of Smutek and Alev, the homelessness is most obvious, for both live in a country from which they do not originate. Although they have assimilated very well, from time to time they still feel homeless and not belonging to the rest of society. Although Ada was born in Germany and grew up there, it is possible to identify characteristics that prove that she is homeless too. For the sake of simplicity, it is to start with Smutek and Alev.

3. a. i. Smutek's Homelessness

His family name – “Smutek” – means “grief” in Polish. The teacher appears correspondingly melancholy in Juli Zeh's novel. In the beginning, he is enthusiastically prepared and confronts conflicts with the unpopular headmaster to push through his project – the founding of an athletics club at the school. But when his wife is becoming depressed and his favourite colleague, Höfi, is committing suicide, melancholy starts taking hold of him, and the suppressed homelessness takes possession of him: “He had been smart enough to realize the extent of his loss. Life had become difficult, there was nothing great to believe in, no duties to fulfil, no customs to rejoice in, and what had been a family consisted of scattered individuals to love or desperately regret – it was almost impossible to tell the difference.”³⁷

Thus, Smutek makes a connection between his well-being and the age. He thinks he can find his fate in a collective fate. So, there is nothing of importance – he implicitly blames the continuation of nihilism for his lostness. But it is precisely because of his immigrant background that Smutek finds himself confronted with further resentments, which ultimately triggers in him homelessness.

His wife, also Polish, first claims: “He is a failure. He had betrayed his ideals, although Smutek wondered what ideals she meant. ...and that left him speechless, he was not even a real Polish man.”³⁸ She then is complaining to her psychologist that “Smutek embodies a country that has taken away her family and past – the strength to simply carry on, Smutek drew from hatred.”³⁹ But she also feels homeless: “I have no country. I have no home. I have no parents. I have no hobby. I have no child... – But you have me! – Maybe I can't have you either, without a country, without a home, without a family. Maybe that's the way it must be, maybe nothingness is our fate, the fate of an expelled generation.”⁴⁰ She rejects the suggestion of locating home in the relationship with her husband precisely because of the homelessness. The vicious circle becomes a perfect oxymoron.

In this respect, Smutek's past in Poland is crucial. Because he was confused with a *Solidarność* resistance fighter who had the same name, Smutek went to prison. His father believed that he had fought for Poland and always said: “Every good Polish man goes to jail once in a lifetime because he is arrested by his own country in the fight for the

³⁷ Spieltrieb, p. 319.

³⁸ Spieltrieb, p. 237.

³⁹ Spieltrieb, p. 267.

⁴⁰ Spieltrieb, p. 245.

fatherland.”⁴¹ When he learns that Smutek was not a resistance fighter and that he is no longer in prison (he had been released and brought to Berlin. Smutek avoided contact with his family in order not to put himself in danger), he is committing suicide. In Berlin, Smutek began to study sports and German, because “for one he needed no language; for the other, he lacked it so completely that he believed he could try it without prejudice.”⁴²

Smutek is giving up the fight against being a stranger at the latest at the moment when his self-built wooden house in the Masuria is set on fire and burned down by “Polish neo-fascists who thought he was a German tourist or a defector or a Jew or whatever”.⁴³ The loss of the cottage, which had been his home during the holiday weeks, illustrates to Smutek not only his national but also his psychological homelessness and thus represents a metaphor for his inner life.

3. a. ii. Alev’s homelessness

Alev’s kind of homelessness is similar to that of Smutek. The main differences are age and generation. Moreover, the student does not seem to have assimilated as well as Smutek, because “Alev was one of those globalization dyslexics who learned five languages from childhood – and none of them properly.”⁴⁴ Thus, the actual enrichment that many different cultures and languages bring with them is at least partly a disadvantage that becomes visible in his use of languages. But growing up in different countries also causes national disunity for Alev: “I was a multi-ethnic state and it wanted to control the civil war inside me by strict regulations.”⁴⁵ Ada also hears this: “His voice sounded like a home that had nothing to do with geographical places.”⁴⁶

Thus, Alev and Smutek seem to be almost typical for a large part of society. They stand opposite each other as counterparts. Smutek embodies all those who try to hide their background as much as possible, while Alev stands for all those who want to make an impression with their origin. Ada seems to personify the rest of the rest of the new 21st century’s generation.

3. a. iii. Ada’s homelessness

“You are a great tolerationist. Probably you are a child of your time and your country,”⁴⁷ Alev states concerning Ada. He declares her to be the representative of the new generation. Some aspects seem to be central for this: on one hand the lack of characteristics and the nihilistic way of thinking that goes along with it: “Ada [...] has considerably fewer characteristics than the man without characteristics [by Robert Musil], who allegedly has none.”⁴⁸ Implemented in it is the inability to believe and otherness – “Probably I was born without faith, as other people are born without arms or eyesight. You live a little bit

⁴¹ Spieltrieb, p. 24.

⁴² Spieltrieb, p. 26.

⁴³ Spieltrieb, p. 264.

⁴⁴ Spieltrieb, p. 346.

⁴⁵ Spieltrieb, p. 177.

⁴⁶ Spieltrieb, p. 293.

⁴⁷ Spieltrieb, p. 287.

⁴⁸ Spieltrieb, p. 278.

differently from the rest and still manage.”⁴⁹ All this mixed with the desire to “listen to a person whose intelligence she valued as highly as her own”⁵⁰ makes her “a child of [her] time and [her] country.”⁵¹ Assuming this, it seems that homelessness is programmatic for this generation.

The teacher Höfi explicitly expresses pity for Ada by saying: “Poor child. You funny, combustible, lost soul. If I were your father, I’d have drowned you in the bathtub while there was still time.”⁵² Ada interprets this as a great compliment. However, he is not the only one who recognizes her lost and homeless state, Ada herself is also aware of it:

“Sometimes I keep myself on the dividing line between careers that are no wider than a curb or the central reservation of a highway. I put foot before foot, without stepping next to it, without swaying, without difficulty with my balance. I imagine that this line is a narrow ridge, the long ridge of a mountain massif and that to the left and right of me there are thousands of metres of depth. [...] As long as you think it is a strip of paint between two tracks, you walk calmly and safely. As soon as you realize that it is a ridge that leads over a bottomless abyss, you stumble, and your life is in danger. I lack the ability to forget the abyss.”⁵³

Especially the awareness of herself makes Ada seem homeless. But for her, unlike Smutek, this feeling has less to do with sadness. Ada “felt wonderfully lonely, surrounded only by water in its various states.”⁵⁴ For her, solitude is a substitute home – just like reading and running. She uses this substitute home until Alev enters the stage and Ada decides: “But she didn’t want peace of mind. Something in her had long since decided to become what Alev was looking for. Even if it was nothing.”⁵⁵ So she is vulnerable to Alev’s ideas because of her homelessness and disbelief, as he offers her a kind of home in the middle of a world where there is nothing left to believe in: neither “the tiresome pot-beating of the search for identity, which Ada had given up again after the first half-hearted attempts, convinces her that there is nothing of importance to be found in it”⁵⁶, nor the belief in a God. For in her imagination Alev was someone who held power: “Perhaps he knew how to build a world in which language does not work as a gigantic spittoon, in which billions of people spit to be able to drink from it afterwards. Perhaps he knew a world in which intelligent sentences are formed with mouths like rings of smoke, gently ejected, and watched together as they swirled around themselves. Such was the world Ada had always wanted.”⁵⁷

Although Ada has a home – Germany – she also lacks a local home. Smutek’s cottage in Masuria burned down. Ada has never owned a home. When she returns one day from Alev, who lives in a boarding house, to the house where she lives, she thinks: “The sign PENSION was missing. Because in that house, too, people were always guests

⁴⁹ Spieltrieb, p. 183.

⁵⁰ Spieltrieb, p. 212.

⁵¹ Spieltrieb, p. 287.

⁵² Spieltrieb, p. 204.

⁵³ Spieltrieb, p. 215.

⁵⁴ Spieltrieb, p. 220.

⁵⁵ Spieltrieb, p. 235.

⁵⁶ Spieltrieb, p. 218.

⁵⁷ Spieltrieb, p. 185.

and never at home.”⁵⁸ Her mother blames everything on the complicated family circumstances. Ada cannot remember her father, because he died in an accident when she was a baby, and her mother divorces her foster father during the novel. Nevertheless, the mother’s motivation is to “build a home for her in spite of the circumstances”,⁵⁹ which she sees as a failure.

Thus, in all three characters, the homelessness appears as the basic motive of their being. They are all different forms and expressions. From the above analysis, it can be deduced that Juli Zeh expresses homelessness being a basic aspect of the 21st century and the generation growing up in it.

3. b. If this is all a game, we are lost

Now that it has already been established that the characters involved have a different kind of homelessness, the objective is to look at the descriptions of the world in the 21st century and point out parallels in this respect that have already been demonstrated on a personal level. For, as already mentioned, the aim is to find out whether and if so, in what respect, the world has overgrown law – or whether it is merely Alev and Ada who seem to have overgrown law.

What is considered programmatic for people at the beginning of the 21st century is that they form “less than every generation before [...] one generation”.⁶⁰ “They were bird-free. Desperados without Wild West. Guerrillas without war.”⁶¹ So, the new generation seems to be characterized by the absence of something that takes away what it thinks it is: “These young people had no desires, no convictions, let alone ideals, they didn’t aspire to a particular profession, they didn’t want political influence or a happy family, no children, no pets and no home.”⁶²

Just as Ada is a “lost soul”, so are her fellow human beings. The generation seems very aimless in the novel, as it has nothing to achieve and is only channelled from station to station in the already existing system so that it does not stand still. But also, the possibility of standing still and thinking is out of the question, because: “In our specialized society, there is no room for the world spirit. *Polyhistor* today sounds like an abrasive and thinking in itself is no longer considered a virtue but a waste of time. It is done by specialized experts, and since then, we recognize philosophy in all its futility.”⁶³

Thus, this is a society that does not care about anything and allows everything to be done with it; for which “the good [...] is maximized efficiency with minimized risk of loss, while the bad is nothing but a suboptimal result. This means they no longer have any reason to do or not to do anything. Since they no longer believe in any God, each person is his own God.”⁶⁴ It is a society that is guided by Lukacs’ (interestingly, Ernst Bloch also

⁵⁸ Spieltrieb, p. 181.

⁵⁹ Spieltrieb, p. 362.

⁶⁰ Spieltrieb, p. 348.

⁶¹ Spieltrieb, p. 357.

⁶² Spieltrieb, p. 348.

⁶³ Spieltrieb, p. 208.

⁶⁴ Spieltrieb, p. 213.

studied him⁶⁵) concept of transcendental homelessness:⁶⁶ “The human need for transcendence is a fixed quantity, similar to hunger, which demands a certain amount of calories every day. If this need is not satisfied, the human soul will run around the country begging – easy prey for any Pied Piper. Höfi had asked his students what a soul was and received the answer that the soul was the striving in men that wanted to believe in a god.”⁶⁷

The teachers in the novel are representatives of the older generation. Here, a big discrepancy can be observed between the human being with his old values and the changing world: “Never before had he felt so clearly that the universe was none of his business. It was no place for him. It offered too much space for the body and too little for the mind. The same was true of the planet, the continent, Germany, this city and the room in which he stayed.”⁶⁸

Spatially, the world seems to have grown too much for Höfi and shrunk in terms of the history of ideas, since thoughts that presuppose ideals or morals are no longer accepted. Besides the death of his wife, this spatial-spiritual discrepancy is the reason for his suicide. He leaves the world to the new generation because he can hardly find himself in it and identify with it in the “glorious age of so-called international conflict resolution.”⁶⁹ The many domestic and foreign policy upheavals that are repeatedly addressed in the novel and how terrorism is dealt with after September 11 2001, give the world an additional bitter taste. Höfi also perceives the danger on an international level in the universe of school: “The destruction of each of us [...] takes as much time as a thought to move from the left hemisphere of the brain to the right.”⁷⁰

3. c. The law is not a delivery room for justice

Jurisprudence plays a central role in *Spieltrieb*, as it has been stated several times before: the narrator – “Cold Sophie” – is a judge, the novel has two court scenes (the second being the final of the plot), references to law are repeatedly cited and, most importantly, in *Spieltrieb* the occurrence of a concrete crime is reconstructed. After already having examined homelessness on a personal level and also concerning the century based on the novel, the aim is now to work out whether the law is presented as anachronistic amid this environment, what value is attributed to it and to what extent it fails.

Among the protagonists, the view prevails: “The only spiritual doctrine with *raison d'être* today is jurisprudence. It will outlive us all.”⁷¹ Besides, Ada is very happy to be able to go to the divorce hearing of her mother and his husband and testify. Thus, the law is given something high, above everything else. But on the other hand, it is also a stage that offers space for self-portrayal, as is particularly evident in the divorce scene. Ada uses her last words to give the judge an insight into her cosmos of thought and to analyse German law. In Ada’s “imagination judges were representatives of a principle, endpoints of a

⁶⁵ Damus, Renate, *Ernst Bloch. Hoffnung als Prinzip – Prinzip ohne Hoffnung*, in Anton Hain, *Monographien zur philosophischen Forschung*, vol. 68, Meisenheim: Verlag Anton Hain, p. 4.

⁶⁶ *Spieltrieb*, p. 211.

⁶⁷ *Spieltrieb*, p. 211.

⁶⁸ *Spieltrieb*, p. 297.

⁶⁹ *Spieltrieb*, p. 257.

⁷⁰ *Spieltrieb*, p. 241.

⁷¹ *Spieltrieb*, p. 209.

collective function, suction cups on the tentacles of the community.”⁷² On the other hand, together with Alev in the second trial and its initiation, she puts German law to the test. They play against the law and finally win because “Cold Sophie” does not feel able to pronounce a verdict: “The law is not a delivery room for justice and has never claimed to be one. Law is made up of regulations, regulations are made up of words, and words can be many things, but certainly not justice.”⁷³

The final proof of Alev’s claim that he is God or the devil is not only given to Ada and the readers as his prophecy that Ada’s room would be searched and the headmaster would try to remove her from the school (which he had arranged shortly after the meeting with Ada) but is confirmed in that he defeats the highest authority in Germany – the legal system: “God is a jurist. He creates rules and leaves their implementation to others.”⁷⁴ As one of the many vague goals of playing with Smutek, to answer Ada’s question, “who or what gives us the right to force Smutek to play,”⁷⁵ Alev formulates the aspect of freedom. “You mean to say that we are forcing Smutek to his personal freedom?”⁷⁶ Ada then inquires. Alev is convinced: “Even according to current morals, which nobody knows about nowadays, it can’t be problematic to force a person to his happiness. Morality itself compels to help a person to independence and freedom. [...] The Creator is not a moral being. He is above right and wrong.”⁷⁷

Also, Alev is exalted above right and wrong: he escapes from the structure of such evaluations; thus, he presents himself as the creator. If Alev as a symbol for the globalized human being of the 21st century can leave these areas and overcoming right, so is everyone else. The law acts pragmatically and yet does not come to any conclusion, because “Cold Sophie” remarks that “there may be pragmatic judgements, but not pragmatic justice.”⁷⁸ Philosophy, the media, the possibilities of a globalized world and widespread homelessness do not change the law, but the environment in which it is valid. Thus, the law is exposed to other circumstances for which it was explicitly not created. It is undergoing a change that is most visible in the relationship of its power over time. This becomes clear in the novel’s judgement on judges and lawyers: “Men could be nothing but men. They put on robes or handcuffs and did what was expected of them. In this house, their job was to create the phantom pain of an amputated set of values.”⁷⁹

Already at the beginning of this chapter, it was pointed out that the law is treated as something divine and sublime. The situation is different from the people who represent this law. They are nothing more than people in a different position. Thus, there is a separation between law and the embodiment of the law. This circumstance can be compared with the separation that has developed in history between the Christian religion and the clergy. In the past, a bishop or priest was considered uncriticisable because God spoke through him. Nowadays it is common practice to make a separation. Ada pleads for a similar humanization of the representatives of the law. Besides, she makes a concrete

⁷² Spieltrieb, p. 366.

⁷³ Spieltrieb, p. 518.

⁷⁴ Spieltrieb, p. 343.

⁷⁵ Spieltrieb, p. 342.

⁷⁶ Spieltrieb, p. 343.

⁷⁷ Spieltrieb, p. 343.

⁷⁸ Spieltrieb, p. 520.

⁷⁹ Spieltrieb, p. 367.

diagnosis of the change in society and the anachronism of the law that comes with it: “You strike me as someone who tries skeletonization with heart massage and mouth-to-mouth resuscitation. Such a judgment must be a necrophilic act. Or let us express it less morbidly: They shout war cries over battlefields long since abandoned by the survivors.”⁸⁰

4. Conclusion

Juli Zeh’s novel *Spieltrieb* is an accurate example of how the German legal system’s inability to act is proven in at least one imaginary scenario, symbolised, and checkmated in fictional literature. The author cites the changes in the 21st century as the main reason for this situation. As already noted, homelessness is a central concept in this period according to Juli Zeh: Ada, Alev, and Smutek are homeless – each in his own way. While Smutek and Alev are concerned with tangible homelessness – because neither of them lives in their country and culture of origin or even has one (as is particularly evident in Alev’s case) – Ada’s way of being homeless is presented as programmatic for the new generation. It has nothing fixed, constant to which it can adhere, it has no religion nor belief. The generation belongs to everywhere and nowhere. People have no goals, ideals or desires.

There are strong discrepancies between this new generation and the previous ones. In *Spieltrieb*, the teachers symbolise the old generation. Thus, Höfi throws himself off the roof because he can no longer cope with the changing world, which leaves the world to the young people. Added to this is the global perspective: the world is pervaded by catastrophes and terror. People do not know what to do about it and instead of turning to a God, they abandon their faith. This fact is of central importance for the result of *Spieltrieb*. Alev feels challenged to prove that in the 21st century every human being is his own God. So he also takes on the task of directing the entire school universe, manipulating and instrumentalizing individual persons, such as Ada, to demonstrate his sublimity in the face of justice. Thus, the change of society on a philosophical level is certainly an important reason for making a game possible, which finally overrides the law in this specific case. Philosophy is also associated with the basic mental attitude of a person. Thus, Alev could not have forced Ada and Smutek to play a game if they were averse to it; in other words, if they both had ideals and a constant in their lives, they would not have been willing to participate in the game. Since Juli Zeh denies this style of life to the entire society of the 21st century, every person of the new generation would have to behave this way.

In the case discussed in *Spieltrieb*, the judge considers German law incapable of deciding on it in this special case. Thus, it is presented at least partly anachronistic, as it cannot fulfil its actual task. This anachronism comes about as a result of the change in the world between the two millennia described above since law is specifically adapted to a society in which the various possibilities offered by modern media and the internet were not yet known. Therefore, the answer can be clearly stated: yes, the law in *Spieltrieb* is anachronistic, as shown in Juli Zeh’s novel. However, in her criticism she also emphasises that a more modern law or its revision is necessary, otherwise, its interpretation will

⁸⁰ *Spieltrieb*, p. 371.

become arbitrary and possibly even lead to vigilante justice. Nevertheless, especially in this case it is to pronounce that it is important to distinguish between fiction and real criticism.

To sum up, it can be said, that Juli Zeh presents the reader a mind game based on existing law. This mind game states the detriments of the German law system. A lawyer, who can be a potential reader of this work, can be advised by the author to always stay conscious that a legal system cannot be perfect, and that law is made by people. So, in Juli Zeh's mind, it is important to be critical and to do not apply rules without questioning them. In the end, the law has the power to make innocents guilty and the culprits inculpable. Juli Zeh refers to the great responsibility of everybody dealing with the law has. In her novel, she puts the following pertinent words about the nature of law into the mouth of her protagonist: "Be aware that you judge people with their faces turned away. Remember that our legal system has been cut off from the trunk of the community like a head, that we speak to each other with our noses pinched shut, and that no one here is still able to look the cut-off head in the face."⁸¹

Comparing this approach to other 21st century novels that deal with literature and law, it seems that Juli Zeh chose an innovative plot. E.g., the very famous German author and lawyer, Ferdinand von Schirach, who is one of the few faces of the law in literature movement in this time, rather presents cases in which the judges took a wrong decision or the law seems absurd. Nevertheless, in his works like "Terror" or "Gott", he presents complicated judicial constellations that cannot be resolved without taking the actual moral views into consideration. They are highly controversial as the TV adaptation of his screenplays show. In the breaks, the audience could vote how the jury, respectively the judge, is supposed to decide. Exactly this way ended the spectacle. Ferdinand von Schirach's plays deal with questions like whether a plane that is up to fly into a stadium full of people can be shot or if medically assisted suicide should be allowed even if the person wishing to die is not ill. These contents, like those in Juli Zeh's novel, are also linked to philosophical approaches, even if the implementation is different. The current state of society plays a central role here. Nevertheless, Juli Zeh rather criticizes the current German legal system because it is overgrown by the partnership, while Ferdinand von Schirach does not explicitly criticize, but asks questions that should make the reader think about the complicity of several constellations that can occur one-to-one. However, both deal with the law in a changing century and society even if their reaction to it is different. They seem to make similar observations. This seems being a characteristic of the law and literature movement in the 21st century. Novels written earlier deal most often with totalitarian law systems (e.g., Nabokov – "Invitation to a Beheading"), bad humanitarian circumstances or complicated procedural steps (e.g., Kafka – "Der Prozess"). In this context, a divergence with respect to e.g., Juli Zeh and Ferdinand von Schirach becomes clear. It seems that the legal and literary movement in this century (in addition to the older approaches) rather criticizes the anachronistic legal systems, which are no longer able to cope with the problems of the new society. This, of course, interferes with the society's beliefs, philosophical foundations and their behaviour. Admittedly, this observation would need further clarification and research to verify this thesis.

⁸¹ Spieltrieb, p. 535.

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