

# Philosophy and Kafka

Brendan Moran and Carlo Salzani

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## Introduction

*Brendan Moran and Carlo Salzani*

This book on philosophy and Kafka is a beginning. A book on "Philosophy and . . ." is always a beginning, or at least never an end. To an unusual extent, however, Kafka's writings indicate, sometimes even thematize, that we are not going to finish our efforts to interpret them. In this sense, they could seem unusually philosophical: They are openly resisting conclusive readings. More than most subjects that might be studied, Kafka's writings recall for us that we can conceivably always return to them and begin again. This book on philosophy and Kafka is a beginning, then, and must acknowledge that all its topics remain open for discussion.

The book emerged from a group of people interested in writing on the topic, and finding that there had not really been a book on it. The research on Franz Kafka is ever-expanding, and continuously generates interest and new works. "Philosophical" questions and topics are obviously central to Kafka-scholarship, and the literature on the subject abounds, but usually in a dispersed form (journal articles, book chapters), or in book-long studies that focus, however, on particular issues, interpretations, or—as is often the case—on philosophical thinkers such as Heraclitus, Søren Kierkegaard or Friedrich Nietzsche.<sup>1</sup> Although the majority of the publications on Kafka focus on biographical aspects or on literary interpretation that does not presume to be "philosophical," a number of book-length studies have indeed appeared in which the question of the relation between philosophy and Kafka is central. Some of them focus, in one way or another, on theoretical or philosophical aspects of Kafka's work, such as time and history, violence, ethics, and freedom.<sup>2</sup> Other studies confront Kafka's thought and work with a philosophical tradition, or analyze his work through a perspective such as psychoanalysis, phenomenology, deconstruction, or "post-structuralism."<sup>3</sup> Other works focus on particular philosophical readings or on particular readings that might be construed as "philosophical," such as those by Walter Benjamin or Jacques Derrida.<sup>4</sup> Finally, some studies attempt a philosophical take on certain aspects of Kafka's work.<sup>5</sup> The present volume is unique, however, in bringing together a considerable variety of essays that focus on major philosophical readings of, or on philosophical issues present in, Kafka's writings. More specifically, the novelty of the volume is that it focuses

## CHAPTER 2

# Kafka's Empty Law: Laughter and Freedom in *The Trial*

*Dimitris Vardoulakis*

### A Cage without Walls?

Hannah Arendt's re-evaluation of Kafka persistently defines his works in terms of what it does *not* stand for—Kafka is not amenable to religion or psychoanalysis, he is neither a realist nor a surrealist, and so on. In the midst of this “negative exegetics” the following assertive statement suddenly appears: “Kafka's laughter is an immediate expression of the kind of human freedom and serenity that understands man to be more than just his failures.”<sup>1</sup> The power of this claim resides in the connection between freedom and laughter. This may, at first blush, appear counter-intuitive. As even a cursory look at Kafka's work will reveal, the figure of imprisonment is paramount—from the Red Peter in “A Report to an Academy” and the “Hunger Artist” who are both confined to a literal cage, to a series of implied cages, such as Gregor Samsa's room in *The Metamorphosis*. However, as Kiarina Kordela and I have argued elsewhere, this need not be taken as a sign of despair and resignation but rather as a critique of the liberal democratic—and capitalist—sense of freedom that developed in Europe since the seventeenth century.<sup>2</sup> Further, as I have also shown, this critique of freedom in Kafka is presented through laughter. Comic elements become the technical means for the presentation of a revamped notion of freedom. Instead of an idealized freedom that can never be reached thereby leading to a sense of human failure, Kafka proposes a sense of mediated freedom that consists, above all, in freeing oneself from that idealized notion of freedom.<sup>3</sup> Hannah Arendt points precisely to the same nexus between laughter and freedom in Kafka's work.

Such a positive articulation of non-idealized freedom through laughter is challenged when we turn to a work like *The Trial*, where Kafka describes a generalized sense of engagement by the law. *The Trial* presents a man, Josef K., ensnared by an all-pervasive law. As the novel famously opens: “Someone must have slandered Josef K., for one morning, without having done anything wrong, he was arrested” (*Trial* 3).<sup>4</sup> This is a similar beginning to the *Metamorphosis*. A man wakes up to find himself completely trapped. Josef K., like Gregor Samsa, is also in his room. There is the image of the narrow street outside the window as well, although here the outside intrudes because the neighbors from across the

road spy on Josef K. The main difference with *The Metamorphosis* is telling: whereas Gregor is confined in his room throughout the novella, Josef K.'s entrapment by the law disperses over his entire milieu. Josef K. enjoys freedom of movement, but everywhere he goes everyone seems to have already judged him as guilty for something indistinct, unexpressed, unknown. Josef K. finds himself trapped by an omnipresent and omnipotent law—he finds himself trapped in a cage without walls.

The reason for the law's omnipresence and omnipotence in *The Trial* is that the law is empty. As the lawyer Huld explains to Josef K., "the proceedings are not public. . . . As a result, the court records, and above all the writ of indictment, are not available to the accused and his defense lawyers" (*Trial* 113). Josef K. is accused of something, but he is not allowed to know what the accusation is nor the law upon which the accusation is based. The proceedings of the courts, as well, are never made public: "The final verdicts of the court are not published, and not even the judges have access to them" (*Trial* 154). The impossibility of finding the content of the law takes a humorous twist when Josef K. does manage, after a lot of effort, to get hold of the law books of an abandoned court-room, but they turn out to be nothing but dirty books: "They were dog-eared book. . . . K. opened the book on top, and an indecent picture was revealed. A man and a woman were sitting naked on a divan" (*Trial* 57).<sup>5</sup> The book of statutes turns out to be a pornographic illustrated novel. If the law is understood as a proscription—"you shall not do this or that"—then the pornographic content of these law books seems conversely to preach promiscuity.<sup>6</sup> So, not only is the only law book seen by Josef K. devoid of actual laws, its content is also incompatible with the law as such. Such a law devoid of content is, as Patrick J. Glen avers, an "empty norm."<sup>7</sup> This emptiness is what makes the law all the more omnipresent and omnipotent.

Prior to having a close look at the emptiness of the law in *The Trial* it is necessary to contextualize this figure of the empty law. I will do so with reference to Spinoza for several reasons. First, in the manner in which Deleuze emphasizes the laughter in both Spinoza and Kafka, we can say that there is an intellectual affinity, even kinship, between the two.<sup>8</sup> This consists in the determination to counter any ideals, to undermine any universals, with a trenchant insistence on materiality. Second, the *Tractatus Theologico-Politicus* is concerned with the problematic of freedom and the law is presented therein as empty, as pure obedience.<sup>9</sup> Thus, Spinoza's empty law is related to the problem of freedom, just as in *The Trial*. Third, the law's emptiness in Spinoza signifies its liberatory potential.<sup>10</sup> Hence, the detour via Spinoza will provide us with indications of how to identify, in Arendt's words, the "laughter" as the "expression of freedom" in the world of *The Trial* that is dominated by the omnipotent and omnipresent empty law.

## Spinoza's Ethical Laughter

In order to present the conception of freedom in the *Tractatus Theologico-Politicus*, it is required to look at Spinoza's description of empty law. The reason is that, as already intimated, it is through the redemptive potential of the empty law that a sense of non-idealized freedom arises.

The affirmation of the emptiness of the law is best articulated by Spinoza in chapter 14 of the *Tractatus*. This chapter bridges the analysis of the Bible offered in the previous thirteen chapters and the analysis of power and freedom propounded in the rest of the book. This is done with reference to the law. Spinoza writes that "the aim of Scripture is simply to teach obedience. . . . Moses' aim was . . . to bind [his people] by covenant" (*Tractatus* 515).<sup>11</sup> Spinoza avers that the Mosaic law is purely functional. Its function is solely to instill obedience as a means of securing a "covenant," or the creation of a Jewish state. Articulating Spinoza's conception of the empty law in terms of existence, we can say that law as means toward pure obedience corresponds to the modality of necessity. The law is necessary for the creation of a state and that's the only function that the law performs. "Moses, by his divine power and authority, introduced a state religion . . . to make the people do their duty from devotion," writes Spinoza in chapter 5 (*Tractatus* 439). The discussion of the handing of the Ten Commandments to Moses in chapter 1 of the *Tractatus* may appear curious since it concentrates on the question of whether Moses actually heard the voice of God.<sup>12</sup> But this is thoroughly consistent with Spinoza's aim to describe the law as purely necessary. The content as such of the commandments is irrelevant. All that matters is that the commandments will be binding and this requires that they be perceived as necessary by the people in need for a legal framework in order to form a state. In other words, all that matters is the functionality of the law—the fact that the law is a means. Thus, even though the ten commandments might have been written on stone, their content was secondary compared to the modality of necessity they enabled to be perceived as God's law—a necessity required in order to allow Moses to introduce a "state religion." The voice of God, as described in chapter 1 of the *Tractatus*, is precisely that modality of necessity that leads to unquestioned obedience.<sup>13</sup>

The modality of necessity that characterizes Spinoza's empty law is accompanied by the modality of contingency. This is related to the fact that the law is conceived by Spinoza as constitutive to the building of sociality. In chapter 14 of the *Tractatus*, shortly after arguing that the sole purpose of the Mosaic Law was obedience, Spinoza writes: "the entire Law consists in this alone, to love one's neighbor. . . . Scripture does not require us to believe anything beyond what is necessary for the fulfilling of the said commandment" (*Tractatus* 515). We see here again that the law is conceived as empty. The function of the empty law—its necessity—consists solely in the love of one's neighbor, insists Spinoza. This neighborly love becomes the constitutive element of "state religion." In other words, it is indispensable for the creation of a community. Spinoza refers here to Paul's assertion in *Romans* (13.8-10) that "Thou shalt love thy neighbor as thyself. . . . [L]ove [is] the fulfilling of the law." However,

just as in the case of the Mosaic Law and the Ten Commandments, here Spinoza again significantly re-interprets—I am tempted to say, “subverts”—Paul’s meaning. In the standard interpretation, the love of one’s neighbor is the fulfillment of the law in the sense that it points to a universal sense of justice.<sup>14</sup> Spinoza uses neighborly love to refer to contingency instead. When discussing in chapter 3 the universal importance of the Mosaic Law, Spinoza insists that Moses’ law was written in order to suit the specific—that is, contingent—needs to the law-maker/prophet and the people he was addressing at that particular place and time. Or, if law is understood as means, then the law must be adaptable to the given circumstances in which the law is to function. At that point, Spinoza turns to Paul’s *Romans*. He interprets the epistle as arguing that “to all men without exception was revealed the law under which all men lived” (*Tractatus* 423). If there is a “universality” to the law, then that “universality” never belongs to one people and is never expressed in one way. Rather, it is a materialist universality, expressed always in contingent terms, related to the living conditions of the people to whom the law applies. Later, when Spinoza addresses explicitly the command to love one’s neighbors in chapter 12, he prefaces that by saying that one cannot expect to find “the same markings, the same letters and the same words” in the laws of different people. The “Divine Law” is empty since its content is changeable and it can only be expressed under the modality of contingency (*Tractatus* 508). Thus, any written laws are nothing but “letters that are dead” since statute depends upon the contingent circumstances of the community (*Tractatus* 521). So, whereas Paul presented love as such in order to identify it with universal or divine justice, Spinoza emphasizes instead a love *for*—a love that requires an object that is only ever transient, aleatory, contingent.

The reconfiguring of both the Mosaic Law and the sense of legality in the New Testament are to be understood together. There is, according to Spinoza, a mutual dependency between necessity—the fact that the law’s only purpose is obedience—and contingency—the expression of that obedience according to the given, accidental circumstances. The law is empty because it is both necessary and contingent. Or, as Spinoza puts it, “since obedience to God consists solely in loving one’s neighbor . . . it follows that Scripture commands no other kind of knowledge than that which is necessary for all men before they can obey God according to this commandment and without which men are bound to be self-willed, or at least unschooled to obedience” (*Tractatus* 511). The contingent expression of the love toward one’s neighbor is the fulfillment of the necessity of the law that consists in nothing else than the fact that the law is to be obeyed. Defining the law in terms of such contingency and necessity makes the law a means—a pure functional element. This co-presence of necessity and contingency denominates “state religion” and the theologico-political in Spinoza.

Further, the co-presence of the modalities of necessity and contingency indicates that the emptiness of the law presupposes something more primary. Or, more precisely, there is an element that arises out of the emptiness of the law that cannot, however, be contained by it. This element is associated with rebellion: “faith requires . . . dogmas [that] move the heart to obedience; and this is so even if many of those beliefs contain not a shadow of truth, provided that he

who adheres to them knows not that they are false. If he knew that they were false, he would necessarily be a rebel” (*Tractatus* 516-17). The moment that an excess is perceived in obedience, then it is no longer possible to rest content with its dictates, especially if they are false. This overcoming of falsity introduces an instability in the obedience that characterizes the co-ordination of the necessity and the contingency of the empty law. The emptiness of the law—unquestioned obedience, pure authority—is paradoxically premised on the power of rebellion. “No body politic can exist without being subject to the latent threat of civil war (‘sedition’). . . . This is the cause of causes,” as Étienne Balibar puts it.<sup>15</sup> Rebellion is excessive of the theologico-political nexus of necessity and contingency but in such a way as to underlie “state religion.” Rebellion is more primary than state constitution. But this simply means that the law as means has no end. No matter what specific content the law has, that content is always changeable. There is no *telos* that defines what a state should look like or what a state should proscribe its citizens.<sup>16</sup>

The rebellious countering of the falsities of obedience is associated by Spinoza with the truth making function of philosophy: “The domain of reason . . . is truth and wisdom, the domain of theology is piety and obedience” (*Tractatus* 523). Truth is excessive of the necessity and contingency that characterize the Mosaic and Pauline laws of “state religion.” Or, differently put, truth shows that the means lack an end—there is no teleology in nature, as Spinoza makes clear in the preface to Part IV of the *Ethics*. The introduction of truth leads to the third and last modality of existence, namely, possibility. This is expressed in the *Tractatus* as the theory of power or *potentia* and it is introduced in chapter 16 in terms of a theory of rights.<sup>17</sup> According to Spinoza’s conception, rights are the expression of one’s possibilities: “each individual thing has the sovereign right to do all that it can do; i.e. the right of the individual is coextensive with its determinate power” (*Tractatus* 527). The search for truth is not an abstract activity but rather embedded in existence. It is linked to the exercise of one’s right to realize one’s power. The notion of right in Spinoza is incompatible with liberal notions of right, according to which rights point to universal human values. Rather, right for Spinoza is precisely the possibility to rebel when truth interrupts the nexus of necessity and contingency, that is, when truth interrupts the emptiness of the law. Or, differently put, right as power is excessive of, and interrupts, “state religion.”

At the same time, it is important to note that Spinoza does not lapse into a utopian vision of a world that could be free from empty law. There is no pure expression of power.<sup>18</sup> Rather, the expression of power requires the presence of the empty law. It is the rebellion against the empty law that allows for the expression of power and hence for freedom. In this sense, freedom for Spinoza is the freedom *from* the empty law.<sup>19</sup> Thus, freedom in Spinoza requires the two modalities of necessity and contingency. Freedom is the breaking of the hold of obedience that they institute—a breaking that is enacted through the introduction of truth. Truth, then, forges the connection with the third modality of existence, possibility, giving rise to Spinoza’s theory of power that allows for a conception of freedom not as absolute but rather as mediated.<sup>20</sup>

Spinoza's empty law, then, far from an inescapable engagement, offers rather a redemptive potential. The emptiness of the law relies on the way that the modalities of necessity and contingency are co-present. Within this context, the excessive elements of rebellion and truth point to the modality of possibility. Thus the emptiness of the law indicates that a political being can in fact be conceived otherwise. Freedom in fact consists in retaining this "otherwise"—the possibility of resistance and change. Politics is never finalized. There is no universal determination of the right political value that would determine a telos to the state and its laws. Truth is not an abstract thesis or inference valid for ever. Rather, truth is the enactment of that "otherwise"—the possibility of resisting the current political arrangement. According to Deleuze, this possibility—this power—to arrange human relations "otherwise" constitutes Spinoza's "ethical laughter." Deleuze contrasts that laughter to the irony and mockery that characterize the tyrant, whose purpose or telos is to remain in power. Such mockery is "another way of saying that human nature is miserable," whereas the affirmation of life and materiality makes Spinoza's laughter joyful—a laughter that affirms the possibility of change.<sup>21</sup>

## Empty Law without Truth

The empty law of *The Trial* can be understood in Spinozan terms. Specifically, it is possible to understand the emptiness of the law as the conjunction of necessity and contingency. The best place to examine the description of the law's emptiness in terms of necessity and contingency is the parable "Before the Law" that is contained in the chapter "In the Cathedral."

Josef K. goes to the cathedral to meet a customer of his bank. The customer does not turn up. Nevertheless, Josef K. meets a priest who narrates the parable. It is the story of a "man from the country" who wants to be admitted to the law. A gatekeeper does not so much prohibit him from crossing a first gate on the way to the law, as warn him that there are more gates guarded by increasingly ferocious gatekeepers, so it would be better for him to wait for admittance. The man from the country waits for many years, but to no avail. His pleas with the gatekeeper fall on deaf ears. He grows old, his strength and eyesight weaken and as a matter of fact he is about to expire, when a strange thought crosses his mind: How come no one has striven to reach the law all these years, even though everyone wants to have access to it? The gatekeeper responds: "No one else could gain admittance here, because this entrance was meant solely for you. I'm going to go and shut it now" (*Trial* 217). This conclusion to the parable fits perfectly the Spinozan framework of the emptiness of the law. We can identify here the necessity and contingency that characterize empty law. There is no proscription against entering the first gate toward the law—the man from the country is free to do so but he is warned against it because of the ferocious gatekeepers that he is bound to encounter further down the road. He does not enter the gate, then, for functional reasons. This functionality determines necessity. Contingency is also present when the gatekeeper asserts that the entrance to

the law "was meant solely for you." From this perspective, the law articulates itself through its contingent relation to the subject. The law is not universal but rather suited to the specific circumstances of the man from the country. The combination of necessity and contingency delineates an empty law in the parable that is amenable to the Spinozan conception of empty law.<sup>22</sup>

The affinity with Spinoza is complicated, however, when at the end of the exchange with the priest the question of truth arises. Josef K. avers that it is not possible to understand everything that the priest is saying as true. The priest objects that the category of truth is inappropriate: "you don't have to consider everything [the gatekeeper says] true, you just have to consider everything necessary." Josef K. can be read as conceding the point to the priest when he says that, when truth is separated from necessity, "Lies are made into a universal system" (*Trial* 223)—although I will return to this assertion in the following section to explore a different interpretation that retains a Spinozan possibility of resistance.<sup>23</sup> The gatekeeper's articulations determine the law as both contingent and necessary—they determine the law as empty. The separation or disengagement of truth from the empty law creates a dualism, which entails that, in Spinoza's terms, the possibility of freedom is eliminated. The man from the country is presented as being absolutely obedient. Without recourse to truth, he has no recourse to any methods of resistance to the contingent and yet necessary pronouncements of the gatekeeper. Separating the emptiness of the law from truth leads to a different understanding of truth than what we discovered in Spinoza. Truth no longer resists teleology. Or, differently put, truth no longer points to the possibility that the political can be configured "otherwise." Therefore, the way that the empty law is construed as disengaged from truth has repercussions for how the third modality, possibility, can be understood. Possibility is inscribed here as the impossibility of searching for the truth, and hence the impossibility of resistance. Spinoza's rebellious stance is excluded from this construal of power. The fact that the law is empty means that the law is inaccessible, and therefore the representative of the law speaks with a necessity that has absolute authority. The empty law that relies on a necessity without truth can take three guises: a theological, a biopolitical and a moral one.<sup>24</sup> I will examine these in turn.

The incontestable authority of a law devoid of truth can spawn a theological reading of *The Trial* because such a law in *The Trial* draws its power from the fact that it is both invisible and thoroughly pervasive. The invisibility and all-encompassing nature of the law in the *Trial* has often been given a theological interpretation.<sup>25</sup> Passages like the following do seem to allow for such a reading: "[Everyone is] in agreement . . . that the court, once it brings a charge, is convinced of the guilt of the accused, and that it is difficult to sway the court from this conviction.' 'Difficult?' asked the painter [Titorelli], throwing one hand in the air. 'The court can never be swayed from it. If I were to paint all the judges in a row on this canvas and you were to plead your case before them, you would have more success than before the actual court'" (*Trial* 149). The judges can be understood as metonymies of the divine that, as Augustine demonstrates in his *Confessions*, never responds despite the appellant's pleas.<sup>26</sup> Or, one can under-



stand the judges' absence in negative theological terms, as the absence that makes the presence of their universal judgment possible.<sup>27</sup> What such readings have in common is the supposition that there is a universal dimension to the law that is visible in the universal ascription of guilt. We have here a fallen world because of an original sin. The law is legitimated through such a universalized guilt. And yet, we have already seen that the law's emptiness requires the contingent. How can the law be both contingent and universalized?

The answer is simple enough and it leads from a theological to a biopolitical construal of authority.<sup>28</sup> It is not the content of the law that is regarded as universal. Rather, the emptiness itself of the law is universalized. For instance, no one knows the content of the law that has Josef K. arrested. In the absence of content, everyone in the novel becomes a guardian of the law.<sup>29</sup> Thus, when Titorelli says that the judges are invisible, this is not because the judges are hidden and their judgments assume a universally true content, but because they are everywhere and their judgments are arbitrary. Everyone is a judge, everyone condemns Josef K. from the very first moment of his arrest without charge. In the absence of any justification or legitimacy based on a sense of legality, their judgments are capricious, contingent upon their mood. And yet, their judgments are simultaneously all the more uniform and universal—they all pronounce Josef K. guilty. The effect of this universalization of contingency is that the law is dispersed and all-encompassing—it is omnipresent and omnipotent. Here, everyone is a proxy to the law, everyone is a legitimate judge. Such a dispersal of the law seeking to take control of the everyday characterizes biopolitics, according to the last lecture of Foucault's *Society Must be Defended*. Foucault expresses this idea in one of his examples: "Ultimately, everyone in the Nazi State had the power of life and death over his or her neighbors, if only because of the practice of informing."<sup>30</sup> The dispersal of an empty law makes judgment legitimate and yet also completely arbitrary and thus an instrument of the exercise of unlimited authority. Law's emptiness—the absence of a content to the law—can become the ultimate trick that authority plays, namely, dissimulating a denial of content only so that everyone is forced to supply arbitrarily content every instant anew, and yet always with the same result—ascRIPTION of guilt. The emptiness of the law is universal, but in biopolitics this is understood as the license for everyone to pass an arbitrary judgment—that is, a judgment without concern for truth. In this sense, the prison without walls represented in *The Trial* can be viewed as the perfect depiction of the repressive emptiness of the law. This pure authority of the empty law is only possible because the law is dissociated from truth.

There is a final turn to the mechanism that disengages authority from truth, thereby foreclosing the possibility of freedom. This consists in the introduction of morality as the law beyond or above the legal system.<sup>31</sup> As has already been shown, the universalization of the law's emptiness means that the judgments passed are arbitrary—everyone regards Josef K. as guilty, even though none relies on a definite content of the law. There is no process whereby guilt is tested by evidence—there is no "natural justice"—and hence the very idea of a state law becomes dubious. Maybe, then, we are not dealing here with law as statute but rather with law as an unwritten moral imperative. Immanuel Kant describes

such a moral imperative in the *Groundwork of the Metaphysics of Morals*.<sup>32</sup> He defines a categorical imperative that can never be given any steadfast content, but it is rather the principle that should determine action "as if" one knew at any time what that content were. It is this "as if" that gives the empty moral law its universal dimension. In *The Ethics of Reading*, J. Hillis Miller examines this empty law by analyzing one of Kant's examples, namely, the proscription against making empty promises—the proscription against lying.<sup>33</sup> Miller shows that Kant cannot determine whether the proscription articulates this empty law through a contractual agreement between humans or through reference to a transcendent law. Both possibilities are necessary and yet they contradict each other.<sup>34</sup> Or, in the terminology used earlier to describe Spinoza's position, an empty moral law is caught in a double bind that is called to decide between contingency and necessity—and yet, it cannot make that decision without annulling its emptiness. Miller compares this Kantian conundrum to Josef K.'s assertion that "Lies are made into a universal system," and infers that "Whether I intend to lie or do not intend to lie I lie in any case."<sup>35</sup> The separation of truth from the empty law indicates a space of judgment and law beyond the legal system—it signifies morality. Nevertheless, the incapacity of that morality to decide between contingency and necessity articulates itself as a lie, thereby contradicting its own moral proscriptions. In other words, the empty law without truth of morality appears as nothing other than a persistent lying. It would be easy to infer at this point that such lying creates a "world order" that represents a lamentable existential condition.

The theological, the biopolitical and the moral interpretations of Kafka's law all lead to despair and a profound sense of failure. In all these construals, Kafka is presented as the most tortured of tortured authors, the most sublimely tragic figure. Guilt is inescapable, there is no possibility of resistance and everything turns into a lie. There is nothing more foreign to Kafka's laughter than condemning the human to such a fallen world with a dispersed power of control and a moral law that exists only as a lie. Such an existential despair is a direct result of separating empty law from truth, which produces a dualism that can be articulated in different ways—theological, biopolitical, moral—and yet with the same result: absolute imprisonment. Deleuze and Guattari note that *The Trial* presents "the law as pure and empty form without content" (*Kafka* 43). They describe this emptying of content as the law's transcendence that posits "a necessary connection of law and guilt." They continue: "Guilt must in fact be the a priori that corresponds to transcendence. . . . Having no object and being only pure form, the law cannot be a domain of knowledge but is exclusively the domain of an absolute practical necessity." They point out to the priest's separation of necessity from truth as the presentation of such a transcendent law (*Kafka* 44-45). The transcendent law that cannot be known, the law that cannot be related to truth, is absolutely necessary because it ensnares the individual in perpetual guilt.

As opposed to this lamentable condition of humanity Deleuze and Guattari insist on a different possibility. They argue that the discovery of Kafka's laugh-

ter leads away from dualism and the ensuing despair—and even leads toward the discovery of a promise of freedom in Kafka's writings.

## The Laughter of Freedom

The possibility of such a promise of freedom through laughter can only be discerned by remaining attentive to how truth is re-figured in *The Trial*. We need to return to the separation of the empty law from truth, as it is expressed at the end of the exchange between the priest and Josef K. Citing the passage in its entirety is required so that an alternative interpretation can emerge that no longer leads to despair:

"The man has only arrived at the Law, the doorkeeper is already there. He has been appointed to his post by the Law, to doubt his dignity is to doubt the Law itself." "I don't agree with that opinion," said K., shaking his head, "for if you accept it, you have to consider everything that the doorkeeper says as true. But you've already proved conclusively that that's not possible." "No," said the priest, "you don't have to consider everything true, you just have to consider everything necessary." "A depressing opinion," said K. "Lies are made into a universal system [*Die Lüge wird zur Weltordnung gemacht*]." K. said that with finality [*abschließend*] but it was not his final judgment [*Endurteil*]. (*Trial* 223)<sup>36</sup>

As seen in the previous section, truth can be separated from the empty law because truth is understood as something universal, unrelated to the possibility of resistance and of seeing the world "otherwise." A different understanding to truth starts arising by noting that the distinction between "finality" and "final judgment" in Josef K.'s assertion introduces a sense of interruption. Josef K. says that lying is a universal principle in conclusion (*abschließend*) but this is not his final judgment since that would have consisted in an endless guilt of the human who, after shedding the yoke of a repressive content to the law, is now even more repressed than ever. This leads inexorably to a lament for human suffering in the state of lying. But by not articulating his final judgment (*Endurteil*), Josef K. interrupts that ceaseless lament, refuses to see humanity as being in a state of perpetual suffering and hence does not seek consolation by the priest.<sup>37</sup>

This interruption is the first move toward retaining a notion of the truth. In fact, such a notion of truth can be gleaned from what Josef K. says about lying. The crucial move is to resist the interpretation that lying—as it is expressed by Josef K.'s formula that "Lies are made into a universal system"—points to the separation of truth from the empty law. In other words, the notion of lying suggested in Josef K.'s statement should not be seen as an apposition to the priest's assertion that what the gatekeeper says is necessary but has nothing to do with truth. When lying is seen as related to truth then lying leads back to the possibility of resistance and the mediated freedom that we discovered in Spinoza.

So, how does truth re-inscribe itself through the figure of lying so as to assert the possibility of freedom? The first point to note is that Josef K.'s statement can be taken to denote a process. "*Die Lüge wird zur Weltordnung gemacht*" does not simply mean that lies are becoming a universal principle, but the process of lying is such a principle. Understanding lying as a process is important because it opposes the presupposition of the priest's previous statement, according to which the gatekeeper's articulations do not pertain to truth but only to necessity. The priest presupposes—and that is what the rejection of the link between necessity and truth amounts to—that truth is universal, or that truth needs to be understood in terms of an assertion of a universally true content. Josef K. responds that lying, as a process, describes how the world is. Understanding lying as a process amounts to a rejection of the premise that truth is to be defined in relation to a content. Instead, Josef K.'s statement allows for an understanding of truth as that which is allowed—that which is *possible*—in relation to the lying that pervades the world. In other words, lying is understood as the untruths of the contingent expression of empty law—as the falsities against which, as Spinoza insists, rebellion is necessary.

Understanding lying—and hence truth—as a process, affects the way the relation between contingency and necessity is understood. When the gatekeeper tells the man from the country that this entrance to the law is only for him and that he will now shut it, the gatekeeper, as already intimated, affirms the contingency of the law as it is applied to the man from the country. But what exactly does the shutting of the entrance mean? From the perspective that seeks to separate the empty law from truth, the entry to the law is barred because the law is empty and it is this emptiness that is universalized. In other words, even though the entrance is solely for the man from the country, still the shutting of that entrance pertains to the guilt that is ascribed to everyone. That is why, also, there is no process here—Josef K. was judged as guilty from the moment of his arrest because everyone is guilty *ab initio*. Conversely, allowing for a relationship between the lying or untruth of the law's articulation and truth highlights the impossibility of eliminating process. The relation between contingency and necessity is not resolved—or, dissolved—in a universalized state that is separated from truth. Rather, it is a relation that is infinitely negotiable, continuously evolving and transformable. It is a relation pregnant with possibilities. There is an agonistic stance articulated as the opposition to any form of occlusion. In this construal, the gatekeeper does not guard access to the law as such—if such a thing exists—but rather to the solidification of the law. The gatekeeper suspends access to the law so that the law can remain open and transformable in its contingency. He shuts the entrance to the law so as to avoid any misunderstanding that the empty law can be attributed a telos. From this perspective, the gatekeeper functions as Spinoza's figure of the philosopher, whose role is to resist blind obedience to the law. It is as if he is telling the man from the country to stop hanging around the gate, submissively waiting for an entrance to the law, urging him instead to rebel. Such a rebellion should be understood in Spinozan terms, namely, as the admonition to stop seeing the empty law as a tool that leads to absolute obedience.

This agonistic stance can be seen as a rebellion against universality. It will be recalled that the universalization of the emptiness of the law is a defining characteristic of the empty law without truth and it results in arbitrary judgments. According to biopolitics, since the law is empty, then everyone can pass judgments, even though such judgments are completely arbitrary. The shutting of the gate is a different form of judgment. It is a judgment that is no longer arbitrary. Rather, it interrupts the process that makes judgment arbitrary. It does so by severing the link between necessity and universality. Or, it is a judgment that insists that a sense of truth is possible, even only as the process of agonism against untruth, against obedience, and against an empty law whose transcendence creates universal guilt. To express this in yet another way, the judgment here inscribes itself as the interruption of occlusion, and hence as the interruption that allows for process to continue.<sup>38</sup>

The possibility of such a sense of judgment is the form that power takes in its agonistic opposition to empty law without truth. Kafka presents Josef K. as arriving at this sense of power, but also as being unable to recognize it. (I will describe shortly the Kafkaesque laughter arising from Josef K.'s inability to recognize the possibility of such a sense of judgment even though he has already arrived at it.)<sup>39</sup> At the end of the dialogue with the priest, Josef K. asserts that "*Die Lüge wird zur Weltordnung gemacht.*" The way that the world is organized consists in lying, avers Josef K. here. The corollary of this assertion is that truth is not universal, or, even more emphatically, that there is no universality as such in the world order. Josef K. says this in conclusion to the conversation (*abschließend*) but not so that he makes it into a final judgment (*Endurteil*). It would be recalled that, according to the interpretation that separates the empty law from truth, this concluding remark does not arrive at a final judgment in the sense of an incessant lament for the ineliminable guilt of a "humanity" faced with a transcendent law. But this concluding to the conversation can be read in a completely different way. It can also be taken as the reiteration of the gatekeeper's gesture of shutting the door in the face of the man from the country. The remark that lying is the order of the world is, literally, a shutting up, an *Abschließen*. Josef K. asserts the possibility of an interruption of this process—this dialogue—so that he is not led to the final conclusion that the possibility of judgment (*Urteil*) has ended and is substituted instead by lament. It is a shutting up that allows for the continuation of the process. This process continues because the shutting up affirms an agonistic stance against a final judgment—a judgment about the universalization of contingent necessity that eliminates truth. At the point that Josef K. stops the process that is intended to suspend all process, at the moment that he interrupts the disempowering gesture that separates truth from necessity in order to universalize arbitrary judgment, Josef K. asserts his potential, assumes his power and responsibility. In Spinozan terms, Josef K.'s observation about the pervasiveness of lying is an assertion of his power (*potentia*), an act of resistance against an empty law devoid of truth. This is not a sense of freedom as the opposite of the imprisonment in guilt that is the outcome of a transcendent law. It is, rather, as Deleuze and Guattari put it, a "line of escape and not freedom" (*Kafka* 35). In other words, it is a sense of freedom that

operates in a register that is different from that of a law without truth. In fact, it is a liberation precisely from that false promise of freedom contained in transcendent law. This is not an absolute freedom from imprisonment and guilt, but a freedom that is *mediated* by its agonistic relation to that illusory sense of absolute freedom. Josef K. liberates himself *from* the universalization of empty law. He is *free from* the illusory promise of a universal freedom that the empty law without truth offers.

If such a potential has been reached, if Josef K. has discovered the possibility that he has at his disposal in order to adopt an agonistic stance against the all-pervasive biopolitical power, then how can we explain the fact that Josef K. does not grasp that possibility, does not realize that potential? Why does he not recognize this mediated freedom?<sup>40</sup>

There are two crucial aspects to answering why Kafka does not present Josef K. as aware of being free from the unknown accusation that ensnares him. The first aspect is Kafka's own circumspection. Kafka is cautious to pre-empt any illusion that a sense of freedom is still possible when the empty law is separated from truth. There is no theological sense of enlightenment that discloses a spiritual freedom, nor is there a sense of universalized freedom that adheres toward the biopolitical paradigm, nor, finally, an individual freedom within the confines of a moral law. What all these senses of freedom presuppose is the separation of an empty law from truth. Obedience to the law is always seen as a lack of freedom, as an instance of absolute obedience that curtails the individual. They all presupposed the dualism of absolute freedom versus absolute imprisonment. Presenting Josef K. as liberated from the unknown accusation that an omnipotent and omnipresent law leveled against him would have run the danger of appearing as if a sense of absolute freedom from the empty law can be achieved. That would not have been merely a utopian conclusion. Further, by accepting the presuppositions of the separation of empty law and truth it would have affirmed the primacy of that separation itself—thereby asserting the priest's position, according to which the empty law is separated from truth. Absolute freedom is not the opposite of the absolute imprisonment that characterizes transcendent law. Rather, absolute freedom and absolute imprisonment operate within the same dialectic of transcendence that produces an empty law devoid of truth. Kafka wants to avoid any confusion between such a notion of absolute freedom and the mediate freedom that is the immanent expression of a freeing oneself from the guilt induced by transcendence.

Besides wanting to resist any misconception that such an absolute sense of freedom can be achieved, there is a second aspect as to why Josef K. is not presented as aware of being liberated. As already indicated, Josef K. has already reached a sense of freedom different from the absolute—and thus unreachable—freedom presupposed by the separation of the empty law and truth. We saw the discovery of that sense of freedom in the conclusion to the conversation with the priest. The finality of his conclusion to the exchange, his *Abschließen*, it will be recalled, is a form of interruption, like the gatekeeper's shutting of the door. What this interrupts precisely is the universalizing impulse that requires an understanding of truth, no less than of freedom, as absolutes. Josef K. concludes

without a final judgment, resisting occlusion in such absolutes. Such an interruption posits a sense of freedom *from* the discourse that understands both freedom and truth as absolutes. And yet, Josef K. remains unaware of it. Like the man from the country, he appears in this occasion, when he finds himself before the empty law, a bit naive, a bit unsophisticated, a bit too obedient to recognize that authority can always be challenged—indeed, that the possibility inherent in making judgments that stake a claim to truth is precisely the challenging of the necessity of authority. Josef K.'s ignorance of what he has achieved is an expression of Kafka's humor.

Kafka laughs with Josef K. by presenting him as having arrived at the conclusion but without being able to recognize it. The entire novel then appears as a joke at the expense of Josef K. The joke consists in the fact that Josef K. constantly strives toward complete liberation—to be granted “complete acquittal,” in the vocabulary of *The Trial*—and yet he never realizes it because such an acquittal is unattainable. But the reason is simply that he was looking for the wrong thing—namely, absolute freedom. Everybody was warning him that “complete acquittal” does not exist. Absolute freedom is the chimera that imprisons the subject. Josef K., the bank manager who dresses up like city dandy—someone who aspires to a high social and economic status—acts like the man from the country, an unkempt buffoon with dark nasal hair.<sup>41</sup> We have, on the one hand, someone who is meant to be “in the know” and, on the other, someone who is meant to be ignorant of the ways of the world. They form a comic pair because they are set up as complete opposites, and yet they ultimately appear not dissimilar. They are not only presented with the same task—the attempt to comprehend their relation to the law—they also both fail to see that their relation to the law points to action and truth. They fail to see that there is no inner sanctum of the law that can be reached. There is no absolute freedom. Rather, it is the enacting of their relation to absolute freedom that is a liberation *from* that sense of freedom. Their task is to liberate themselves *from* the emptiness of the law devoid of truth. They both arrive at this conclusion and yet they both fail to see it—until it is too late. The sentence of Josef K. to die “like a dog” recapitulates the erasure of the distance that separates him from this comic pair—the dandy banker lapses into animality and to country ignorance, he descends from his lofty position and thereby meets the animal or a representative of the most low stratum.<sup>42</sup>

Arendt's assertion discussed at the beginning of the chapter makes perfect sense from this perspective. Arendt noted that Kafka's laughter points to a sense of freedom that “understands man to be more than just his failures.” Josef K. has indeed failed to recognize his liberation from transcendent law. But this failure is articulated as laughter. Kafka's humor is *immanent* in Josef K.'s failure. This takes two guises. First, it is immanent in the sense that it points to a sense of being that is not reliant on transcendence. One cannot laugh when one is confronted by transcendent ideals—a heroic endeavor toward something lofty and ideal is never meant to be funny. Indeed, laughter is a physical symptom, a bodily expression, that does not point to anything high, anything transcendent. No wonder that it has always been associated with “low” literature.<sup>43</sup> Kafka em-

braces that low literature—or what Deleuze and Guattari call “minor literature”—that is meant to provoke laughter in the reader.

The second aspect arises when it is recognized that even if a heroic deed that aspires toward transcendent ideals is not meant to be funny, it still can appear laughable. In other words, the failure to live up to transcendence can be subject of laughter.<sup>44</sup> In fact, as we have already seen, Deleuze calls Spinoza's laughter “ethical” precisely because it is an opposition to forms of transcendence that constitute attempts at imprisonment. Deleuze and Guattari raise an equivalent point when they discuss Kafka. They argue that even though Kafka presents an empty, transcendent law that is absolutely necessary in *The Trial*, still “the humor that he puts into it shows an entirely different intention” (*Kafka* 43). In fact, Deleuze and Guattari argue that the empty law without truth is “a superficial movement” in Kafka's work that is needed because it “indicates points of undoing, of dismantling” (*Kafka* 45). What is being dismantled is the structure of transcendence that separates necessity from truth, thereby leading to absolute authority. Laughter performs such a dismantling, or “even . . . a demolition,” as Deleuze and Guattari emphatically put it (*Kafka* 45). In other words, laughter leads to an empty law that is conceived in terms of its immanent relation to whoever is before it. Thus laughter functions as the *means* for the expression of a freedom from the empty law without content. In Kafka's world, laughter is the conduit to freedom. The one who laughs at Josef K.'s perennial guilt is Spinoza's necessary rebel who interrupts the nexus of contingent necessity by recognizing its falsity.<sup>45</sup>

## Notes

I would like to thank Norma Lam-Saw and Aleksandra Ilic for reading and commenting on this chapter.

1. Hannah Arendt, “Franz Kafka, Appreciated Anew,” in *Reflections on Literature and Culture*, ed. Susannah Young-ah Gottlieb (Stanford, CA: Stanford University Press, 2007), 106-7.

2. See Kiarina Kordela and Dimitris Vardoulakis, “Kafka's Cages,” in *Freedom and Confinement in Modernity: Kafka's Cages*, eds. Kordela and Vardoulakis (New York: Palgrave, 2011), 1-6.

3. Dimitris Vardoulakis, “‘The Fall is the proof of our freedom’: Mediated Freedom in Kafka,” in *Freedom and Confinement in Modernity*, eds. Kordela and Vardoulakis, 87-106.

4. The English translation of the *Trial* referenced in this chapter is Franz Kafka, *The Trial*, trans. Willa and Edwin Muir, rev. trans. E.M. Butler (New York: Schocken, 1995).

5. Walter Benjamin observes that filth and decay are constant characteristics of power in Kafka's worlds. Benjamin, “Franz Kafka: On the Tenth Anniversary of his Death,” in *Selected Writings*, ed. Michael W. Jennings et al. (Cambridge, MA: Belknap, 2001), volume 2, 794-818.

6. If the law does indeed elide proscription in *The Trial*, then a relevant point can be raised (that I cannot, however, take up in any detail here) about the concluding remark of

the novel, when Josef K. is executed "like a dog." If the law is an expression of desire, then being a "dog" is not an offensive appellative. Rather, it is a re-iteration of the way that the elusive law of *The Trial* conceives of agency.

7. Patrick J. Glen, "The Deconstruction and Reification of Law in Kafka's 'Before the Law' and *The Trial*," *Southern California Interdisciplinary Law Journal* 17 (2007): 26 and *passim*.

8. For instance, we find the following comment in the transcript of "Power and Classical Natural Right," a lecture by Deleuze delivered on December 9, 1980: "[T]here are some very comical pages in Spinoza's *Ethics*. . . . It is a very particular kind of laughter and Spinoza is one of the most cheerful authors in the world. . . . It is Ethical laughter!" <http://www.webdeleuze.com/php/texte.php?cle=20&groupe=Spinoza&langue=2> (accessed October 2006). And of Kafka, Deleuze and Guattari write: "He is an author who laughs with a profound joy, a *joie de vivre*, in spite of, or because of, his clownish declarations that he offers like a trap or a circus." Gilles Deleuze and Félix Guattari, *Kafka: Towards a Minor Literature*, trans. Dana Polan (Minneapolis, MN: University of Minnesota Press, 1986), 41. I will discuss further both of these assertions by Deleuze in due course. All subsequent references to this book will be made in-text parenthetically with the title abbreviated as *Kafka*.

9. That Spinoza's *Treatise* is about freedom is made clear from the subtitle that says that the treatise is about the freedom to philosophize and to judge as necessary for the peace of the state. The subtitle says exactly: "Containing Various Disquisitions, By means of which it is shown not only that Freedom of Philosophizing can be allowed in Preserving Piety and the Peace of the Republic: but also that it is not possible for such Freedom to be upheld except when accompanied by the Peace of the Republic and Piety Themselves."

10. My reading of Spinoza's *Tractatus Theologico-Politicus* here is based on, combines and augments two earlier attempts: Dimitris Vardoulakis, "Spinoza's Empty Law: The Possibility of Political Theology," in *Spinoza Beyond Philosophy*, ed. Beth Lord, (Edinburgh: Edinburgh University Press, 2012), 135-48; and Dimitris Vardoulakis, *Sovereignty and its Other* (New York: Fordham University Press, forthcoming in 2013), chapter 4. Both of these contain more detailed analysis than can be offered here of Spinoza's position.

11. The English translation of the *Tractatus* referenced in this chapter is Spinoza, *Theological-Political Treatise*, in *Complete Works*, trans. Samuel Shirley, ed. Michael L. Morgan (Indianapolis, IN: Hackett, 2002), 383-582.

12. For a discussion of this point, see Arthur Jacobson, "Prophecy without Prophets: Spinoza and Maimonides on Law and the Democracy of Knowledge," in *Spinoza Now*, ed. Dimitris Vardoulakis (Minneapolis, MN: University of Minnesota Press, 2011), 135-59.

13. Spinoza in the *Tractatus* describes this perception of necessity as superstition.

14. Alain Badiou, *Saint Paul: The Foundation of Universalism*, trans. Ray Brassier (Stanford, CA: Stanford University Press, 2003).

15. Étienne Balibar, *Spinoza and Politics*, trans. Peter Snowdon (London: Verso, 1998), 68.

16. The opposition to teleology can be traced throughout Spinoza's work. It can already be found, for instance, in Part I of the *Ethics* where teleology is associated with the anthropomorphic understanding of God. See, e.g. the "Appendix" to *Ethics*, Part I.

17. For the distinction between constituent power or *potentia* and constituted power or *potestas* in Spinoza, see Antonio Negri, *The Savage Anomaly: The Power of Spinoza's*

*Metaphysics and Politics*, trans. Michael Hardt (Minneapolis, MN: University of Minnesota Press, 2002).

18. Despite the great merit of clearly drawing the distinction between constituted and constituent power, Negri's interpretation of constituent power still fails to grasp that this distinction in Spinoza never leads to a separation of the two. I take this issue up in the chapter on Negri in a book that I am writing on *stasis* that is the sequel to *Sovereignty and its Other*.

19. Cf. Vardoulakis, "Spinoza's Empty Law."

20. For the concept of freedom *from* or mediated freedom, see my "The Fall is the proof of our freedom."

21. Deleuze, "Power and Classical Natural Right."

22. Jacques Derrida starts from a different distinction, namely, the universality and the singularity of the law. See Derrida, "Before the Law," in *Acts of Literature*, ed. Derek Attridge, trans. Avital Ronell and Christine Roulston (New York: Routledge, 1992), 181-220. For reasons of space I cannot compare this distinction here (see also note 62). For a powerful discussion of freedom in Derrida and Spinoza, see Alexander Garcia Düttmann, "A Matter of Life and Death: Spinoza and Derrida," in *Spinoza Now*, ed. Dimitris Vardoulakis (Minneapolis, MN: University of Minnesota Press, 2011), 351-62.

23. See a recent discussion in Slavoj Žižek, *Iraq: The Borrowed Kettle* (London: Verso, 2004), 160-61.

24. An implication of the argument of my book *Sovereignty and its Other* is that there are *only* three types of empty law without truth, even though there can be of course an indefinite amount of variation within these three types.

25. For a more detailed discussion of theological readings of Kafka, see my *The Doppelgänger: Literature's Philosophy* (New York: Fordham University Press, 2010), chapter 5.

26. Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford University Press, 1991). See also Jean-François Lyotard's discussion of this non-response in *The Confession of Augustine*, trans. Richard Beardsworth (Stanford, CA: Stanford University Press, 2000).

27. See Theodor Adorno's critique of the negative theological interpretation of Kafka in "Notes on Kafka," *Prisms*, trans. Samuel and Shierry Weber (London: Neville Spearman, 1967), 245-71.

28. I am not suggesting here that the theological and the biopolitical dimensions are separated. On the contrary, the suggestion is that they are intimately connected. For a detailed analysis of this connection see my *Sovereignty and Its Other*.

29. Or, more accurately, *almost* everyone becomes such a guardian, because there are certain ambiguous characters, the foremost being Leni, the attorney's assistant, who seem to escape the law's snare.

30. Michel Foucault, *Society Must be Defended: Lectures at the Collège de France 1975-1976*, trans. David Macey (New York: Picador, 2003), 259.

31. Michael Hardt and Antonio Negri show in *Empire* (Cambridge, MA: Harvard University Press, 2000) that biopolitics does rely on moralizing. I do not mean to suggest here that the theological, the biopolitical and the moral interpretations are separate—I only want to argue that they are distinct. I take this issue up extensively in my *Sovereignty and its Other*.

32. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 2002).

33. The distance that separates Kant from Spinoza can be gleaned by comparing Kant's proscription against lying to the argument in chapter 16 of the *Tractatus* that a promise depends on its utility (see 529).

34. J. Hillis Miller, *The Ethics of Reading: Kant, de Man, Eliot, Trollope, James, and Benjamin* (New York: Columbia University Press, 1987), 36.

35. Miller, *Ethics of Reading*, 38. Cf. Jacques Derrida, "Justices," trans. Peggy Kamuf, in *Critical Inquiry*, 31 (2005): 715.

36. *Der Proceß, Kritische Ausgabe*, eds. Jürgen Born, Gerhard Neumann, Malcolm Pasley and Jost Schillemeit (Frankfurt a.M.: Fischer, 2002), 302-3.

37. For the figures of suffering, priesthood, consolation and nihilism, see Friedrich Nietzsche's third essay of *The Genealogy of Morals*.

38. For a more detailed discussion of judgment as well as arbitrary judgment (or, justification, as it is called there), see my *Sovereignty and its Other*, chapter 1.

39. For a novel articulation of the Kafkaesque, see Kiarina Kordela, "Kafkaesque: (Secular) Kabbalah and Allegory," in *Freedom and Confinement in Modernity*, eds. Kordela and Vardoulakis, 128-58.

40. A complicating factor here is the fact that Kafka never finished *The Trial*. According to Brod's arrangement of the chapters, the novel ends with the execution of Josef K., without him achieving any awareness of liberation. This is not to say, of course, that Kafka would have necessarily concluded the same way, had he been able to finish the novel. In any case, as I am about to show, this lack of awareness by Josef K. is in fact conducive to the Kafkaesque laughter that functions as the means to the attainment of this mediated freedom.

41. For a discussion of the nasal hair, see Jacques Derrida, "Before the Law."

42. I do not have the space here to review here the extensive—and expanding—secondary literature on the animal in Kafka's works. The only point that I am making here is that the expression "like a dog" can be seen, amongst other things, as parts of the structure of the humor directed toward Josef K. in *The Trial*.

43. Cf. Mikhail Bakhtin, *Rabelais and his World*, trans. Hélène Iswolkly (Bloomington, IN: Indiana University Press, 1984), chapters 1 and 2.

44. For such a notion of failure in Kafka, see Vardoulakis, *The Doppelgänger*, chapter 5.

45. One important—even crucial—question remains at this point. Namely, does this new conception of freedom through laughter do away completely with transcendence? Or, differently put, is it possible to conceive of the empty law that allows for rebellion and truth as completely independent of the empty law without truth that points to transcendence and absolute imprisonment? And if such a separation is possible, how can one find criteria in the absence of any content to the law? These questions cannot be taken up here because of lack of space. But I intend to return to them through a discussion of Jacques Derrida's "Before the Law" that can be made to resonate within this constellation of thinkers that includes Kafka, Spinoza and Deleuze.

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## CHAPTER 3

# A Kafkaan Sublime: Dark Poetics on the Kantian Philosophy

*Andrew R. Russ*

## Introduction

The opportunity exists to initiate a dialogue between the imaginative universe of Kafka's fiction, and the critical, ethical philosophy of Immanuel Kant. It may just be that the consequences of Kant's achievement in philosophy, namely the critical redirection of knowledge away from justification of truth, to its own self-criticism and conditions of possibility, are aesthetically and imaginatively interrogated by Kafka's fictional worlds. This of course involves a reversal of the usual applications of philosophy to Kafka's art, where a philosophy, idea, or body of ideas is used to shed light upon Kafka's fictional intent. I instead aim to show how Kafka's modern fictional constructs and ambiguous rationales can be seen as a dark poetical elucidation of the effect Kantian critique has had upon the subsequent mental, institutional and psychological landscapes of modern societies. What we have in the comparison of these two thinkers is a positive philosophical vision of modernity being mirrored back to us in negative aesthetic form. Kafka shows us the dissipated and degenerating reality of Kant's vision of an emancipated human universe benevolently governed by critical reason.

Kantian critique always began life as an attempt at the unseating of false, unsustainable or dogmatic philosophical, social, and political beliefs, and was always allied with the enhancement of ethical autonomy and the Enlightenment's attack upon superstition and irrational authority. In attempting to secure the reality of human freedom and the undogmatic purity of science, Kant's solution was to leave us suspended between a noumenal autonomy and a phenomenal determinism, condemning us to a doomed modern challenge to negotiate these severed realms with no assurance of their hidden, actual or eventual communion. To Kafka, I attribute the subtle imaginative comprehension that this supposed Kantian solution was in reality a new existential dilemma, one that would involve us in new appreciations of irrational authority, anonymous servitude and superstition, and leave us with no faculty to judge them accurately. Kant attempted the modern securing of our freedom, the apotheosis of our enlightenment, our "emergence from self-imposed tutelage," the ordering of our