

“A PECULIAR APPARATUS”

Kafka's Thanatopoetics

Kafka's technique could best be compared to the construction of models. Just as a man who wants to build a house or evaluate its stability would draw up a blueprint of the building, Kafka practically devises the blueprints of the existing world . . . , which sometimes in a page, or even in a single phrase, expose the naked structure of events.

—Hannah Arendt, “Franz Kafka, Appreciated Anew”

Inclusive Exclusion

“It's a remarkable [eigentümlicher] piece of apparatus,” reads the first prophetic sentence of Kafka's 1914 story “In the Penal Colony” (161, 140).¹ It is the officer who speaks this first sentence to the explorer, and in a way, Willa and Edwin Muir's mistranslation in the Schocken edition is “remarkable” in itself in that,

1. Chapter epigraph: Hannah Arendt, “Franz Kafka, Appreciated Anew,” trans. Martin Klebes, in *Reflections on Literature and Culture*, ed. Susannah Young-ah Gottlieb (Stanford, CA: Stanford University Press, 2007), 94–109, here 104f.; “Franz Kafka: A Revaluation,” in *Essays in Understanding, 1930–1954: Formation, Exile, and Totalitarianism* (New York: Schocken Books, 1994), 69–80, here 76f. Quotations from Kafka's “In the Penal Colony” are followed by two sets of page numbers. The first set refers to Franz Kafka, *Ein Landarzt und andere Drucke zu Lebzeiten* (Frankfurt a.M.: Fischer TB Verlag, 1994), 161–95; the second set refers to Franz Kafka, *The Completed Stories*, ed. Nahum N. Glatzer (New York: Schocken Books, 1988), 140–67.

though wrong, they got it just right. For *ein eigentümlicher Apparat* is, of course, not a "remarkable" but rather a "peculiar" or "singular" or "specific" or "idiosyncratic" apparatus. Yet in the eyes of the officer, the apparatus is indeed not peculiar but simply remarkable—there is nothing wrong or alarming about it. He considers the apparatus an impressive work (*Werk*, 163, 141), extraordinary, notable, outstanding, astonishing; it allows for no hesitation but solely for awe. Conversely, in the eyes of the explorer and presumably in ours (also because we shall take Kafka, at least for now, at his word), the apparatus is likely to appear peculiar or idiosyncratic. Yet what conjures up the idiosyncrasy of the apparatus? The word "apparatus" is a significant one in Kafka's story; it appears no less than twelve times within the first three paragraphs, a frequency that one may find remarkable or peculiar in itself. To be sure, the apparatus is, on a basic level, an execution machine. Yet this execution machine not only tortures and executes; it also informs the prisoner of his sentence (see 166, 143f.); and since the word "apparatus," in its most general sense, simply denotes a construct that operates according to an established set of functional rules, one perhaps could say that the apparatus constitutes the juridical institution of the penal colony.

This juridical apparatus or construct appears remarkable in its emphasis on technological details. Kafka employs an entire discourse of technological vocabulary: "Harrow," "Designer," "electric battery," "disturbances," "needles," "acid fluid," a "ladder," a creaking "wheel," "screw," "spanner," "machinery," "cogwheels," "mechanical instruments," "chemist," "draughtsman," and so forth. In the light of the officer's idealization of the mechanical parts of the juridical apparatus (see 170, 149), the emphasis on the technological seems to be at odds with the higher cause of justice—that dimension to which every juridical apparatus characteristically aspires, a dimension generally considered to be the *sine qua non* of jurisdiction. By contrast, the officer's obsession with the apparatus's innate beauty—his meticulous maintenance of the machine—seems to follow a logic of its own and serve some immanent law yet to be explored.

On the "Bed" of the apparatus lies another construct, an "*anatomical* apparatus," an expression the Duden dictionary defines as "a system of organs and parts of the body serving the same purpose."² This anatomical construct is the condemned man, his body, "naked, of course" (164, 142f.). The naked prisoner is strapped to the Bed of the execution machine at his hands, feet, and neck (see 164, 143). While the description of the juridical apparatus is striking for its emphasis on technical and mechanical elements, the description of the human "construct" is striking for its strong emphasis on physiological and anatomical elements (e.g., blood, saliva, vomit, skin, etc.). "For millennia, man remained what he was for Aristotle," Michel Foucault writes, "a living animal with the additional capacity for a political

2. Duden's *Das große Wörterbuch der deutschen Sprache*, 10 vols. (Mannheim: Dudenverlag, 1999), here 1:271.

existence.”³ According to Aristotle, human beings are distinct from animals in their potentiality for an understanding of justice (*dikē*),⁴ but the condemned man in Kafka’s story has largely been deprived of precisely this ethical dimension, this sense of justice. “In any case, the condemned man looked so like a submissive dog that one might have thought he could be left to run free on the surrounding hills and would only need to be whistled for when the execution was due to begin” (161, 140). The prisoner seems to have no sense of justice, no understanding of the injustice brought against him; instinctually driven, he would run to his execution if whistled for.

We are thus presented with two different apparatuses: a juridical one and an anatomical one.⁵ Both appear suspect with regard to their seeming absence of justice. Both constructs, that of law and that of life, are adjacent to one another; the condemned man lies naked on the Bed of the execution machine. Yet not only are law and life bound closely to one another (*an-einander*); they are indeed *interlocked* (*in-einander*):

“Here at the head of the Bed, where the man, as I said, first lays down his face, is this little gag of felt, which can be easily regulated to go straight into his mouth. It is meant to keep him from screaming and biting his tongue. Of course the man is forced to take the felt into his mouth, otherwise his neck would be broken by the strap.” (164f., 143)

In this description, the juridical and the corporeal seem to be intertwined. In addition, the three parts of the apparatus—“Bed,” “Designer,” and “Harrow”—have “acquired a kind of *popular* nickname [volkstümliche Bezeichnungen]” (163, 141f.). The apparatus is given “popular” (*volkstümliche*) names and, as such, at least nominally, relates to the people (i.e., the population, the *Volks*, the *Volkskörper*, the political body constituted by the people). Analogously “the shape of the Harrow,” the part of the apparatus that inscribes the sentence on the man’s skin, “corresponds to the human form” (169, 146). The Harrow indeed shows human behavior when, for example, the officer’s body does not drop from the long needles: “The Harrow tried to move back to its old position, but as if it had itself noticed that it had not yet got rid of its burden, it stuck after all where it was, over the pit” (193, 165f.). The juridical and the corporeal, law and life, appear closely interrelated in the penal colony.

3. Michel Foucault, *The History of Sexuality: An Introduction* (New York: Vintage Books, 1978), 1:143.

4. See esp. book 1 of Aristotle’s *Politics*, trans. Ernest Barker (New York: Oxford University Press, 1998).

5. For a Freudian interpretation of the “apparatus,” cf. William Dodd, “Kafka and Freud: A Note on ‘In der Strafkolonie,’” *Monatshefte* 70 (1978): 129–39.

In fact, the resemblance between law and life amounts to the *terminological permutation* between the juridical and the human "construct":

"Be careful with him! [Behandle ihn sorgfältig!]," cried the officer again. He ran around the apparatus, himself caught the condemned man under the shoulders, and with the soldier's help got him up on his feet, which kept slithering from under him [Er umlief den Apparat, faßte selbst den Verurteilten unter den Achseln und stellte ihn, der öfters mit den Füßen ausglitt, mit Hilfe des Soldaten auf]. (171, 148)

The traveler "was even leaning right across the Harrow, without taking any notice of it [ohne sich um sie zu kümmern]," thus following an activity, *sich kümmern*, that humanizes the Harrow. Similarly, the officer's exclamation "Behandle ihn sorgfältig!" employs a vocable, *sorgfältig*, not typically used in reference to human beings, but to machinery, perhaps an animal, or, indeed, a baby, an infant, which in German, unlike in English, is explicitly neuter, a *thing*. It is in this vein that Kafka invokes the image of the officer catching the prisoner under the shoulders, "und stellte ihn . . . mit Hilfe des Soldaten auf," like a marionette, it seems, whose inanimate "feet . . . kept slithering from under him." The interrelatedness of law and life is thus translated into a converse rhetoric, humanizing the machine and dehumanizing the prisoner.

In *Politics*, Aristotle asserts that in addition to his potentiality for an understanding of justice (*dike*), man is also a being capable of language (*logos*).⁶ Indeed the condemned man (and perhaps also the soldier)⁷ seems to distinguish himself from the officer in that he does not speak the officer's language—the language of the colonizer, the imperialist, the language of the one in power. From the perspective of the officer, the prisoner probably does not speak any language at all: "The officer was speaking French, and certainly neither the soldier nor the prisoner understood a word of French" (164, 142).

If man has language (*logos*) he has reason (*logos*); he who is without language is without reason. Language is reason, and the condemned man, consequently, is deprived of reason as much as of language: "The condemned man . . . was a stupid-looking, wide-mouthed creature with bewildered hair and face [ein

6. "Nature, according to our theory," Aristotle writes, "makes nothing in vain; and man alone of the animals is furnished with the faculty of language. The mere making of sounds serves to indicate pleasure and pain, and is thus a faculty that belongs to animals in general: their nature enables them to attain the point at which they have perceptions of pleasure and pain, and can signify those perceptions to one another. But language serves to declare what is advantageous and what is the reverse, and it is the peculiarity of man, in comparison with other animals, that he alone possesses a perception of good and evil, of the just and the unjust" (*Politics* 1253a7, trans. Barker).

7. The resemblance between the soldier and the prisoner is enacted by the soldier's gestures, seemingly in imitation of the appearance of the prisoner: "He had wound the prisoner's chain around both his wrists"; in fact, the soldier's posture prefigures the prisoner's fate: he "propped himself on his rifle, let his head hang" (163f., 142).

stumpfsinninger, breitmäuliger Mensch mit verwahrlosten Haar und Gesicht]" (161, 140). The characterization of the condemned man conjures up the innumerable illustrations pervading the cultural archaeology of nineteenth-century Western Europe: pictures of mentally ill people, photographed in the context of new academic disciplines such as psychology and psychiatry. These images—often presenting the mentally ill with tousled hair and with salivating, paralyzed, grinning faces—were etched on the collective memory of a century. It is this very image encountering us in Kafka's prisoner—a man eating the "rice pap" (from which he "can take as much as his tongue can lap"; 173, 150) as he awaits being strapped to the execution machine's Bed. In his narcotic passivity, and without the slightest understanding that his execution is imminent, the condemned man, "with a kind of drowsy persistence . . . directed his gaze wherever the officer pointed a finger, and at the interruption of the explorer's question he, too, as well as the officer, looked around" (164, 142). The condemned man lacks both language/reason and an understanding of justice, though he does perhaps have a potentiality for both; yet from our perspective he is solely presented as a nonhuman. In the colonial-imperialist context of the story, and in stark contrast with the officer and the traveler, he simply seems to be a "wild man"—that pervasive signifier in nineteenth-century Western European literature and philosophy, recurring in countless footnotes in the works of Kant, Hegel, and others—typically allocated to the same classificatory rubric as the still-to-become-human "child" (and extended by the "woman" to a triad). It is therefore unsurprising that the condemned man, this "insane" being, this "animal," behaves in an utterly infantile and naive manner and has nothing in mind other than horsing around with the soldier:

When [the condemned man] put on the shirt and the trousers both he and the soldiers could not help guffawing, for the garments were of course slit up behind. Perhaps the condemned man felt it incumbent on him to amuse the soldier; he turned around and around in his slashed garments before the soldier, who squatted on the ground beating his knees with mirth. (188, 162)

The condemned man is a silly "figure," a child, a wild man, a madman, and so forth, and he is as truly naked as the officer only appears to be when he undresses,⁸ drops off his uniform, that cultural signifier that ostentatiously marks him as a political being, a member of civilization, a human being (cf. 189, 162).

8. In his essay "Toward a Critique of Violence," Walter Benjamin distinguishes "mere life" (*bloßes Leben*) from "the living" (*das Lebendige*). Whereas "mere life" corresponds to the natural existence of a human being, "the living" partakes in a supernatural, sacred order (Benjamin, "Zur Kritik der Gewalt," in *Gesammelte Schriften*, ed. Rolf Tiedemann and Hermann Schweppenhäuser [Frankfurt a.M.: Suhrkamp, 1977], 2.1:179–203, here 200). If one were to describe Kafka's "condemned man" in Benjaminian terms, one would probably characterize him as "mere" rather than "sacred" life.

I have already indicated that the execution procedure, which strikes us first as peculiar and then as very cruel and appalling, does not seem to the officer to be peculiar at all. He finds the work of the old Commandant remarkable, places his services at the disposal of its preservation, and identifies his life entirely with the juridical procedure. It is a procedure that strikes the explorer as problematic but appears to the officer to be quite normal, even beautiful:

Many questions were troubling the explorer, but at the sight of the prisoner he asked only: "Does he know his sentence?" "No," said the officer, eager to go on with his exposition, but the explorer interrupted him: "He doesn't know the sentence that has been passed on him?" "No," said the officer again, pausing a moment as if to let the explorer elaborate his question, and then said: "There would be *no point* [*nutzlos*] in telling him. He'll learn it on his body." ... "But surely he knows that he has been sentenced?" "Nor that either," said the officer, smiling at the explorer as if expecting him to make further surprising remarks. "No," said the explorer, wiping his forehead, "then he can't know either whether his defense was effective?" "He has had no chance of putting up a defense," said the officer, turning his eyes away as if speaking to himself and so sparing the explorer the shame of hearing *self-evident matters* explained. (144f., 167)

What appears entirely inconceivable to the explorer is "self-evident" (*selbstverständlich*) to the officer; he is "eager to go on with his exposition" to spare the explorer the "shame" of hearing these self-evident matters. The basis for this discrepancy in the evaluation of the juridical procedure seems to be two diametrically opposed understandings of the meaning of law. The explorer, in accordance with most modern democratic legal constitutions, maintains an understanding of law as a tool, in the broadest sense, to protect human beings from one another. In contrast, the officer seems to assume an inextricability of law and life. In such a system there is no outside-of-politics and no outside-the-law. From the perspective of the officer—one where law and life are inextricably linked or are, figuratively, perhaps even identical—there is indeed no point in informing the prisoner of his sentence ahead of time. The individual being is registered by the system as a corpus, and the legal inscription *on his body* is therefore a quite logical form of communication. Likewise, there would be little sense in giving him an opportunity to put up a defense, for if the body is law and law is the body, to defend oneself means to defend oneself against oneself, against one's own body, and that, indeed, appears absurd.

If we follow the logic of the officer, it would ultimately appear quite inappropriate to call the execution procedure "atrocious" or "barbarous," and so on. Such taxonomy is meaningful if an *external* moral perspective, an a-nomic viewpoint, one *outside the law*, is available. In a system such as that of the penal colony, however, it can only be deemed extraneous. Notions of the "cruel," "inhuman," "unethical," and so forth do not apply; all classificatory attributes, in one way or another,

are subsumed under the binary of the “politically sensible” and the “politically nonsensible.” Thus the officer fails to comprehend the gist of the traveler’s questions and so offers no qualifying remarks that might shed a critical light on the procedure. Thus his general *lack of understanding* (*Unverständnis*); what is *selbstverständlich* (self-evident) is, according to the Duden dictionary, “without question,” meaning “understanding itself out of itself,” *sich aus sich selbst verstehend*.⁹ Thus, after all, the officer’s unperturbed mannerism, his uncanny smile “at the explorer as if expecting him to make further surprising remarks.”¹⁰

The juridical procedure around the prisoner in Kafka’s “Penal Colony” is pursued without a hearing, without a defense, and without a proclamation of the sentence prior to the execution. Given that this appears “self-evident” within a systemic logic in which law and life are identical, it only follows that the officer finally executes himself when he becomes aware that the life of the old system appears to have come to an end. The disintegration of the “logic” of justice in the penal colony, the disintegration of the old juridical system, the disintegration of the execution machine (see 192, 164) can coincide only with the disintegration of life, the officer’s life, life constituting the old system. Even the explorer, whose chagrin the officer’s sedate manner had provoked at the outset (167, 144f.), now yields or at least understands the logic and the consistency of the officer’s action:

Now [the officer] stood naked there. The explorer bit his lips and said nothing. He knew very well what was going to happen, but he had no right to obstruct the officer in anything. If the judicial procedure which the officer cherished were really so near its end ... then the officer was doing the right thing; in his place the explorer would not have acted otherwise. (189, 163)

9. Duden’s *Herkunftswörterbuch* (Mannheim: Dudenverlag, 2001), 760.

10. The rhetoric of the “self-evident” *obliquely* relates to what Hannah Arendt described with her formula of the “banality of evil” in her book on the trial of Adolf Eichmann (Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* [New York: Penguin Books, 1994]). The “banality of evil” does not describe the unimaginable suffering of millions of Jews murdered in the “technically efficient” gas chambers and crematoriums of Nazi concentration camps. Nor does Arendt’s formula describe the banality of an execution apparatus that can be comprehended only as the project of an insane person or a sadist. The banality of evil describes the very plain factual situation that the Holocaust was not illegal, that laws were not breached, that the entire genocide was not a criminal act in the legal sense because no juridical apparatus, no legal language, no *juris-diction* was available to classify it as “illegal,” as juridically “unjust”; it follows from a judicial perspective, then, that the Holocaust was entirely “banal.” At the same time, the colonial dimension of Kafka’s story and the historical context of Arendt’s formula of the “banality of evil,” namely twentieth-century totalitarianism, are, of course, fundamentally different. And yet, perhaps the most ingenious insight of Arendt’s monumental *The Origins of Totalitarianism* (New York: Harcourt, 1968) is precisely the conceptual link that she establishes in part 2 of the book: the link between colonialism and twentieth-century totalitarianism. Here Arendt argues that Germany’s “failure” as a colonial empire largely motivated the imperialism and unprecedented racism of Nazi Germany in the middle of the twentieth century. While, on the one hand, it would be problematic simply to impose a conceptual framework for totalitarian politics on Kafka’s colonial narrative, it seems, on the other, impossible to dismiss the repercussions that the story evokes.

The explorer understands the officer, and perhaps he even tacitly admires him. In any case, the officer does not really have any other choice, there is no *tertium datur* to living within the system and dying within the system; in the face of the "great change" (*grossen Umschwung*, 190, 163) it simply is the continuation of a political logic of which he is a political segment—thus the officer's determination and the total lack of irritation, anxiety, or panic, when discarding his clothes (see 189, 162). There also is, consequently, no need to strap the officer to the machine: "Everything was ready, only the straps hung down at the side, yet they were obviously unnecessary, the officer did not need to be fastened down" (190, 164).

If, for the moment, we ask why the officer holds a superior rank in the penal colony, he readily provides an answer: "This is how the matter stands. I have been appointed judge in this penal colony. Despite my youth. For I was the former Commandant's assistant in all penal matters and know more about the apparatus than anyone" (168, 145). The officer makes no secret of the dictatorial nature of his appointment: "Other courts... consist of several opinions and have higher courts to scrutinize them [Andere Gerichte... sind vielköpfig und haben auch noch höhere Gerichte über sich]. That is not the case here" (168, 145). While in democratic societies, power, following the *trias politica* proposed by Montesquieu, is divided *horizontally* (i.e., into executive, legislative, and judiciary branches), the penal colony's officer combines all power in his persona. Beyond that, all *vertical* allocation of power finds its end in the officer. He rules as an autocrat, epitomizing the vertex of the hierarchical pyramid; all power is *con*-centrated within his political presence.

In response to the exigencies of political crisis, the logic directing the officer's actions is a situational one: "'The new [Commandant] has already shown some inclination to interfere with my judgments, but so far I have succeeded in fending him off and will go on succeeding'" (168, 144, translation modified). According to this logic, the situation almost dictates the law (*Recht*) of situational jurisdiction, and in cases of sudden threats ("The new [Commandant] has already shown some inclination to interfere with my judgments [hat... schon Lust gezeigt, in mein Gericht sich einzumischen]"), "extra-ordinary measures" (169, 146) appear not only legitimate but imperative to further ensure order and stability that facilitate the effectiveness of jurisdiction.¹¹ During his encounter with the officer, the explorer comes

11. The juridical dynamic described here somewhat corresponds to the notion of "situational law" that Carl Schmitt popularized in the early twentieth century. "For a legal order to make sense, a normal situation must be guaranteed. [Die Ordnung muss hergestellt sein, damit die Rechtsordnung einen Sinn hat.]... All law is 'situational law' [Situationsrecht]," Schmitt writes in chapter 1 of his *Political Theology* (Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab [Cambridge, MA: MIT Press, 1985], 13; Schmitt, *Politische Theologie: Vier Kapitel zur Lehre der Souveränität* [Berlin: Duncker & Humblot, 2004], 19). Correspondingly, Schmitt's conception of the "state of exception" (*Ausnahmezustand*) is not one of "calculability" and "certainty," but rather one characterized by such concepts as "state of danger" (*Gefährdung*), "case of necessity" (*Notlage*), and so forth (Schmitt, "Staat, Bewegung, Volk," in *Die Dreigliederung der politischen Einheit* [Hamburg: Hanseatische

to understand how exceptional the political situation in the penal colony is and why the military infrastructure is necessary: “After all, he had to remind himself that this was in any case a penal colony *where extraordinary measures were needed and that military discipline must be enforced to the last*” (169, 146).

Given this background the question of the adequacy, the legitimacy, of the sentence of death penalty seems misplaced. Yet we may ponder its structure, its *synthetic constituency*. At the outset, the “evidence” precipitating the execution reads as straightforward:

“A captain reported to me this morning that this man, who had been assigned to him as a servant and sleeps before his door, had been asleep on duty. It is his duty, you see, to get up every time the hour strikes and salute the captain’s door. Not an exacting duty, and very necessary, since he has to be a sentry as well as a servant, and must be alert in both functions [denn er soll sowohl zur Bewachung als auch zur Bedienung frisch bleiben]. Last night the captain wanted to see if the man was doing his duty. He opened the door as the clock struck two and there was his man curled up asleep. He took his riding whip and lashed him across the face. Instead of getting up and begging pardon, the man caught hold of his master’s legs, shook him, and cried: ‘Throw that whip away or I’ll eat you alive.’—That’s the evidence.” (168, 146)

I am interested here in the managerial principles, the juridical rationale, pursued by the officer. What is the officer’s position that allows him to arrogate to himself a decision beyond any constitutional constraint? What are the legal grounds on which he adjudicates upon the prisoner’s life? Moreover, I am interested in the normality of the exception, the simplicity of the atrocious, partly reflected in Kafka’s rhetorical style¹²—a style demonstrated here in a succession of main clauses characteristic in their low stylistic temperature of affect:

1. The captain came to me an hour ago,
2. I wrote down his statement
3. And appended the sentence to it.
4. Then I had the man put in chains.
5. That was all quite simple. (168, 146)

Verlagsanstalt, 1934], esp. 43f.; and Schmitt, *Politische Theologie*, 19f.). To be sure, the officer—and this only hints at the *limits* of a dialogue between Schmitt and Kafka—is *not* a “sovereign” in the Schmittian sense. He is incessantly subservient to the old Commandant and ultimately remains within the circle of jurisdiction; thus his political incorporation eventually induces his own execution and defies such terminological attribution.

12. “The ethical possibility [ethische Möglichkeit] of literature lies in its moral indifference,” Joseph Vogl beautifully writes (Vogl, *Ort der Gewalt: Kafkas literarische Ethik* [Munich: Wilhelm Fink Verlag, 1990], 3). The key word here is *Möglichkeit*, “possibility” or “potentiality”; for it is the deadening power of moralistic speech that makes the mere *possibility* of sober analysis and scrutiny (and, eventually, the *ability to respond* to a problem, that is, *respons-ability*) impossible.

According to the logic of the officer, everything is "quite simple." His authority as a judge (an extension of the absolute authority of the old Commandant) is not bound by any law. It is exclusively his decision that matters, tethered to whatever he considers necessary to sustain order. All of the characteristic legal procedures that precipitate deferral, allow presentation and analysis of evidence, or accommodate consideration of varied possibilities (e.g., the inquest, the calling of the accused, the interrogation, cross-examination, etc.) are suspended in the "extra-ordinary" (169, 146) political climate in the penal colony. Correspondingly and subjunctively, they are also suspended in Kafka's rhetoric:

"If I had first called the man before me and interrogated him, things would have got into a confused tangle. He would have told lies, and had I exposed these lies he would have backed them up with more lies, and so on and so forth. As it is, I've got him and I won't let him go.—Is that quite clear now? [Jetzt aber halte ich ihn und lasse ihn nicht mehr.—Ist nun alles erklärt?]." (168, 146)

In fact, hardly anything is "clear" if we actually delve into the peculiar interrelations of crime, judgment, and punishment. If we recapitulate the "evidence" as presented by the officer, then it seems that the servant's sleeping and the resulting failure to salute is already punished through the received lashes—with Kafkaesque poignancy—"across the face." This "punishment" put forth by the captain clearly seems to be the captain's "right," or at least it finds no extra mention in the officer's exposition. The actual delict calling the death penalty down upon the servant lies in his juvenile vengeance: "Instead of getting up and begging pardon, the man caught hold of his master's legs, shook him, and cried: 'Throw that whip away or I'll eat you alive [Wirf die Peitsche weg, oder ich fresse dich].'" And it is only in response to the servant's retort that the captain makes a report (*Anzeige erstattet*) to the officer, who then, simultaneously acting as judge and prosecutor, writes down the "statement" (*Angaben*) "and append[s] the sentence to it right away [und anschließend gleich das Urteil]" (168, 146, translation modified).

What is the basis of this sentence? The officer offers a blunt answer to this question: "My guiding principle is this: Guilt is never to be doubted" (168, 145). The actual delict precisely does *not* lie in the breaching of this or that law, the breaking of this or that rule. The guilt (in the legal sense) lies in the Guilt (in the literal sense); that is, it lies not in "being guilty of having committed a crime," but rather in the sense of the Latin *in culpa esse*—as an a priori to-be-indebted-to, in this case, to the "state" (see 175, 151).¹³ The condemned man by definition is always indebted to the state, yet this locks him in a relationship with the state where he must remain a culprit who can never acquit his debt himself. It is a guilt he can be released from

13. See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998), 26f.

only in the moment of the execution, when his “illegal” claim (the claim to “individuality”) simply evaporates. By executing him, the state in essence takes back a life that never was anyone’s but the state’s, a life with no legal claim to individuality. By executing the condemned man, the state reinserts the body of the prisoner into the political body of the *Volks* (cf. 163, 141f.; 194, 167). Since the state lent life without ever relinquishing control over it, by executing the prisoner it simply takes it back; and it is only then that, via transcendental reinsertion, the condemned man is relieved of his guilt.

It appears essential that the actual crime lies not in the infringement of a specific law but rather in the servant’s “presumptuousness” of considering his body personal property rather than a possession of the state; the servant’s “hubris” in decapsulating his body out of the state infrastructure—indeed, to posit his body *against* the political system—is a crime that calls for capital punishment. This crime of *separating* and *opposing* law and life amounts to an acute threat (“The man *caught hold of his master’s legs*, shook him, and cried: ‘Throw that whip away or I’ll eat you alive’”) and flips the established social order by menacing the state *existentially*. It is a danger emanating not primarily from the individual per se but rather in principle: the arrogation to *think* and to *act* as if the political individual had a right to a nonpolitical existence, a right to a personal body.¹⁴

The paradox we are facing here is the following. On the one hand, the offender seems largely deprived of an ethical understanding or a sense of justice that would qualify him as “human” (see 168, 146). The condemned man is characterized as naked (without cultural makeup), animalistic, insane, wild, and so forth; his is a body that, on top of everything else, is destroyed by a “Harrow” (*Egge*). The German word *Egge* etymologically denotes an agricultural implement used to break up clods, that is, biomaterial, and in the context of Kafka’s “Penal Colony,” human biomaterial. The word choice is certainly no arbitrary one: “‘Yes, the Harrow,’ said the officer, ‘a good name for it [der Name passt]’” (164, 142).¹⁵

At the same time, however, an ethical dimension *does* seem immanent to the prisoner’s body, immanent as potentiality, whose actualization is triggered in the very process of the execution, to then *take place*: “Now justice takes place [geschieht]” (178, 154). The body of the condemned man is, paradoxically, absorbed into the

14. In line with Carl Schmitt’s theory of sovereignty, one perhaps could say that the crime of the servant lies in his disregard of the fact that “any decision about whether something is *unpolitical* is always a *political* decision” (Schmitt, *Political Theology*, 2, Schmitt’s italics). At the same time, this Schmittian notion of “the political” as totality is undermined in Kafka’s story: the old regime is in its demise, and the new Commandant’s reformatory endeavors are not yet fully implemented. As a result, the executions now suffer poor attendance, much to the officer’s regret (“In the old days . . . no high official dared to absent himself”; 178, 153f.).

15. It is not by chance that the officer later throws a “clod of earth” after the soldier, this threshold figure between human being and wild man, who by the end of the story will epitomize together with the freed prisoner another version of Kafka’s “helpers” (*Gehilfen*), continuously “wrestling, half in jest” (190, 163).

socius through his execution; at the moment of the execution, the *human* quality of punishability is alleged and allows for the juridical-political treatment—the exclusion via juristically launched execution. In addition to the potentiality for justice (*dikē*), the nonhuman (in keeping with the Aristotelian double determination of human beings) also actualizes reason (*logos*) during his execution. While the officer's explications before the execution suggest that "the condemned man watched it too, but uncomprehendingly [aber ohne Verständnis]" (174, 150), during the execution, reason indeed does seem to come into being: "But how quiet he grows at just about the sixth hour! Reason comes to the most dull-witted [Verstand geht dem Blödesten auf]. It begins around the eyes" (173, 150, translation modified).¹⁶ During the execution the presumably nonhuman entity seems to activate a potentiality for being human (through the receiving of reason, *logos*, and justice, *dikē*). In short, because the prisoner is excluded qua human being, he is included into human society.

It is this *double bind*, the deprivation of human beings to the degree of biomaterial vis-à-vis the maintaining of a person's juridical liability, that is at the center of Kafka's story. It is a paradox that also characterizes the peripheries of democratic societies in their treatment of prisoners, terrorist detainees,¹⁷ and others, individuals who are excluded by states, excluded qua human beings, a dehumanization and desubjectization not by chance often accompanied by the deprivation of the personal name and the allocation of numeric designations.

The Power of Representation

A closer look at various linguistic discourses soon reveals how much *religious* overtones permeate the predominant *juridical* register in Kafka's narrative. In addition to the mysterious twelve-hour cycle dividing the execution procedure and inviting a number of biblical readings (cf. 178, 154),¹⁸ an array of religious references and insinuations are apparent, ranging from the "old" (judicial/religious) law versus the "new" (judicial/religious) law to notions of "guilt," "redemption" (193), and the "scripture." In addition, the commander stands in as the "Creator" of the apparatus, while the officer serves as a kind of disciple—one who ultimately sacrifices

16. Richard Jayne deals with the "truth-constituting function of punishment through the infliction of pain and torture" in Kafka in the light of Friedrich Nietzsche's pertinent remarks in *On the Genealogy of Morals* and Michel Foucault's *Discipline and Punish* (Jayne, "Kafka's 'In der Strafkolonie' and the Aporias of Textual Interpretation," *Deutsche Vierteljahrsschrift für Literaturwissenschaft und Geistesgeschichte* 66.1 [1992]: 94–128, here esp. 94–101). The "body's material potential for pain, wounding, breakage, and amputation" is at the center of Malynne Sternstein's "Laughter, Gesture, and Flesh: Kafka's 'In the Penal Colony,'" *Modernism/Modernity* 8.2 (2001): 315–23, here 320). Danielle Allen examines the typically underarticulated dimension of the acoustics of pain in "Sounding Silence," *Modernism/Modernity* 8.2 (2001): 325–34.

17. Cf. Judith Butler, "Indefinite Detention," in *Prekarious Life* (London: Verso, 2004), 50–100, for a discussion of questions of desubjectivization and dehumanization at Guantanamo Bay.

18. Cf., for instance, Jean-François Lyotard, "Prescription," in *Lectures d'enfance* (Paris: Galilée, 1991), 59.

himself. Finally, the commander's "followers" are presented with the almost eschatological epitaph "Have faith and wait!"—possibly encapsulating hope for the commander's later rising (*Auferstehung*), and so forth (see 195, 167). The analogy between the juridical and the religious certainly does not occur coincidentally, and while, depending on one's orthodoxy as a reader and one's orthodoxy as a believer, different avenues for interpretation may or may not appear tantalizing, what remains, no doubt, is the suggested analogy between the *juridical* and the *religious*. It is an analogy Carl Schmitt, author of two books with the title *Political Theology*, found so apparent that in his analysis of the concept of sovereignty he writes:

All significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also of their systematic structure.¹⁹

For an understanding of the relation between the *juridical* and the *religious* in Kafka's story, it appears vital to emphasize a third category—namely the *theatrical*. Notably, the actual execution in the colony is presented as a theatrical spectacle in "a deep hollow surrounded on all sides by naked crags" (161, 140):

"How different an execution was in the old days! A whole day before the ceremony the valley was packed with people; they all came only to look on; early in the morning the Commandant appeared with his ladies; fanfares roused the whole camp; I reported that everything was in readiness; the assembled company—no high official dared to absent himself—arranged itself around the machine; this pile of cane chairs is a miserable survival from that epoch. The machine was freshly cleaned and glittering; I got new spare parts for almost every execution. Before hundreds of spectators—all of them standing on tiptoe as far as the heights there—the condemned man was laid under the Harrow by the Commandant himself. What is left today for a common soldier to do was then my task, the task of the presiding judge, and was an honor for me. And then the execution began! Many did not care to watch it but lay with closed eyes in the sand; they all knew: Now Justice takes place [Jetzt geschieht Gerechtigkeit]." (178, 153f., translation modified)

This *theatrum iustitiae* almost reads like a blueprint for Benjamin's contention that "virtue can be *demand*ed, justice," however, "can ultimately only *be*,"²⁰ an insight that places "justice" outside the reach of human beings, outside the law. The officer, of course, knows of this interplay between virtue and justice: "Up till now

19. Schmitt, *Political Theology*, 36.

20. Walter Benjamin, "Notizen zu einer Arbeit über die Kategorie der Gerechtigkeit," *Frankfurter Adorno Blätter* 4 (1992): 41, my translation.

a few things still had to be set by hand, but from this moment it works all by itself" (162, 141). Yet what is really at the heart of this passage? How are we to understand the exposition by an officer who "know[s] more about the apparatus than anyone" and from whom we should hope to learn a lot (168, 145)?

The description of the amphitheatrical hollow in which the execution is to take place and the electrified atmosphere in the crowd underscores the blatant interplay between the *theatrical* and the *juridical*.²¹ And as this theater of justice becomes a theater of cruelty, the symbiosis conjures ramifications significant in our context. It goes without saying that the juridical in its institutional manifestation typically generates a specific theatrical economy of actors, audience, costumes, dialogical forms (like cross-examination), monological forms (like opening statements), and so on; evidently the kinetics (i.e., the paralinguistic signifying dynamics) are ritualized and follow a protocol of standing and sitting, entering and leaving the courtroom, and so forth. There is, in short, an established dramatic *modus operandi* creating a sphere of its own, a sphere within, yet distinct from, the world outside.

Yet why is the juridical so intricately linked with the theatrical, and why does its legitimation appear so contingent on the theatrical? For a better understanding of the relation between the *juridical* and the *theatrical* in Kafka's story, we may—in line with the established analogy between the juridical and the religious—additionally consider the connection between the *religious* and the *theatrical*. What may appear confusing at this point amounts to a rather simple triangular relationship between the juridical and the religious and their point of convergence—namely the theatrical, or, more specifically, the power of (theatrical) *representation*. The relationship could be illustrated as shown in figure 1.

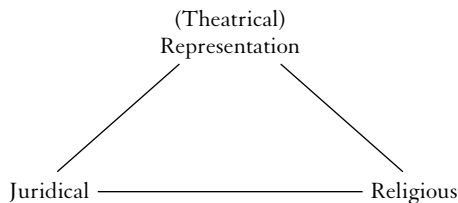


Figure 1.

21. For a detailed discussion of the "theatrical logic of the law" in Kafka, cf. Klaus Mladek, "Radical Play: Gesture, Performance, and the Theatrical Logic of the Law in Kafka," *Germanic Review* 78.3 (2003): 223–49.

proceedings alike; both the institution of law and that of the church employ a highly codified semiotic system of *representation*, not to be understood as a technical tool of deception, but rather as an ontological category, a category of being, of (Christ/justice) being present in being absent.²² As represented in Kafka's "Penal Colony," the power of the law lies in the creation of a nexus between what is present (law) and what is absent yet there as an "occurrence" (justice). It is a strength situated less in presentation than in re-presentation, the re-presentation of justice²³—justice that defies presentation but can nevertheless be apprehended as *being*...absent. It can be apprehended because of the persuasive force of representation, bridging the epistemic gap between the present and the absent—a force that makes it ultimately unnecessary to *see* what is represented. "No discordant noise spoiled the working of the machine. Many did not care to watch it but lay with closed eyes in the sand; they all knew: Now Justice takes place [Jetzt geschieht Gerechtigkeit]" (178, 154, translation modified). In most courtroom dramas, the presence of an audience seems vital, not for passive spectatorship, but for semantic force and verifying power; and we can assume that the old Commandant in Kafka's "Penal Colony" had good reasons for having the execution carried out "before hundreds of spectators." "A whole day before the ceremony the valley was packed with people; they all came only to look on" (177f., 153). The Commandant "with his ladies," the children and the crowd—"all of them standing on tiptoe"—appear as an essential part of the juridical proceeding. "What is left today for a common soldier to do was then my task, the task of the presiding judge, and was an *honor* for me" (178, 154). The *legitimation* of the juridical apparatus in the colony appears contingent on its *public presence* as well as its *glorification*, since it is precisely the juridical *institutionalization* that seems to substantiate law's claim to justice.

An exceptional moment of such glorification can be witnessed in the officer's exposition of the guiding plans drawn by the old Commandant:

"I am still using the guiding plans drawn by the former Commandant. Here they are"—he extracted some sheets from the leather wallet—"but *I'm sorry I can't let you handle them, they are my most precious possessions*. Just take a seat and I'll hold them

22. In his 1923 essay, "Roman Catholicism and Political Form," published the year after his first *Political Theology* (1922), Carl Schmitt observes that the church "represents the *civitas humanas*. It presents [stellt...dar] in every moment the historical connection to the incarnation and crucifixion of Christ. It represents the Person of Christ Himself: God become man in historical reality. Therein lies its superiority over an age of economic thinking" (trans. G. L. Ulmen [Westport, CT: Greenwood Press, 1996], 19, Schmitt's italics). While economic thinking, Schmitt contends, relies on a network of norms that stand for something else, the Catholic Church, by means of its "power of representation," develops a "specifically formal superiority," anchored in "concrete existence, full of life," and thus does not *stand for* but *is* Christ (19, 8, translation modified).

23. Justice defies presentation as much as God; "justice can ultimately only be, as a condition of the world, or as the condition of God," Benjamin writes in a posthumous fragment ("Notizen zu einer Arbeit über die Kategorie der Gerechtigkeit," 41, my translation).

in front of you like this [ich zeige sie Ihnen aus dieser Entfernung], then you'll be able to *see* everything quite well." He spread out [er zeigte] the first sheet of paper. The explorer would have liked to say something appreciative, but all he could *see* was *a labyrinth of lines crossing and recrossing each other*, which covered the paper so thickly that it was difficult to discern the blank spaces between them [daß man nur mit Mühe . . . erkannte]. "Read it," said the officer. "I can't," said the explorer. "Yet it's clear enough," said the officer. "It's very ingenious," said the explorer evasively, "but I can't make it out." "Yes," said the officer with a laugh, putting the paper away again, "it's no calligraphy for school children." (171f., 148)

The passage stages an oscillation between the act of *showing* and the act of (attempted) *seeing*. The officer exalts the sheets, praising them as his "most precious" possession, and this preciousness clearly enhances their representative valence, yet he does not allow the explorer to take a closer look, because the explorer perhaps would scrutinize them as the "researcher" (*Forscher*, 158, 184, translation modified) he is. The explorer compliments the sheets as "ingenious," yet they remain enigmatic and indiscernible. Holding the drawings before the explorer with due ostentatious ambiguity, the officer does not forget to say: "Yes, . . . it needs to be studied closely. I'm quite sure that in the end you would understand it too." Though promising meaning, he immediately, subjunctively, defers the possibility of recognition. He does not say "will" (*werden*) but "would" (*würden*) and adds "in the end" (*gewiss*) to keep the discouraged seeking for what cannot be "found."

This power of representation provides the entire basis for the officer's hopes, claims, expectations, and hallucinations, according to which the traveler will finally come to a positive opinion of the execution procedure:

"*Just watch it!*" He ran up the ladder, turned a wheel, called down: "*Look out*, keep to one side!" and everything started working. If the wheel had not creaked, it would have been marvelous. The officer, as if surprised by the noise of the wheel, shook his fist at it, then spread out his arms in excuse to the explorer, and climbed down rapidly to peer at the working of the machine from below. Something perceptible to no one save himself was still not in order; he clambered up again, did something with both hands in the interior of the Designer, then slid down one of the rods, instead of using the ladder, so as to get down quicker, and with the full force of his lungs, to make himself heard at all in the noise, yelled in the explorer's ear: "Can you follow it?" (170, 149)

Once again the officer relies on an abundance of theatrical stimuli, thereby attempting an implementation of the juridical as a means of re-presenting what defies recognition. Yet what can be achieved through the effect of this odd mélange of clownery, slapstick, "excusing" gestures reminiscent of early twentieth-century silent film, and so forth? Those residues of juridical "representation" appear to

succumb to grotesqueness. The officer does and does not admit it to himself: the phrase “The officer, *as if* surprised by the noise of the wheel” suggests that unconsciously he probably suspects the penal colony’s demise, for he cannot ignore the “creaking” wheel, the fading power of representation, the diminishing legitimation of the juridical apparatus. Yet he cannot avow such a decline either, not to himself and not to the explorer. And whatever the presentiments, he fortifies his insistence in addressing the explorer: “Just *watch* it! [Sehen Sie doch!]... Can you follow it? [Begreifen Sie den Vorgang?].” The officer insinuates a transition from the *sensory* to the *cognitive level*—a transition encumbered precisely by the apparatus’s lack of representative strength; what the performance does *not* achieve is precisely a fusion, an ontological shaping, an *identity* of jurisdiction.

We said that the status of the theatrical, of theatrical representation, lies in making the absent present by *staging* its absence. Law acts in the name of justice, yet justice defies its instrumentalization—thus the irreconcilability of law and justice, and thus the need for a power to bridge the hiatus between representation (juridical performance) and represented (“justice”); and since the notion of “justice” in the penal colony is particularly perverted, its proprietor—the old Commandant—wisely put a particular emphasis on the enactment of the execution.

Yet in contrast to the crowds of spectators once witnessing the spectacle of the execution and the “occurrence” of justice, the explorer refuses his complicity. Why so? Why does the representative power of the juridical procedure, once banning the crowd, now fail before the eyes of the explorer? That the juridical procedure seems to have forfeited its *credibility* (*Glaubwürdigkeit*), its *authenticity*, certainly has a number of causes. First of all, the old Commandant, being the apparatus’s creator, who, by means of his power of decision, previously ensured the apparatus’s claim to “justice,” is dead. Further, the apparatus’s institutional integrity seems undermined by the new Commandant’s antagonistic reformatory endeavors. The people, at least outwardly, have lost faith in the old system, thereby robbing the penal proceeding of one of its most central configuratory constituents: its public participation (see 177, 153). Finally, the machine has begun to show significant signs of wear: its straps are broken, and its canes are worn. The officer laments the disgusting felt gag “which more than a hundred men have... slobbered and gnawed in their dying moments” (176, 152). The “acid fluid” used in the machine has been prohibited, and without it “the machine can no longer wring from anyone a sigh louder than the felt gag can stifle” (178, 154). In short, its deteriorating state deprives the apparatus of its power to represent and consequently its legitimating foundation, also in the eyes of the explorer. Moreover, the explorer describes himself as a “stranger” (*Fremder*)—that is, someone unfamiliar with the apparatus’s ethical idiosyncrasy. Yet what precisely is it that the explorer condemns, what is the apparatus’s *force*, and what is the nature of its law enforcement? What is the kernel of its “peculiarity” that its “inadequate” act of representation fails to concretize?

The Force of Law

While law's power of representation is directed at the nonpresent, its force (*Geltung*) and its enforceability rely on its access to the body. The force of law constitutes a moment of violence, leaving law and justice irreconcilable; it is the very violence that requires the law's legitimation via representation in the first place. Law "needs" the body,²⁴ for only on naked flesh can it inscribe itself. Correspondingly, in systems like the one in Kafka's penal colony, the body gives validity to the law by allowing the law to punish the body. "I do not approve of your procedure," the explorer says; he even offers an "explanation"—without ultimately "explaining" anything (185, 159, translation modified), perhaps because he knows that the juridical procedure is as immune to his critique as it is immune to the remarks of the new Commandant's "ladies": "'In our country we have a different criminal procedure,' or 'In our country the prisoner is interrogated before he is sentenced,' ... or 'We haven't used torture since the Middle Ages'" (180, 155f., translation modified). "All these statements," the officer says, "are as true as they seem natural to you, harmless remarks that pass no judgment on my methods." They are "statements" attesting to a hypothetical "core" of the procedure—statements trying to challenge the inadequate means employed by the old law to ensure its force (*Geltung*). The "ladies" progressivism, however, does not allow them to grasp the officer's ideas, because from his perspective the legitimacy of law cannot be deduced from a rationalistic assessment of its "recognized" "brutality"; rather, it must be deduced from its phenomenological effect exclusively. The question is one rooted in its representativeness, its power of persuasion: "'So you did not find the procedure *convincing* [Das Verfahren hat Sie also nicht *überzeugt*],' he said to himself and smiled" (186, 160).

Once more we shall ask: What is the logic of the old system? How, concretely, does its law acquire *force* (*Geltung*), the force of law?

"As soon as the man is strapped down, the Bed is set in motion. It quivers in minute, very rapid vibrations, both from side to side and up and down. You will have seen similar apparatuses in hospitals [Heilanstalten]; but in our Bed the movements are all precisely calculated; you see, they have to correspond very exactly to the movements of the Harrow. And the Harrow is the instrument for the actual execution of the sentence [Dieser Egge aber ist die eigentliche Ausführung des Urteils überlassen]." (165f., 144)

What does it mean that "der Egge ist die ... Ausführung des Urteils überlassen"? In the first place it means, as the translation indicates, that the Harrow carries out the execution by inflicting injuries on the condemned man's body. Yet the German idiom

24. For a discussion of "law's desire to have a body," see also Agamben, *Homo Sacer*, 124. On the portrayal of the law in Kafka with regard to the complexities and shortcomings of Agamben's reading of Kafka, see Susanne Lüdemann, "'Geltung ohne Bedeutung': Zur Architektur des Gesetzes bei Franz Kafka und Giorgio Agamben," *Zeitschrift für deutsche Philologie* 124.4 (2005): 499–519.

jemandem etwas überlassen conveys a certain ambiguity because it can also mean “to leave something up to someone”; in this sense, the execution of the sentence is left to the discretion of the Harrow. Not only does the Harrow carry out the judgment, but given that human qualities appear to be attributed to it, it may in fact have a certain agency in this process of execution (i.e., “The carrying out of the execution is left up to the Harrow”). The Harrow appropriates a certain autonomous quality by being put in position to decide how exactly the sentence is to be carried out.

Yet doesn't this contradict the officer's assertion that the inscriptions are prescribed by the old Commandant's sketches? And, after all, isn't “guilt . . . never to be doubted”? “We should not be deceived by all the Constitutions framed throughout the world . . . , the Codes written and revised, a whole continual and clamorous legislative activity: these were the forms that made an essentially normalizing power acceptable,” Foucault writes in *The History of Sexuality*.²⁵ The Harrow's partial autonomy to decide on the prisoner's fate is juxtaposed with total predetermination—a predetermination that, at the moment of inscription, manifests itself by turning life into a political matrix. “Dieser Egge aber ist die eigentliche Ausführung des Urteils überlassen” means, after all, no more than that whatever the political inscription of life, whatever its “specificity” is or may turn out to be, never will it transgress the referential framework of the extraordinary state in which everyone's guilt is *a priori*.²⁶ Every inscription is preceded by a prescription—a prescription not only in the primary *temporal* sense of the word, but also in its *normative*, normalizing sense. The inscription makes a promise that evaporates with the Harrow's first prick, a promise of an individualized inscription, a promise that succumbs, however, to the vehemence of the preestablished sentence of the politicization of life, tantamount to the individual's death.²⁷

The Birth of the Nation, or the “Wisdom” of the Commandant

The condemned man's execution figuratively stages the birth of a human being (see 173, 150); his inclusion into human society via inscription reenacts the process

25. Foucault, *History of Sexuality*, 1:144.

26. That the traveler does not lend himself to the officer's propaganda, that the officer's rhetoric leaves no *im-pressure* (*Ein-druck*) sympathetic to the old system, results precisely from his already-being-inscribed—seemingly by a more democratic texture—and his not-being-naked-anymore: “The officer kept watching the explorer sideways, as if seeking to read from his face the impression [Ein-druck] made on him by the execution, which had been at least cursorily [oberflächlich] explained to him” (174, 151).

27. Stanley Corngold, in his nuanced chapter on “In the Penal Colony” in *The Necessity of Form* (Ithaca, NY: Cornell University Press, 1988, 228–49), discusses the motif of “inscription” as a reflection on the “rigors of writing.” Beate Müller reads the story as a problematization of “censorship”: “In the process of his execution, the offender is supposed to decipher the inscription the machine administers to his body. . . . Taking the narrated world of the island colony as a frame of reference, the figures embody the narrative functions of author, fictional character and reader, engaged in creation and reception. But ultimately, the literary text acts as censor: It does not yield to the reader's knocking on the gate” (“Die grausame Schrift: Zur Ästhetik der Zensur in Kafkas ‘Strafkolonie,’” *Neophilologus* 84 [2000]: 107–25, here 107).

of the politicization of a child. The prisoner lies on the Bed under the Harrow where he is born into the political realm—an experience of birth, the experience of a “naked” being, someone not yet inscribed. The juridical apparatus inscribes the naked flesh of the delinquent, because it considers it as much a threat as every child is considered a threat—a threat in the sense of what Jean-François Lyotard calls “l’innocence criminelle du corps.”²⁸ The naked body of the child is dangerous because of its existence outside of the law; the child epitomizes a blank space, an interruption within the communicative texture of the state. In the perspective of the state, the naked flesh feigns innocence and pretends to an innocuous, apolitical existence that officially does not exist and must not exist, a state of existence only the state can adjudicate upon by virtue of its “sovereignty”²⁹—in itself again an act of politicization. The state deems the event of birth, which, as Heidegger says, “throws” us into the world, disconcerting precisely for what Arendt (in the context of twentieth-century totalitarian politics) calls “natality”: “The beginning of a being that itself has the ability to begin: it is the beginning of a beginning, the beginning of beginning itself.”³⁰ The event of birth, an event of novelty and unprecedented potentiality for the new, challenges the system of the old Commandant. In fact, it potentially threatens to subvert the thanatopolitical regime in Kafka’s “Penal Colony.” The strength of the old regime then lies in its capacity to obliterate the “infinitely improbable” promised by each birth, and to transform the naked body into a political body, a body of the nation. (Notably, the word *nation* is an etymological derivative of the word *nascere*, “to be born.”) Thanks to the “wisdom” of the old Commandant, the children can watch the execution procedure from nearby, witnessing the prisoner’s inscription that enacts their own inscription:

“It was impossible to grant all the requests to be allowed to watch it from nearby. The Commandant in his wisdom ordained that the children should have the preference; I, of course, because of my office had the privilege of always being at hand; often enough I would be squatting there with a small child in either arm.” (178, 154)

The Commandant is a “wise” man, for he knows that the political upbringing of the children and adolescents amounts to a new generation of biomaterial, the essential resource and existential guaranty of his government. The wisdom of the Commandant lies, in the words of Foucault, in the implementation of the power

28. Lyotard, “Prescription,” 44.

29. For an analysis of Kafka’s story in its relation to the peculiar efficacy of “sovereignty,” see Andreas Gailus, “Lessons of the Cryptograph: Revelation and the Mechanical in Kafka’s ‘In the Penal Colony,’” *Modernism/Modernity* 8.2 (2001): 295–302.

30. Hannah Arendt, *The Origins of Totalitarianism* (Cleveland: Meridian, 1958), 166, after Werner Hamacher, “The Rights to Have Rights (Four-and-a-Half-Remarks),” *South Atlantic Quarterly* 103.2/3 (Spring/Summer 2004): 356.

“to ‘make’ live and ‘let’ die.”³¹ It is the power allowing for the growth of an entire population—a population soon to be inscribed, politicized, and judiciously registered. It is the power of inserting the human being, from the moment of birth, into the body of the nation. And it is not by chance, then, that the question of nationality and citizenship plays an important role in Kafka’s story:

The explorer thought to himself: It’s always a ticklish matter to intervene decisively in other people’s affairs. He was neither a citizen [Bürger] of the penal colony nor a citizen [Bürger] of the state to which it belonged. Were he to denounce this execution or actually try to stop it, they could say to him: You are a foreigner [Fremder], mind your own business.... Yet here he found himself strongly tempted. The injustice of the procedure and the inhumanity of the execution were undeniable. No one could suppose that he had any selfish interest in the matter, for the condemned man was a complete stranger [war ihm fremd], not a fellow countryman or even at all sympathetic to him [kein Landsmann und ein zum Mitleid gar nicht auffordernder Mensch]. (175, 151f.)

Evidently this passage touches on questions regarding the notion of citizenship. The officer is a “citizen [Bürger] of the state to which [the colony] belonged,” a state which he refers to as his “home” (*Heimat*, 162, 141).³² Also the explorer is identifiable as a citizen, for “the condemned man was a complete stranger [war ihm fremd], not a fellow countryman [kein Landsmann]”; the explorer is a citizen in an Occidental country (*Abendlandes*, 181). Yet what juridical status has the condemned man? He does not appear to be a citizen, he seems deprived of any civil rights, he has no right to rights and is juridically naked.³³ The question of human rights (that is, rights that technically precede the rights of state citizens) is one addressed in Kafka’s story:

31. Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France* (New York: Picador, 2003), 241.

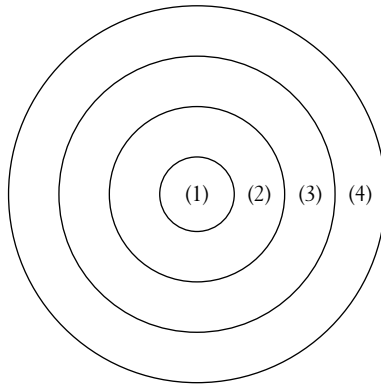
32. Claudia Albert and Andreas Disselnkötter explore the colonial dimension of Kafka’s story in terms of its invocation of cross-cultural practices (Albert and Disselnkötter, “Inmitten der Strafkolonie steht keine Schreibmaschine”: Eine Re-Lektüre von Kafkas Erzählung,” *Internationales Archiv für Sozialgeschichte der deutschen Literatur* 27.2 [2002]: 168–84). Danilyn Rutherford tackles the question of colonialism from an anthropologically informed perspective and focuses on “the alterity of power” and the space for subversion it may open (Rutherford, “The Foreignness of Power: Alterity and Subversion in Kafka’s ‘In the Penal Colony’ and Beyond,” *Modernism/Modernity* 8.2 [2001]: 303–13, here 312).

33. With respect to the prisoner’s exclusion from human society, it seems interesting that even the explorer “was...not...at all sympathetic [Mitleid] to him” (175, 151f.). “Commiseration,” *Mitleid*, is not an emotion that can be shared between human beings and animals; commiseration is possible only if the one who is commiserated with (*der Bemitleidete*) himself can feel commiseration (*Leid mit-empfinden*)—a quality the prisoner lacks, whose characterization better fits that of an animal than of a human being, and who consequently “does not call commiseration upon himself” (ein...zum Mitleid gar nicht auffordernder Mensch). A “human being not calling commiseration upon himself” is a nonhuman, whose human insufficiency lies in the absence of an ethical potentiality, the potentiality for an understanding of justice.

"A famous Western investigator [Ein großer Forscher des Abendlandes], sent out to study criminal procedure *in all the countries of the world*, has just said that our old tradition of administering justice is *inhumane* [*unmenschliches*].'... You may want to interpose that you never said any such thing, that you never called my methods *inhumane* [*unmenschlich*], on the contrary your profound experience leads you to believe they are *most humane and most in consonance with human dignity* [*das menschlichste und menschenwürdigste*]." (181)

Presumably the existence of human rights, rights that are prior to the rights of citizens of nation-states—"in all...countries of the world"—would save the prisoner. His privation will be inflicted on European Jewry barely three decades after Kafka writes this story. The prisoner is no citizen, and as such, without a pre-right to citizen rights, he epitomizes the extreme of political existence in the penal colony. The officer also is politically encoded, yet his status differs in degree. If one wanted to schematize the political sectors in Kafka's story, the echelons could be represented as shown in figure 2 (moving from the inside to the outside).

The extreme of the penal colony's political system is situated "*in* the penal colony" (1) (and the preposition in the story's title makes all the difference here): the juridical logic appears to be a situational one, where "extra-ordinary measures" ensure order (169, 146). The penal colony itself (2) presents a military regime, in which a "great change" is about to come into being for the sake of another, still military ("the new Commandant") yet more moderate, order. Moreover, citizen



- (1) "*in* the penal colony"—condemned man
- (2) "citizen of the penal colony"—officer
- (3) "citizen of the state to which it belonged"—officer's "home" (*Heimat*)
- (4) "Occident"—"stranger"/"foreigner" (*Fremder*)—explorer

Figure 2.

rights exist. We learn little about the state to which the penal colony belongs (3), except perhaps its spoken language—French. The explorer, coming from the outside (4), “from far away” (*aus der Fremde*), is “neither a citizen [Bürger] of the penal colony nor a citizen [Bürger] of the state to which it belonged.” In addition, he, in contrast to the officer, does not wear a uniform, and he appears to come from a “modern” time: “I am an opponent of this procedure” (*Ich bin ein Gegner dieses Verfahrens*, 185, 159, translation modified). If we limit the geopolitical radius to that of the penal colony³⁴—whose one extreme is that of the peculiar extraordinary state within, and whose other extreme is a state with civil rights, rights of citizens (*Bürgerrechte*)—what can be said about the topographical gradation of the different sectors? What is the relation between the extremes, between inside and outside, and between outside and inside? In a diary entry of October 8, 1911, Kafka writes:

Would like to know Yiddish literature, which is obviously characterized by an uninterrupted tradition of national struggle that determines every work. A tradition, therefore, that pervades no other literature, not even that of the most oppressed people. It may be that other peoples in times of war make a success out of a pugnacious national literature, and that other works, standing at a greater remove, acquire from the enthusiasm of the audience a national character too.³⁵

What manifests itself in this entry appears to be an understanding according to which the marginal may at times precipitate a more forceful dynamic than does the center of a system. It is an insight Joseph K., the protagonist of Kafka’s novel *The Trial*, appears to heed in orchestrating his trial from the suburbs of the city and from law offices in remote attics—that is, the horizontal and the vertical extremes. It is an epistemological insight that equally pertains to Kafka’s “Penal Colony”—an insight according to which history presents itself from the perspective of its extremes rather than from political middle ground. The secluded space “in the penal colony,” the prisoner exposed in it—all this is not merely exception, but exception determining as well as characterizing the rule. We know more about “the state to which it belonged” than Kafka explicitly states. We know in particular what happens to those deprived of the rights of citizens (of the colony as much as of the state to which it belongs), those excluded from the socius. And we know of the unremitting reproduction of this condition, of children being inscribed with a political status in the act of seeing: “Often enough I would be squatting there with a small child in either arm. How we all absorbed the look of transfiguration on the face of

34. For documentation of the geopolitical-historical context of Kafka’s story, cf. Walter Müller-Seidel, *Die Deportation des Menschen: Kafkas Erzählung “In der Strafkolonie” im europäischen Kontext* (Stuttgart: Metzler Verlag, 1986).

35. Franz Kafka, *The Diaries of Franz Kafka, 1910–1913*, ed. Max Brod, trans. Joseph Kresh (New York: Schocken Books, 1965), 87.

the sufferer, how we bathed our cheeks in the radiance of that justice, achieved at last and fading so quickly!" (178, 154).

Postscript: "Have faith and wait!"

After the officer's execution the explorer glances at the face of the corpse:

It was as it had been in life; no sign was visible of the promised redemption; what the others had found in the machine the officer had not found; the lips were firmly pressed together, the eyes were open, with the same expression as in life, the look calm and convinced, through the forehead went the point of the great iron spike. (193, 166)

The officer finds no redemption; his eyes remain open, like those of a living person; the legal system embodied by the officer continues to maintain its force. This latent power, its perennial force (*Geltung*), is one Kafka rhetorically enacts with three asterisks—no closure but a rupture, no end but deferral, a suspension.

The persistent power characterizing the peculiar situation in the penal colony—that state within which the law withdraws all the while maintaining its presence, an omnipresence precisely due to its withdrawal—finds an enactment in the eerie atmosphere of the "teahouse," where the old Commandant, the physical body of the deceased ruler, lies buried:³⁶

As the explorer, with the soldier and the condemned man behind him, reached the first houses of the colony, the soldier pointed to one of them and said: "There is the teahouse." In the ground floor of the house was a deep, low, cavernous space, its walls and ceiling blackened with smoke. It was open to the road all along its length. Although this teahouse was very little different from the other houses of the colony, which were all very dilapidated, even up to the Commandant's palatial headquarters, it made on the explorer the impression of a historic tradition of some kind, and he felt the power of past days. (193f., 166)

The explorer *feels* the power of past days, a power that is past yet still sensible and as such present. Together with the old Commandant, the law retreats while relentlessly sustaining its force: the "people" (*Volċ*, 194, 167, translation modified) sit around the grave, the *Volċ* whose etymology can be traced back to the Germanic word *fulka*, "das Kriegsvolk" (the war-waging people). The correspondence between the old Commandant and the political body of the people (*Volkskörper*) does not seem interrupted as a result of the old Commandant's death:

³⁶. Cf. also Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1997).

"Where is the grave?" asked the explorer. . . . They pushed one of the tables aside, and under it there was really a gravestone. It was a simple stone, low enough to be covered by a table. There was an inscription on it in very small letters. . . . "Here rests the old Commandant. His adherents, who now must be nameless, have dug this grave and set up this stone. There is a prophecy that after a certain number of years [nach einer bestimmten Anzahl von Jahren] the Commandant will rise again [auferstehen] and lead his adherents from this house to recover the colony. Have faith and wait! [Glaubet und wartet!]." (194, 166f.)

The officer's demise, at least at first glance, does not seem to make a difference at all; the soldier does not even consider it a message worth being reported: the *socius* generates its force no longer from concrete incidences of conviction and execution, but from its inherent void, a void drawing "dock laborers," "poor, humble creatures," the population, into its ban, leaving them in a deactivated state of drinking "tea." To be sure, these secluded, destitute men are "adherents," *Anhänger*, "on-hangers," hanging on to the old order, segregated within the Commandant's ban,³⁷ condemned to remain in a static state of believing and waiting (*Glauben und Warten*).

It is impossible to say how long the old Commandant's adherents will wait, how long they will still remain subordinate to his omnipresent power. The latent power of the old Commandant, the faith in his resurrection (*auferstehen*) "after a determined number of years" is very indeterminate, for the *act* thus far having constituted the *potency* of the colony (namely the execution of prisoners) will, due to the officer's death, not take place anymore. The particular political situation in the penal colony gained its entire power from the act of execution, an act now abolished, perhaps bequeathing the prophecy of the "recovery of the colony" (*Wiedereroberung der Kolonie*) to obliteration and foreclosing the actualization of all potency. The execution of prisoners was, one may say, the old system's last hope—in spite of the difficult conditions, the constant shortages of material, the lack of public participation, and so forth. Without the executions, we may have to read the epitaph "Have faith and wait!" (Glaubet und wartet!) somewhat differently: as believing (*Glauben*) and waiting not only for the actualization of the prophecy (i.e., the resurrection [*Auferstehung*] of the old Commandant), but also for the fading of their own belief (*Glauben*), the belief in their own waiting (*Warten*).

* * *

Yet perhaps the adherents latently know and always knew of this fate and thus have been reading the "Glaubet und wartet!" in this sense for a long time already: as waiting for the end of their own belief, an *act*, once again, reinvigorating the potency—an act of believing, once again constituting the *socius* anew.

37. Cf. also Jean-Luc Nancy, *L'impérative catégorique* (Paris: Flammarion, 1983); Nancy, "Abandoned Being," in *The Birth to Presence*, trans. Brian Holmes (Stanford, CA: Stanford University Press, 1993).