Kafka's Law-Writing Apparatus: A Study in Torture, A Study in Discipline

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INTRODUCTION

Franz Kafka's short story In the Penal Colony begins with an officer touting the elegant design of an Apparatus used to punish and execute prisoners on a colonized island. From the outset, we learn that this officer is "quite familiar" with the device.† His zeal in describing it to the explorer, who has been asked to observe and critique the efficacy of its continued use as a disciplinary tool, is part private obsession with its unique mode of torture and part desperation to save it from being annulled by the current Commandant of the colony. Indeed, the Apparatus appears to be on the brink of desuetude. The officer recognizes that he is its sole advocate and that all former adherents have "skulked out of sight."‡

While the officer credits the colony's previous Commandant with its invention, he has been charged with keeping and implementing the "guiding plans," which serve as a programming code to control the movements of the three parts of the Apparatus—the Designer, the Bed, and the Harrow.§ Each of these parts serves a specific function, yet their motions must correspond precisely to achieve a successful execution.¶ The Designer, the sole province of the officer, acts as the programming center of the machine, into which the officer enters his "guiding plans."‖ The officer claims that he has only to enter this code; afterwards, the Apparatus performs the execution all on its own.¶¶ The Bed holds the condemned man while it rapidly vibrates his body to conform to the

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¶ Id. at 153.
‖ Id. at 148-49.
¶¶ Id. at 143-44, 148.
See id.
See id. at 141, 147, 149.
motions of the Harrow. The Harrow performs the actual execution with a set of needles that inscribe the letters of the law he has violated by gradually perforating his entire body until he bleeds to death. Awaiting this textual and punitive sentence is a condemned man who stands beside the officer and the explorer. He has allegedly committed an act of insubordination by falling asleep on duty and hence failing to adhere to the hourly ritual task of saluting his captain’s door. The words “HONOR THY SUPERIORS” will be written on his body.

According to the officer, the entire process will take twelve hours. During this time, the condemned man will feel the needles penetrating deeper layers of his flesh as warm rice pap pours into a basin by his mouth for sustenance. At the sixth hour, the officer reports, enlightenment will come to the convict as he begins to decipher the meaning of the law through his wounds. Six hours later, after the Apparatus has killed him, the Harrow will cast his body into a pit for burial.

The officer’s endorsement of the Apparatus hinges to a great extent upon its ability to conform to the shape of the human body and respond to the body’s movements. The shape of the Harrow corresponds neatly to the human form. One set of needles pierces flesh, while another set sprays a jet of water to wash away blood. Ultimately, when the officer realizes that his advocacy has been to no avail and that the explorer will vote against continued subsidization of the Apparatus, the officer subjects his own body to the machine. During this act of ritual suicide, the explorer observes how the officer need only approach the Apparatus for its Harrow to adjust to the right position to fit his frame and for the felt gag, meant to muffle screams, to come, of its own accord, to meet his mouth.

The officer has selected his own law, “BE JUST!,” from among the guiding plans in his wallet to be entered into the Designer. Curiously, instead of gradually tracing these letters upon his torso, the Apparatus begins to disintegrate, violently plunging the needles into his flesh as its cogwheels burst out of the Designer in sequence. Kafka’s illustration of the Apparatus thus culminates not in elegant textual embellishment, but

7. *Id.* at 143–44.
8. *See id.* at 142, 144, 147, 149–50.
9. *Id.* at 144–46.
10. *Id.* at 144.
11. *Id.* at 149.
12. *Id.*
13. *Id.* at 150.
14. *Id.* at 150, 154.
15. *Id.* at 146.
16. *Id.* at 147.
17. *Id.* at 160–64.
18. *See id.* at 163–64.
19. *Id.* at 161.
20. *Id.* at 164–66.
rather, as the explorer remarks, in "plain murder." 21

This Article proposes that Kafka’s law-writing Apparatus presages Michel Foucault’s analysis of monarchical punishment and modern discipline. 22 The Article first addresses In the Penal Colony through an openly political reading of Kafka’s work as a young lawyer at the Workmen’s Accident Insurance Institute of Bohemia in Prague. Here, Kafka was charged with filling gaps in legislation to improve safety conditions at burgeoning industrial job sites. Just as the Apparatus aspires to attain a penological ideal of bringing convicts to a state of enlightenment, so did the Bohemian bureaucracy strive towards attaining an enlightened approach of balancing industrial efficiency and worker safety. The failure to achieve both of these ideals results in physical trauma: in the penal colony, the needles forsake their writing function and merely pierce; in Kafka’s jurisdiction as an insurance officer, fledgling regulations to advance industry resulted in lost limbs and other work-related accidents. In his letters, diary entries, and In the Penal Colony, Kafka imagines the body as a site where power structures exert violence and leave wounds that are legible.

Kafka’s obsession with the body as a semiotic instrument with its own unique system of signification anticipates Michel Foucault’s analysis of the body as a text through which history and its changing power structures can be read. Foucault examines the junctures where dominant ideologies meet the human body, whether to enact vengeance upon it or to subtly coerce it to order. 23 His work, Discipline and Punish, addresses the pivotal moment at the end of the eighteenth century when medieval penal methods of public torture and execution were replaced by a rehabilitative model of discipline. For Foucault, this shift in the treatment of convicts reflected an epistemic rupture in Europe’s experience of power and power systems. This rupture is the Enlightenment—an era when the individual became the focal point of philosophical and criminological investigation. 24 The individual “convict” henceforth became judicially knowable: “During the 150 to 200 years that Europe has been setting up its new penal systems, the judges have gradually, by means of a process that goes back very far indeed, taken to judging something other than crimes, namely the

21. Id. at 165.
23. Id. at 24. Foucault asks us to accept “the general proposition that, in our societies, the systems of punishment are to be situated in a certain ‘political economy’ of the body.” Id. Even if these systems “do not make use of violent or bloody punishment, even when they use ‘lenient’ methods involving confinement or correction, it is always the body that is at issue—the body and its forces, their utility and their docility, their distribution and their submission.” Id.
24. See id. at 19. The Enlightenment brought new questions to criminology. One no longer simply asked, “‘Has the act been established and is it punishable?’ But also: ‘What is the act, what is this act of violence or this murder? To what level or what field of reality does it belong? Is it a phantasy, a psychotic reaction, a delusional episode, a perverse action?’” Id.
'soul' of the criminal.\textsuperscript{25}

In both the medieval and Enlightenment eras, Foucault recognizes the importance of the body as the bearer of signs.\textsuperscript{26} In the medieval era, the king used public torture to publish the law of divine retribution on the body of the condemned.\textsuperscript{27} The convict thus acted as an inverted image of the king,\textsuperscript{28} meant to instruct the audience of the king's power through his wounds. Induced hysteria and the threat of revolt during this public spectacle were part of a ritual uniting the community in shared terror and denouement.\textsuperscript{29} In Enlightenment-era (and post-Enlightenment) discipline, however, the body served not as an instructive medium, but rather as an intermediary between the law and the soul of the subject.\textsuperscript{30} Modern penal discipline targets the soul of the convict to make him obsessively aware of a liberty interest he has lost in the commission of his crime.\textsuperscript{31} In all institutions, Foucault argues, discipline aims at making the body a "docile" mechanism, appropriately fitted to advancements in technology and industry.\textsuperscript{32}

While some critics have examined Kafka's short story as an autobiographical critique of the drudgeries and inspirations of office life,\textsuperscript{33} and others have acknowledged the resonance between Kafka's and Foucault's conceptions of punishment,\textsuperscript{34} few have taken up the task of

\textsuperscript{25} See id. at 28. Engaging in an analysis of the body as a political text is a matter of "situating the techniques of punishment—whether they seize the body in the ritual of public torture and execution or whether they are addressed to the soul—in the history of [the] body politic." Id. This body politic, for Foucault, is not one with corporeal "elements," "resources," and "forces." Id. Nor does it involve "the study of the body and its surroundings in terms of a small state." Id. Rather, it is "a set of material elements and techniques that serve [sic] as weapons, relays, communication routes and supports for the power and knowledge relations that invest human bodies and subjugate them by turning them into objects of knowledge." Id.

\textsuperscript{26} See id. at 47-48.

\textsuperscript{27} "In the darkest region of the political field the condemned man represents the symmetrical, inverted figure of the king." Id. at 29.

\textsuperscript{28} See id. at 48 ("The public execution, however hasty and everyday, belongs to a whole series of great rituals in which power is eclipsed and restored (coronation, entry of the king into a conquered city, the submission of rebellious subjects)"); see also Maurice Blanchot, Michael Foucault as I Imagine Him, in FOUGAULT/BLANCHOT 86-87 (Jeffrey Mehlman & Brian Massumi trans., Zone Books 1987) (1966) (commenting that, for Foucault, public executions "symbolized the suspension of laws and customs" and "also at times provoked the populace to rebellion, by giving it the idea that it too had the right to shatter with its revolts the constraints imposed by the king, who was momentarily weakened").

\textsuperscript{29} See generally id. at 135-41 (describing eighteenth-century military discipline as an instance of the classical age's discovery of the body as an object of Newtonian science and power).

\textsuperscript{30} See Reza Banakar, In Search of Heimat, 22 LAW & LITERATURE 463, 471 (2010). See generally FRANZ KAFKA, THE OFFICE WRITINGS (Stanley Corngold et al. eds., 2009) (compiling Kafka's more interesting legal briefs with commentaries that situate these papers within a history of Austrian workmen's compensation insurance and within a discussion of Kafka's literary works).

\textsuperscript{31} See Jane Bennett, Deceptive Comfort: The Power of Kafka's Stories, 19 POL. THEORY 73, 89--
analyzing the law-writing Apparatus in light of Foucault’s discussion of the two punishment modalities—torture and discipline. The central question appears to be: to which mode does the Apparatus belong?35 This Article sets out to demonstrate that Kafka’s machine performs its operations at the threshold of these competing systems of punishment, purportedly disciplining the convict to revere the letter of the law even as the law is brutally inscribed upon his flesh until he dies.

Precisely at this juncture, In the Penal Colony challenges Foucault’s sense of a radical epistemological shift between torture and discipline. Kafka’s story suggests that the vengeful impulse guiding the sovereign’s hand in torture not only survived the transition to modern disciplinary practices, but also spread into all areas of governmental regulation, exposing bodies to new forms of trauma in the wake of industrial and technological advancement. In this sense, In the Penal Colony serves as a prescient critique of Foucault’s separation of the two systems. While Foucault conceded that a “trace” of torture remained in post-Enlightenment disciplinary institutions, he contended that this trace was vanishingly small, “enveloped, increasingly, by the non-corporal nature of the penal system.”36 The Apparatus’s liminality challenges this proposition and reflects the means by which oppressive regimes attempt to obfuscate their brutality with laws, formulas, letters, and other signs. Kafka elegantly portrays how these forms of signification proliferate at the

90 (1991) (citing MICHEL FOUCAULT, 1 THE HISTORY OF SEXUALITY: AN INTRODUCTION 93 (1980) to support her proposition that Foucault and Kafka are “congenial” in their efforts to frustrate the reader’s search for “precise external sources” that cause “adverse effects”); Judith Butler, Foucault and the Paradox of Bodily Inscriptions, 11 J. Phil. 601, 604 (1989) (exposing Foucault’s reliance on the body as something that is not entirely a blank slate, but rather “a surface and a set of subterranean ‘forces’ that are repressed and transmuted by a mechanism of cultural construction external to that body” and analogizing that mechanism of cultural construction to Kafka’s law-writing Apparatus); Frances E. Mascia-Lees & Patricia Sharpe, The Marked and the Un(re)marked: Tattoo and Gender in Theory and Narrative, in TATTOO, TORTURE, MUTILATION, AND ADORNMENT: THE DENaturalization OF THE BODY 145, 145 (Frances E. Mascia-Lees & Patricia Sharpe eds., 1992) (noting how Kafka presages Foucault’s notion of “a body totally imprinted by history,” and briefly mentioning that through the “torture machine,” the “ideals of the culture are concretized in a ‘sentence’ pierced onto the flesh of individuals with needles”); Benno Wagner, Kafka’s Office Writings: Historical Background and Institutional Setting, in FRANZ KAFKA: THE OFFICE WRITINGS, supra note 33, at 40–41 (placing Kafka’s job as an insurance lawyer at the intersection of Foucault’s “norm of discipline,” which is directed at the individual body, and “norm of regulation,” which is directed at the body politic); Carl Curtis, Justice, Punishment, and Docile Bodies: Michel Foucault and the Fiction of Franz Kafka (Nov. 23, 2009) (Ph.D. dissertation, Florida State University), http://diginole.lib.fsu.edu/cgi/viewcontent.cgi?article=3247&context=etd.

35. Compare NICHOLAS DUNGEY, FRANZ KAFKA AND MICHEL FOUCAULT: POWER RESISTANCE AND THE ART OF SELF-CREATION 29–44 (examining the Apparatus’s power as illustrative of Foucault’s modern disciplinary strategies, which seek to write our individual “sentences” on our souls) with Curtis, supra note 34, at 114–191 (analyzing In the Penal Colony through Discipline and Punish and concluding that the Apparatus operates primarily as a medieval torture device that will be replaced by a new disciplinary regime instituted by the current commandant). See also Ruth Cumberland, Inscribed Bodies: The Cruel Mirage of Imperialistic Idealism in Kafka’s “Penal Colony,” 49 PAPERS ON LANGUAGE & LITERATURE 203 (2013) (discussing In the Penal Colony as a literary portrayal of the effects of colonialism and imperialist conquest and relying predominantly on Foucault’s Discipline and Punish to explore how these hegemonic forces take shape on the island).

36. FOUCAULT, supra note 23, at 16.
violent intersections between hegemony, machines, and docile bodies. Foucault’s “soul” in *Discipline and Punish* is, for Kafka’s law-writing Apparatus, another layer of viscer.

This Article proceeds in four parts. Part I proposes a biographical reading of *In the Penal Colony* through what we can reasonably suppose to have been Kafka’s experience in administrative, insurance, and labor law. Kafka’s letters and diary entries show the artist defining himself against the burgeoning industrial state in which he assumed office. These correspondences hyperbolize the psychological and physical pressures under which he labored as one vulnerable to the external forces of new capitalism and the internal forces of creative expression. While sometimes comical, Kafka’s conscientious focus on his physical vulnerabilities serves as the basis for an incisive critique of the nascent Bohemian power structures that organized bodies in the labor force by a principle of risk classification.

Part II shows how Michel Foucault’s *Discipline and Punish* provides foundation for a political reading of *In the Penal Colony*. It first focuses upon Foucault’s historical analysis of punishment and the epistemic break he perceived between torture and discipline in the eighteenth century. It then begins to anchor Kafka’s critique of risk classification in discourse of torture and discipline. Foucault’s mapping of the evolution of torture hinges almost entirely upon an understanding of the body, its pains, and its sacrifices. His analysis, therefore, provides a link between Kafka’s autobiographical sketches, where the artist suffers to reconstruct his body in the midst of social and political austerity, and *In the Penal Colony*, where the officer bears witness to the brute power of the Apparatus upon his body.

Part III turns to the critical literature addressing Kafka’s and Foucault’s notions of power. The trajectory of scholarship shows an increasing focus on the authors’ treatment of the body as the bearer of cultural and political signs. Few, however, have undertaken a focused analysis of Kafka’s Apparatus alongside the punishment modalities in *Discipline and Punish*. And while Carl Curtis and Nicholas Dungey have advanced studies along those lines, both authors fall short of a holistic portrait of the Apparatus. Curtis confines his discussion to the discourse of Foucault’s torture model and fails to account for its more calculating, disciplinary aspects, and Dungey limits his analysis to Foucault’s disciplinary technology as it is symbolized by the Apparatus. Both scholars fail to see that Kafka’s story resists any categorical assignment to one of Foucault’s historical schema. Moreover, Curtis’s and Dungey’s arrival at precisely opposite conclusions supports this Article’s thesis: Kafka’s story

37. *Id.* at 29–30.
challenges Foucault’s treatment of torture and discipline as epistemologically distinct.

Having taken account of Kafka’s legal career and Foucault’s two distinct penal modalities, Part IV then suggests a critical difference in the two authors’ understandings of power. While Foucault recognizes as analytically distinct the notions of torture and discipline, Kafka sees a vanishing point in the analysis of power that Foucault himself could not see. Kafka’s Apparatus exposes the modern industrial state as a theater of violence and critiques the persistent presence of torture in the principle of risk classification. Finally, this part of the Article engages the symbolism of the Apparatus, showing both how it occupies a liminal space between Foucault’s two categories of punishment and how its liminality occasions the reduction of soul to flesh in the final hour of perforation.

I. KAFKA’S LIFE WITH THE LAW

What reading of In the Penal Colony might we generate if we read it in the context of Kafka’s experience in administrative, insurance, and labor law? Admittedly, any biographical approach risks lapsing into reductionism, but here Kafka’s letters and diary entries describing his experiences as a law student and later as a government official might be understood as the beginnings of an analysis of the body as political artifact, etched by hegemony. A biographical approach allows for a reading of the Apparatus—which transcribes law onto the body—as the fruition of the author’s maturing, darkly satiric portrait of the law.

A. “Chewing Sawdust”: Kafka’s Successful but Vexed Legal Career

Kafka’s emergence as a high-ranking official in the nascent field of insurance law represented an achievement beyond what was typical for his social status, as Jews were frequently denied governmental positions in Prague at the turn of the twentieth century. Despite this success, Kafka expressed vexation with the increasing demands of his office, its interference with his writing, and the overall tedium of government work. Beginning with his anxieties as a law student, Kafka’s relationship with the law served as a source of inspiration for his dramatic self-conception as a lawyer at the law’s mercy. We can see these caricatures in his diary, letters, and later embodied in the officer of In the Penal Colony. These documents suggest that, for Kafka, the law could be at once cold and unapproachably scholastic and, when put into effect, brute and palpably violent.

To begin, if we assume that the family operates according to its own internal laws, then we can see that Kafka’s legal education began as early as his childhood interactions with his father, Herman. In the author’s early impressions, Herman held a “tyrannizing” role both in the home and in the family fancy-goods store, where he viewed his employees as “paid
enemies," to which Kafka added that Herman was their "paying enemy." The young Franz empathized with the subordinate Jews who worked in his father's shop, and was left with the impression of business as an enterprise of competition and jealousy. This sensitivity to the Jewish laborer's plight never seems to have left Kafka. It would later become an animating principle in his legal work in accident prevention for Jewish laborers and it would provide the foundation for writing fiction deeply critical of authoritarian regimes.

Kafka confessed his feelings of estrangement from and fear towards his father in a long letter in which he described a particular episode from a winter in his childhood that left lasting emotional scars:

Once in the night I kept on whimpering for water, not, I am certain, because I was thirsty, but probably partly to be annoying, partly to amuse myself. After several vigorous threats had failed to have any effect, you took me out of bed, carried me out onto the pavlatche and left me there alone for a while in my nightshirt, outside the shut door.

The detached attitude of the prose in this reflection conveys a voice that has been silenced and left out in the winter night; it is an understatement of his father's violence. Herman imposed upon the child's sensibilities as a totalitarian figure, an archetype of monstrous "strength, health, appetite, [and] loudness of voice." In contrast, the author viewed himself as "skinny, weakly, [and] slight."

Herman's domineering aspect was not confined to his physical presence, but extended to his intellectual posture. Kafka remarks:

You were capable... of running down the Czechs, and then the Germans, and then the Jews, and what is more, not only selectively, but in every respect, and finally nobody was left except yourself. For me you took on the enigmatic quality that all tyrants have whose rights are based on their person and not on reason.

The chilling effect of Herman's monologues created an atmosphere of repressed speech in the household. Language became almost entirely a private affair, forced into deeper and more secret corners of the artist's consciousness.

In light of this repression, Kafka notes his mother's countervailing tendency to "spoil" the Kafka children as a "quiet, unconscious
counterdemonstration against [the father’s] system.”\(^{45}\) According to the father’s rules, the Kafka family spoke German in the house and only rarely reverted to the Yiddish of their ancestors.\(^{46}\) Kafka notes the absence of tenderness in the German word *Mutter* [mother]: “We give a Jewish woman the name of a German mother, but forget the contradiction that sinks into the emotions so much more heavily.”\(^{47}\) Kafka casts his sense of oppression under the German language, as under his father’s law, in terms of physical deprivation, “coldness,” and austerity.\(^{48}\)

Kafka characterizes his law school education in terms of similar estrangement. As a law student at the Charles-Ferdinand University of Prague, he described cramming for final exams: “In a way that told severely on my nerves, I was positively living, in an intellectual sense, on sawdust, which had moreover been chewed for me in thousands of other peoples’ mouths.”\(^{49}\) Sawdust, as a metaphor for law, conveys a process of labor and constant refinement; yet, for Kafka, this metaphor also identifies an unpalatable, malnourishing aspect of the law, which is a kind of waste, or by-product of labor. The law, for Kafka, could not be understood except in reference to his own ailing body and as something that could not be fully internalized.

Kafka’s early impressions of the law as alien and violent carried over into his career as an insurance officer for the Workers’ Accident Insurance Institute of Prague. Charged with writing regulations to enhance safety and efficiency in the industrial workplace, he witnessed the hard effects of accidents on workers’ bodies and became increasingly conscious of his own physical deterioration as he tried to keep pace with a rapidly evolving industrial state.\(^{50}\) Kafka’s office writings evince a critical self-awareness of his own subjugation as a state agent.

Max Brod, friend and first biographer, recalls Kafka’s anger at the “meekness of workers mutilated in avoidable industrial accidents, who approached the Institute as supplicants instead of storming it and smashing it to bits.”\(^{51}\) Kafka’s disturbance over the mistreatment of the workers recalls his earlier observations of the Jewish employees his father kept as

\(^{45}\) *Id.* at 184.


\(^{48}\) *Id.*

\(^{49}\) *Kafka*, *supra* note 40, at 202; see *Begley*, *supra* note 46, at 26–28.

\(^{50}\) See Stanley Comgild, *Kafka and the Ministry of Writing*, in *Franz Kafka: The Office Writing*, *supra* note 33, at 16. For Kafka, “the dear of office life” is constituted “only by negation of the writer’s world” and is thus a kind of “counterliterature.” *Id.* Indeed, as Kafka notes, “the real hell is there in the office, no other can hold any terror for me.” *Id.* (quoting *Franz Kafka, Letters to Felice* 238 (Erich Heller & Jürgen Born eds., James Stern & Elisabeth Duckworth trans., Schocken Books 1973) (1967)).

“paid enemies” in the Kafka family shop.\footnote{52}{See Dodd, supra note 40, at 181 (quoting KAFKA, supra note 40, at 181).}

Moreover, here, in the context of risk classification, Kafka’s visceral imagination for In the Penal Colony might have found direct inspiration. His office writings document work-related injuries ranging from workers cutting off fingers on wood-planing devices\footnote{53}{“In a report directed at technical experts, mechanical engineers and business owners, Kafka wrote of finger joints and entire fingers cut off by square shaft planing machines, presenting a lengthy argument, illustrated with drawings that advocated replacing them with much safer cylindrical-shaft planing machines.” Jack Greenberg, From Kafka to Kafkaesque, in FRANZ KAFKA: THE OFFICE WRITINGS, supra note 33, at 358.} to prisoners of war losing control of overhead cranes.\footnote{54}{Kafka’s 1915 brief, Risk Classification and Accident Prevention in Wartime, contained a description of this event: A prisoner of war was employed as an operator of a large overhead crane. One day, for no good reason, he set the crane’s hoist motor at full power. When the hoist cable broke, the pulley block shot up into the air and flew into the work place behind, without as it happened, hitting anyone. There was no doubt that the prisoner of war’s principal intention had been to disable the crane and to disrupt the flow of work. The German authorities recommended that any firm employing prisoners of war make certain that these are not called upon to perform tasks on which the welfare of the operation depends. FRANZ KAFKA, Risk Classification and Accident Prevention in Wartime (1915), in FRANZ KAFKA: THE OFFICE WRITINGS, supra note 33, at 332–33.} In each of these instances, Kafka portrays the consequences of a rapidly growing industry in terms of its statistical effects on the body of the worker.

Austrian insurance law was originally conceived to assuage class and ethnic struggles. As Benno Wagner notes, “Compulsory social insurance . . . was meant to serve as a ‘clamp’ on the centrifugal thrust of the nationalities.”\footnote{55}{But Kafka’s biography and story reveal an alienating force at work in the movement towards social welfare. Prague’s transition into modernity and industrialization led to the emergence of a new juridical landscape in which the “rule of judgment” began to replace the principle of “guilt” with the principle of “risk,” and “retroactive punishment of the individual with the precautionary collection of fees, or premiums, from a multitude.”
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This transition had the effect of relieving the individual worker of responsibility (fault) for his work-related injuries, while imposing significant burdens on him to convince administrative boards of his claim to damages.\footnote{56}{This performance could only serve to reinforce an alienation from labor already present in the industrial movement. The industrial worker under the Institute’s charge became aware of his status as but one variable in mathematical formulae...} As a result, the worker became a “speculator on . . . his own misery,” and was forced to play the role of an “actor” who convinced administrative boards of the merit of his claim.\footnote{57}{...”}

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\item 52. See Dodd, supra note 40, at 181 (quoting KAFKA, supra note 40, at 181).
\item 53. “In a report directed at technical experts, mechanical engineers and business owners, Kafka wrote of finger joints and entire fingers cut off by square shaft planing machines, presenting a lengthy argument, illustrated with drawings that advocated replacing them with much safer cylindrical-shaft planing machines.” Jack Greenberg, From Kafka to Kafkaesque, in FRANZ KAFKA: THE OFFICE WRITINGS, supra note 33, at 358.
\item 54. Kafka’s 1915 brief, Risk Classification and Accident Prevention in Wartime, contained a description of this event: A prisoner of war was employed as an operator of a large overhead crane. One day, for no good reason, he set the crane’s hoist motor at full power. When the hoist cable broke, the pulley block shot up into the air and flew into the work place behind, without as it happened, hitting anyone. There was no doubt that the prisoner of war’s principal intention had been to disable the crane and to disrupt the flow of work. The German authorities recommended that any firm employing prisoners of war make certain that these are not called upon to perform tasks on which the welfare of the operation depends. FRANZ KAFKA, Risk Classification and Accident Prevention in Wartime (1915), in FRANZ KAFKA: THE OFFICE WRITINGS, supra note 33, at 332–33.
\item 55. Wagner, supra note 34, at 22–23.
\item 56. Id. at 20.
\item 57. Id. at 21.
\item 58. Id.
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balancing risk and efficiency.  

Charged with drafting regulations to balance these variables, Kafka spent his early years at the Institute responding to a “flood of protests” from recalcitrant employment firms that did not want to pay their insurance premiums. At the office, Kafka straddled two sides of insurance law: “risk classification”—which involved setting insurance premiums for industrial firms based on several risk criteria—and “accident prevention”—which involved the “mechanical and physical” circumstances on the work site. As Wagner explains, “Risk classification addresses the legal dimension of technology: firms are classified within a schedule of fees based on statistically probable risk,” while “[t]he focus of accident prevention, on the other hand, is the mechanical dimension of technology, the interactions of machines and humans.” The latter field embodied, for the young lawyer, the “dark side” of insurance law—“the raw reality of wounded, crippled, and killed workers and the business of compensating the harm done to them according to a calculus that estimated the impact of their injury on their potential earning capacity.”

While he had many successes in advancing insurance law in Prague and in compensating injured workers, Kafka referred to himself as a “conditioned official”—one whose own identity had to be relegated, set apart. This appears to have tainted his conception of office life: “I am desperate, like a caged rat.” Office work appeared to turn loathsome for him not only because it diverted energy from his fiction, but also because he felt tyrannized by the regulations he was required to enforce and elaborate. Further, Kafka was one of only two Jews working at the Institute, which had, in principle, closed its doors to Jewish employees. These facts help explain the fraternity that Kafka felt with the industrial workers who were injured by machines run in conformity with the regulations he helped to implement.

59. For an American analog to risk classification, see, e.g., United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947):

Since there are occasions when every vessel will break from her moorings, and since, if she does, she becomes a menace to those about her; the owner’s duty, as in other similar situations, to provide against resulting injuries is a function of three variables: (1) The probability that she will break away; (2) the gravity of the resulting injury, if she does; (3) the burden of adequate precautions. Possibly it serves to bring this notion into relief to state it in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P: i.e., whether B < PL.

60. Id. at 38.
61. Id. at 40.
62. Id.
63. Id. at 36.
64. See KAFKA, supra note 50, at 462.
65. Id.
66. FRANZ KAFKA, TO MAX BROD, IN LETTERS TO FRIENDS, FAMILY & EDITORS 165 (Max Brod ed., Richard & Clara Winston trans., Schocken Books 1977) (1959); see BEGLEY, supra note 46 at 32–33 (discussing Kafka’s “sensitivity to the ambient anti-Semitism” of the Institute).
B. Fiction: “Being Torn to Pieces”

Art, like the office, came with its own laws and accidents. The trope of physical deterioration as a sacrifice for assimilation, present in Kafka’s depiction of his position as an officer, appeared as readily in his descriptions of his artistic efforts. The artist viewed himself pulled in two directions, with the demands of the office on one side and his artistic aspirations on the other. Ultimately, conformity to society’s laws meant physical deprivation—a condition Kafka commemorated in letters with portraits of his own body as somehow disenfranchised and alien. Fiction seemed to provide Kafka a means of expressing the body’s malignancies as symptoms of living and working as an artist in a rapidly expanding industrial society.

A look into Kafka’s diary reveals an artist keenly aware of the physical demands of creative labor. Later in his career, when tuberculosis began to tighten its grip on Kafka, he commented on his writing:

> When it became clear in my organism that writing was the most productive direction for my being to take, everything rushed in that direction and left empty all those abilities which were directed toward the joys of sex, eating, drinking, philosophical reflection, and above all music. This was necessary because the totality of my strengths was so light that only collectively could they even halfway serve the purpose of writing.  

Kafka cast his art as a sublimation of the body’s appetites, carried out to such an extreme as to deny the body its basic nourishment.

The creative impulse appears to have made such demands upon Kafka that he likened it to a natural law, which, like the law of his office, acted adversely on his body. Writing presented a medium for the intersection and collision of these laws with their attendant, repressed desires. Kafka reflected upon the difficulty of the creative undertaking: “The tremendous world I have inside my head, but how to free myself and free it without being torn to pieces. And a thousand times rather to be torn to pieces than retain it in me or bury it.” Writing prose became an exercise in liberating an internal world and in translating its pains and fractures. This creative act exposed—like the process of film development—the mechanisms of assimilation as violent forces. In this sense, we might understand Kafka as guided by empathetic sentiment, reimagining his body as part of a shared

67. For a thorough and interesting engagement with Kafka’s diary entries as expressing this tension between office and art, see generally Begley, supra note 46, at 8–51.
69. Kafka, supra note 47, at 163.
70. See Maurice Blanchot, The Space of Literature 73 (Ann Smock trans., Univ. of Nebraska Press 1982) (1955) (For Kafka, “[t]o write is to conjure up spirits, perhaps freeing them against us, but this danger belongs in essence to the power that liberates.”).
71. Id. at 222.
experience of anguish felt by Prague’s laborers.

Kafka, in his letters, consistently presented psychological fractures in terms of physical and bodily disintegration. For example, in a letter to Milena, a lover, he gave an image of himself as a Western Jew, constantly missing everything he needs to take with him, and so each time he has to sew his clothes, make his boots, manufacture his walking stick, etc. Of course it’s impossible to do all of that well; it may hold up for a few blocks, but then suddenly, on the Graben, for example, everything falls apart and he’s left standing there naked with rags and pieces.72

The body, for Kafka, threatens to fall to pieces and must be constantly retailed in an attempt to restore a lost materiality.

In sum, Kafka’s autobiographical sketches portray an artist deeply concerned with the body. The artist presents the body, in its vulnerability, as a medium whose pains and fractures reveal a narrative of power. This Article thus far has suggested how Kafka envisioned his own body as representing the collective suffering of forced assimilation into Prague’s burgeoning culture of risk classification. Beginning with law school and ending with his career at the Workers’ Accident Institute, Kafka’s probing self-critique can be seen as an equally incisive commentary on the organization of bodies during the industrial revolution. To this extent, Kafka’s autobiographical sketches anticipate Michel Foucault’s historical analysis of torture and discipline in Disciplline and Punish. Foucault shares Kafka’s intense focus on the body as a system of signification. Turning next to Foucault’s examination of the punished body as an encoded text, whose wounds form the letters of history, the Article will provide a justification for a political reading of Kafka’s In the Penal Colony.

II. MICHEL FOUCAULT’S ANALYSIS OF TORTURE AND DISCIPLINE

Michel Foucault’s Discipline and Punish provides a lens through which to examine In the Penal Colony as a critique of Kafka’s professional life and of the dominant ideologies under which he voiced his oppression. Both Kafka and Foucault were preoccupied with the human body as a template upon which history is written. In Kafka’s assessment, the body of the worker was transformed into a mathematical variable through a government risk calculation, just as his own body was transformed in the process of performing these calculations. Foucault’s analysis of the history of punishment provides a record of similar deprivations. Under his historical analysis, the body becomes a site where political power expresses itself. By either systematically annihilating the body or harnessing its mechanical efficiency, punishment is the true and last voice of power. Foucault’s two modalities of punishment—torture and

72. Kafka, supra note 68, at 217.
discipline—thus provide apt schema for analyzing Kafka’s short story as political critique. As this Article will later show, however, the Apparatus resists an easy classification under one specific modality. In the Penal Colony must finally be understood as a prescient critique of Foucault’s separate schema and as demonstrating the violence still inherent in Foucault’s micro-physics of power.73

A. Torture

Foucault examines medieval torture as a display of the sovereign’s complete power over the body of the condemned. Torture, Foucault writes, has two components. Its first purpose is semiotic:

[I]t must mark the victim: it is intended, either by way of the scar it leaves on the body, or by the spectacle that accompanies it, to brand the victim with infamy; even if its function is to “purge” the crime, torture does not reconcile; it traces around or, rather, on the very body of the condemned man signs that must not be effaced.74

By exercising complete power over the body of the condemned, the sovereign’s primary concern is to make that power visible in signs. The wounds drawn in torturous acts, therefore, must necessarily have some kind of legibility and symbolic purchase. Wounds and cries of agony, in the medieval model, functioned as articulations of the king’s glory. The victim became, interestingly, a mouthpiece for the king’s magnificence. “It was the task of the guilty man to bear openly his condemnation and the truth of the crime that he had committed . . . in him, on him, the sentence had to be legible for all.”75

Torture’s second purpose is theatrical. In Foucault’s view, it must be performed to excess; for “[t]he very excess of the violence employed is one of the elements of its glory: the fact that the guilty man should moan and cry out under the blows is not a shameful side-effect, it is the very ceremonial of justice being expressed in all its force.”76 Infliction of extreme pain and systematic disintegration of the body are elements of a ceremony meant to convey “the unrestrained presence of the sovereign.”77

73. See FOUCAULT, supra note 23, at 25–27, 139–41. Foucault makes the revolutionary proposition that the convict’s body can be read as a text documenting political power and its effects. Id. at 25. Such an analysis requires a sophisticated reader, for as Foucault notes, the power exercised on the body is really a “micro-physics of power,” which operates at the level of the infinitesimal, “right down into the depths of society.” Id. at 27. “Discipline,” in other words, “is a political anatomy of detail.” Id. at 139. Political power exists as “innumerable points of confrontation, focuses of instability, each of which has its own risks of conflict, of struggles, and of an at least temporary inversion of the power relations.” Id. For Foucault, these powers are coercive and subtle, as opposed to the “crude” power exercised on the body in the medieval era. See Blanchot, supra note 29, at 87. I am arguing that Kafka’s story challenges precisely this distinction.

74. Id. at 34.
75. Id. at 43.
76. Id.
77. Id. at 49.
Here, justice "pursues the body beyond all possible pain." Medieval torture operated under the ideology of divine retribution; human crimes were answered with the infinite vengeance of the king, whose power, it was believed, was divinely vested. To make this power known, therefore, the sovereign turned the body of the condemned into a theater of signs, the last of which manifested itself as the body's expiration.

The theater of torture held important hermeneutic value. Foucault notes that, "long before he was regarded as an object of science, the criminal was imagined as a source of instruction." Even as the reformists began to protest against the medieval practice of public torture, children were encouraged to come to the place where the punishment was carried out, where they attended their classes in civics. Both the semiotic and theatric components of Foucault's torture modality denote an audience-centric exercise. The convict's body was treated as a medium through which the law could be published. Yet, as Maurice Blanchot would later emphasize, public executions tapped a deeper—and perhaps more primal—cultural register than mere deterrence of crime. They were the "occasion of celebrations in which the people rejoiced, since they symbolized the suspension of laws and customs" and "also at times provoked the populace to rebellion, by giving it the idea that it too had the right to shatter with its revolts the constraints imposed by the king, who was momentarily weakened." The spectacle of capital punishment thus engendered "a whole aspect of the carnival, in which rules were inverted, authority mocked and criminals transformed into heroes.'

B. Discipline

According to Foucault, the sovereign's vengeful impulse, expressed theatrically and to excess by branding and rending the body, was transformed into an art of "discipline" by the end of the eighteenth century. Discipline expressed a radical shift in Europe's cultural understanding of the body. First and foremost, discipline rendered the convict's body "docile." Through an elaborate set of highly regulated and defined rituals, Europe's penal systems articulated a new awareness that the human body was pliable to the last infinitesimal. Foucault writes:

The historical moment of the disciplines was the moment when an art

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78. Id. at 34.
79. See id. at 48-49.
80. See id. at 50-51.
81. Id. at 112.
82. Id. at 111.
84. Id. at 86.
85. FOUCAULT, supra note 23, at 61.
86. Id. at 16, 138.
87. Id. at 138.
of the human body was born, which was directed not only at the growth of its skills, nor at the intensification of its subjection, but at the formation of a relation that in the mechanism itself makes it more obedient as it becomes more useful, and conversely.88

Penal systems lent to industrial and military disciplines an urgency to organize the space in which the body was confined and the timetables under which it ate, slept, and labored.89 Foucault portrays the body as situated in a techno-political field, where “power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs.”90

Attention withdrew from making an example and spectacle of the condemned. Subtler cultural forces converged on the convict, coercing him to be a spectator of his crime. To fashion this docile, self-reflective body, institutional discipline induced self-observation by the “unequal gaze.”91 Hence the relevance of the Panopticon: a prison designed such that the prisoner could anticipate—but never see—the eyes of the warden from the central tower.92

The second purported interest of this new penal system was to reach the heart of the criminal and provide moral instruction. Foucault rejected the notion that egalitarian or humanitarian concerns underlay these cultural shifts from torture to discipline. Rather, he argued, discipline was the “dark side” of the emerging “egalitarian judicial framework.”93 He wrote: “The general juridical form that guaranteed a system of rights that were egalitarian in principle was supported by these tiny, everyday, physical mechanisms, by all those systems of micro-power that are essentially non-egalitarian and asymmetrical that we call the disciplines.”94

The body now serves “as an instrument or intermediary,” a surface open to the technology of the infinitesimal.95 Foucault perceived that “if one intervenes upon [the body] to imprison it, or to make it work, it is in order to deprive the individual of a liberty that is regarded both as a right and as property.”96 The body now provides a medium between the law and the soul of the criminal. While the law—expressed through the sentence of

88. Id.
89. In all instances, discipline amounts to “a perpetual movement in which individuals replace one another in a space marked off by aligned intervals.” Id. at 147.
90. Id. at 25.
91. See id. at 201 (“Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power.”).
92. See generally id. at 195–228 (discussing Jeremy Bentham’s Panopticon, an architectural model of a prison with a tower at its center, from which a supervisor may observe—without being seen—each inmate in cells lining the circular periphery).
93. Id. at 222.
94. Id.
95. Id. at 11; see also id. at 138 (“The human body was entering a machinery of power that explores it, breaks it down and rearranges it. A ‘political anatomy’, which was also a ‘mechanics of power’, was being born; it defined how one may have a hold over others’ bodies.”).
96. Id. at 11.
prison and hard labor—habituates the body, it simultaneously coerces the soul to follow it to the last letter. The “soul,” through the art of the disciplines, becomes a kind of legal fiction; one can only ensure one’s “liberty”—the soul’s fullest expression—by subjecting one’s body to the state’s desires.\(^7\) As political rhetoric began to approximate more closely the Bible’s promise of an eternal refuge for those who believed in its laws, submitting one’s body for service or as penance became acceptable consideration for an eternal and inviolable liberty interest.

Docility of the individual’s body promoted efficiency in the body politic. The physical body was now swept up in an industrial nexus where a “micro-physics” of power governed its movements in the smallest of increments.\(^8\) The body was now part of a political calculus that sought to derive its maximum mechanical advantage without imposing excess costs on the political and corporate institutions that harbored it. These homogenizing forces do not issue from concrete, discernable agents, nor can they be marshaled; rather, they exist in the relations between agents.\(^9\) “Discipline ‘makes’ individuals,” not vice-versa; “it is the specific technique of a power that regards individuals both as objects and as instruments of its exercise.”\(^10\) Foucault writes:

> [T]hus a new demand appears which discipline must respond to: to construct a machine whose effect will be maximized by the concerted articulation of the elementary parts of which it is composed. Discipline is no longer simply an art of distributing bodies, of extracting time from them and accumulating it, but of composing forces in order to obtain an efficient machine.\(^11\)

In both historical modes of punishment—torture and discipline—Foucault recognizes the importance of the body as the bearer of signs. On the one hand, in torture, the body occupies center stage in a theater of excess; its complete destruction is to be read as an expression of the king’s infinite vengeful impulse. The convict, in this sense, acts as an inverted image of the king,\(^12\) and instructs the audience of the king’s power

\(^7\) See id. at 180–81. “In discipline, punishment is only one element of a double system: gratification-punishment.” Id. at 180. In the analogous context of the classroom, discipline operates by a similar “circulation of rewards and debits.” Id. at 181. A child can “redeem” herself from punishment by collecting “points.” Id. By this “continuous calculation of plus and minus points, the disciplinary Apparatuses hierarchized the ‘good’ and the ‘bad’ subjects in relation to one another.” Id. For further discussion of Foucault’s and Kafka’s treatment of the soul as a social construct, see Butler, supra note 34, at 605–06.

\(^8\) FOCAULT, supra note 23, at 139, 143.

\(^9\) See Bennett, supra note 34, at 89 (noting that, for Foucault, “[p]ower is not the effect of responsible agents; responsible agents are effects of power—and adverse effects at that, adverse because much rater, much discipline, much socialization, and much punishment were required to mold variegated and ambiguous human beings into unified moral agents”).

\(^10\) FOCAULT, supra note 23, at 170.

\(^11\) Id. at 164.

\(^12\) “In the darkest region of the political field the condemned man represents the symmetrical, inverted figure of the king.” Id. at 29.
through the text of his wounds. Under disciplinary measures, on the other hand, the body performs less as an instructive text for an audience and more as an intermediary to reach the soul of the convict.\textsuperscript{103} Discipline’s aims are less audience-centric and are instead targeted more towards making the convict ever anxiously aware of a liberty interest he has lost by committing his crime. For Foucault, this “interest” holds tremendous discursive value because it can be doled out, rescinded, and controlled according to how well the individual assimilates. Assimilation, in this context, means acquiescing to the demands of technology and industrialization. It requires both a literal and symbolic union between man and machine.

Turning to \textit{In the Penal Colony} with \textit{Discipline and Punish} in mind, the question arises as to where Kafka’s law-writing Apparatus fits in Foucault’s historical analysis of punishment. In an effort to answer this question, this Article will first address the critical literature that explores Kafka’s and Foucault’s treatments of power. It will then turn to Carl Curtis’s and Nicholas Dungey’s very different analyses of \textit{In the Penal Colony}. While Curtis carefully draws points of resonance between Foucault’s discussion of torture and the violent machinations of Kafka’s Apparatus, Dungey—through an equally careful analysis—arrives at precisely the opposite conclusion and sees the Apparatus as a symbol of modern institutional discipline. Noting how these authors’ opposite conclusions prove that the Apparatus resists any easy classification as an instrument of torture or discipline, the Article will then propose a new reading of the Apparatus as existing between these modalities. The Article finally suggests that Kafka, in a moment of prophetic departure from Foucault, engineers a collapse of Foucault’s historical schema. By performing the systematic breakdown of the Apparatus—cog by cog—the author allows us to see that within the innermost recesses of modern penal law, torture is still its animating principle.

\textbf{III. The Scholarly Nexus}

Maurice Blanchot writes, “We are ever more subjected.”\textsuperscript{104} In this brief statement, he captures Foucault’s sense of the underbelly of the Enlightenment, the “dark side” of the new “egalitarian judicial framework.”\textsuperscript{105} Kafka, as Blanchot notes, intimately details the “cruelest” manifestations of this framework, yet still expresses wonder at the “mystical” aspect of a bureaucracy that can reify its procedures, and render subjects free only by subjecting them.\textsuperscript{106} Blanchot is the first to

\begin{footnotesize}
\begin{enumerate}
\item[103.] Id. at 29–30.
\item[104.] Blanchot, supra note 29, at 87.
\item[105.] See FOUCAULT, supra note 23, at 222.
\item[106.] See Blanchot, supra note 29, at 87–88. Blanchot, by writing that we “are ever more subjected,” means that modern discipline imposes on us a kind of subjectivity more profound and
\end{enumerate}
\end{footnotesize}
map, in Kafka’s work, Foucault’s understanding of the “free subject” as a contradiction in terms. Agency—the ability to marshal ideas, causes, and effects—becomes problematic in modern discourse, where subjectivity is informed by language, not vice versa.107

The scholarship following Blanchot tends to refine this focus on frustrated agency in Foucault’s and Kafka’s works. Jane Bennett writes that Kafka and Foucault are “congenial” in their efforts to trouble the reader’s search for “precise external sources” that cause “adverse effects.”108 She first highlights Foucault’s notion of power as not informed by agents, but rather as informing agents: “Power is not the effect of responsible agents; responsible agents are effects of power.”109 Bennett then compares this inversion to Kafka’s frustration of the reader’s search for a culpable agent in the penal colony. For her, Kafka “brings out the hope that . . . behind each adverse effect lies a blameworthy agent, and . . . the idea that this agent has mastered the art of actualizing priorities unique to him.”110 Bennett notes that any power at work in the penal colony is “faceless.”111 In a telling line, she writes, “Kafka draws power as an artist depicts wind—by way of oddly positioned clothes on the line.”112 While the characters in the story appear to act upon “a desire to render surroundings predictable and to protect the dream of responsible agency,” this is plain denial.113

Judith Butler brings us closer to an understanding of the Kafkaesque and Foucauldian body as one encoded by history. Butler writes that Foucault treats the body as “a surface and a set of subterranean ‘forces’ that are repressed and transmuted by a mechanism of cultural construction external to that body.”114 Butler then analogizes that mechanism of cultural construction to Kafka’s law-writing Apparatus. For Kafka, the law of the Apparatus gives the body “intelligibility.”115 The law is “not literally


107. See Judith Butler, Bodies That Matter 225 (1993) (“[W]here there is an ‘I’ who utters or speaks and thereby produces an effect in discourse, there is first a discourse which precedes and enables that ‘I’ and forms in language the constraining trajectory of its will.”).

108. Bennett, supra note 34, at 89–90.

109. Id. at 89.

110. Id.

111. Id.

112. Id.

113. Id. at 79.

114. Butler, supra note 34, at 604.

115. Id. Butler is here writing about Foucault’s analysis of torture, which is perhaps the clearest example of how the body—through grotesque wounds—wears the law it has broken for all to see. In this context, the law, providing for such retributive measures as torture, can be thought of as making the body understandable insofar as it is the province of the king.
internalized, but incorporated on bodies; there the law is manifest as a sign of the essence of their selves, the meaning of their soul, their conscience, the law of their desire.”116 This gives “the illusion of ineffable depth.”117 But, in the end, Butler writes, Foucault’s analysis yields the result that “the soul is not imprisoned by or within the body but, inversely, ‘the soul is the prison of the body.’”118

Carl Curtis advances this discussion of the semiotics of torture directly to the situs of the penal colony. Curtis sees Kafka’s machine as symptomatic of a shift from the vengeful punitive measures of the past to the modern methods of discipline and surveillance.119 Curtis understands In the Penal Colony as representing “the logic of the inquisitorial model in conflict with Enlightenment reason.”120 The Apparatus that appears in Kafka’s story reflects the dialectic between these two competing visions of justice. On the one hand, Curtis recognizes that “Kafka’s machine condenses the necessary, intricate elements of the public ritual into a simple performance and conflates the signs associated with the articulation of the law, its transgression, the guilt of the condemned, and the power of the sovereign into a single sign: the text / wound.”121 According to Curtis, this conflation of signs reflects the “semiotics of torture” outlined in Foucault’s Discipline and Punish.122 On the other hand, Curtis notes that the machine’s popularity has waned in the penal colony, and “executions of late have been plagued with ‘false insinuations and scornful looks,’ which are representative of the public’s estimation of the procedure as unreasonably cruel and shameful (sentiments that refused the old commandant a respectable burial in the cemetery).”123 The changing of sentiment reflects, in Curtis’ view, a shift towards a more humane, enlightened perspective, coinciding with the shift in government taking place on the Colony.

Curtis sees the systematic breakdown of the machine, as it begins to execute its sentence on the officer instead of the condemned man, as reinforcing this sense of a sudden collapse of the old political regime. “Kafka (the student of law) insightfully represents the outdated judicial

116. Id. at 605.
117. Id.
118. Id. at 606 (quoting FOUCAL, supra note 23, at 30). Butler thus helps us see that, for Foucault, the soul is a creature of statute, worn on the outside like a tattoo. It is a relic of the law’s branding. We always anticipate depth in such bodily inscriptions. We always anticipate (in the sense of both assuming and desiring) the eternal truth of the signified. But what we find, in the end, is a kind of plain murder of signification—that is, that the “soul is the prison of the body.” FOUCAL, supra note 23, at 30.
120. Id. at 19.
121. Id. at 143.
122. Id. at 143–44.
123. Id. at 157 (quoting FRANZ KAFKA, IN THE PENAL COLONY, IN THE METAMORPHOSIS, IN THE PENAL COLONY, AND OTHER SHORT STORIES 189, 214 (Joachim Neugroschel ed. & trans., Simon & Schuster 1995)).
system's uneasy rationality and proceeds to outline its function in order to reveal its shortcomings and the reason for the eventual implosion.\textsuperscript{124} Curtis thus interprets the machine's implosion as indicative of its old age and the barbaric nature of the judicial system it serves. As a relic of a violent order, the Apparatus, in his estimation, can no longer sustain the sovereign's uneasy rationality and buckles under its weight. The machine's implosion coincides with the inversion of the convict and the judiciary. Curtis notes:

The inherent violence of the episode always presented the possibility of disturbance—the possibility that the violence of the procedure could be inverted, turned on the executioner himself (in this case, the officer). In the ostensibly regulated execution procedure, there was always a remainder—the possibility of chaos, disorder, and carnival.\textsuperscript{125}

Curtis reads the irony of the officer's demise at the hand of the machine he has been charged to maintain and operate as indicative of a Foucauldian inversion. Whereas in Foucault's analysis the punished convict reflects the inverted, yet symmetrical, image of the monarch, Kafka makes the officer in charge of the Apparatus an inverted image of the condemned man. Curtis thus places the Apparatus squarely within the older medieval system of punishment that Foucault developed in \textit{Discipline and Punish}.

Confining himself to the medieval rubric, Curtis generally resists examining the Apparatus as emblematic of a modern technology of discipline. Modern disciplinary practices, for him, exist on the horizon of the penal colony where the new Commandant has just recently made his rule known. They will arise once the old system has broken down. Curtis writes,

"[M]eticulous in his calculations," the new commandant had implemented a slow, methodical approach to eliminate the old procedure. The new Commandant thus offered a "new mild policy [that] reflects a different attitude" about punishment, implying that the new model reflects a more gentle punishment that no longer directs its attention to the violent destruction of the body.\textsuperscript{126}

The Apparatus, in Curtis's view, is of the old world, to be replaced by newer, gentler modes of discipline as the new Commandant establishes his reign.

While Curtis inventories the unique textual aspect of the publishing device, he ascribes the Apparatus exclusively to the older historical model of torture. He argues that "the machine functions primarily according to the sovereign model," and that "it is augmented by the addition of

\textsuperscript{124} \textit{Id.} at 114.
\textsuperscript{125} \textit{Id.} at 153.
\textsuperscript{126} \textit{Id.} at 154 (quoting KAFKA, \textit{supra} note 123, at 208, 212).
semiotic coding.”

He goes on to explain that “the text / wound refers to the power of the sovereign, the punishment, and revenge, while simultaneously articulating, publishing, and reinstating the law.”

While Curtis does identify some elements of modernity in the machine, he ultimately does not offer an adequate appraisal of its disciplinary aspects. As the next section of this Article will show, the “text / wound” function serves much more than an augmentary purpose; it reflects the fact that modern disciplinary interests underlay the device’s machinations.

Nicholas Dungey, in his recent book *Franz Kafka and Michel Foucault: Power, Resistance, and the Art of Self-Creation*, arrives at a different conclusion than Curtis. Whereas Curtis sees indicia of medieval torture in the Apparatus, Dungey analyzes its power as derived from the modern disciplinary practices documented in *Discipline and Punish*. For Dungey, “Kafka’s Apparatus is an early example of disciplinary power and the discursive and material technologies of cultural inscription because it possesses a strategic and instrumental ambiguity—it is designed to be productive of control and learning.”

Dungey understands the device as emblematic of a new technology derived from the Enlightenment. This technology defines us as subjects by giving us our “sentence”—that is, the specific cultural narrative we are supposed to adopt. Dungey writes that the Apparatus is an “early literary foreshadow of Foucault’s account of the Enlightenment’s power/knowledge Apparatus and Bio-power— institutions and machines that educate subjects, distribute them in a domain of value and utility, and then dispose of them.”

Dungey astutely draws a comparison between the Apparatus’s purported ability to enlighten the convict and Foucault’s discussion of modern discipline as seeking to “correct the soul” of the subject.

Dungey sees the officer’s act of ritual suicide, where he subjects himself to the Apparatus, as illustrating Foucault’s principle that power is neither stable nor fixed, but exists in unstable relations between modern apparatuses and their subjects. For Dungey, the officer’s suicide reveals that he “is not the maker and master of the Apparatus, but rather an effect of it.” This inversion, Dungey notes, is a characteristic of modern disciplinary power, where we “are all under constant examination and

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127. *Id.* at 191.
128. *Id.*
130. *Id.*
131. See *Id.* at 39–41. Dungey insightfully portrays the Apparatus as an early instance of disciplinary power, similar to those analyzed by Foucault, which “are humming along in elementary schools, hospitals, factories, and corporations—writing on our bodies and into our souls: Be Docile, Be Obedient, and Be Normal.” *Id.* at 29.
132. *Id.* at 30.
133. *Id.* at 33.
134. See *Id.* at 41–43.
135. *Id.* at 43.
surveillance, and we never know when, or from whom, the judgment will come.”

Dungey’s analysis—as opposed to Curtis’s—does not take into account Foucault’s study of torture. Thus, while Curtis falls short of a holistic analysis of the Apparatus by forgoing treatment of modern discipline, Dungey falls short by limiting the scope of his inquiry to the Apparatus’s disciplinary qualities. As the remainder of the Article will show, the Apparatus occupies a threshold between Foucault’s competing discourses. By virtue of its liminality, the Apparatus emblematizes Kafka’s sinister view of a society where torture continues to haunt our institutional spaces. Kafka places the officer in the Apparatus not merely—as Dungey and others have suggested—to express the instability and interchangeability of loci of political power. Rather, Kafka’s short story directly challenges any understanding of torture and discipline as being analytically distinct. The Apparatus resists being categorized in either of Foucault’s schema. Kafka writes the officer’s suicide as a means of performing the violent conflation of these two modalities of punishment.

IV. KAFKA, THE PRE-FOUCAULDIAN ENGINEER: A READING OF IN THE PENAL COLONY

In its tendency to elegance and precision, the Apparatus executes Foucault’s “micro-physics of power” over the body of the condemned, which is a power associated with modern disciplinary strategy. Curtis thus underestimates Kafka’s symbolic achievement in the Apparatus by confining its semiotic operations to that of a medieval torture device. While he is correct to notice that In the Penal Colony illustrates that this outdated methodology continually haunts the present, he fails to see that the machine itself, a literary creation, occupies a liminal space between the distinct ideologies underlying Foucauldian torture and discipline. The Apparatus is not merely a vestige of the old order, but expresses the semiotics of modern punishment, which directs its energies towards the soul of the criminal.

Yet, contrary to Dungey’s view, the Apparatus is not merely “an earlier, perhaps cruder, example of the sort of Apparatuses that Foucault argues

136. Id. at 36; see also Cumberland, supra note 35, at 204 (“Kafka’s text shows that, once enslaved in the machine of social ideology, one is perpetrator, voyeur, and victim, but never truly empowered.”). Cumberland situates In the Penal Colony within a discussion of colonialism and imperialist conquest, relying heavily on Foucault’s Discipline and Punish as a basis for understanding power dynamics within the penal colony. Her analysis of Kafka’s Apparatus turns primarily on Foucault’s study of Panopticism. Indeed, Cumberland seems to understand the Apparatus as a kind of preliminary model of Jeremy Bentham’s Panopticon. Id. at 207–08.

137. For example, Cumberland sees the officer’s suicide as symptomatic of colonialism’s “inherent suicidal foundation”—an unstable relationship between colonial government and its subjects. Id. at 210.

138. See supra note 73 and accompanying text.
appear in prisons, hospitals, factories, and schools."\textsuperscript{139} The Apparatus cannot be understood simply as an instrument of modern disciplinary strategy. Its violence, its direct work on the flesh and organs of the body, and its final performance of "plain murder"\textsuperscript{140} on the officer resist such an easy assignment.

The fact that Curtis and Dungey independently arrive at opposite conclusions suggests an important point of departure between \textit{In the Penal Colony} and \textit{Discipline and Punish}. Kafka's portrayal of power, rather than assuming a separation between modern institutional disciplines and medieval torture, demonstrates that they are—in the last hour of perforation—not analytically distinct. Here, Kafka is critiquing Foucault. \textit{In the Penal Colony} troubles Foucault's concept of an epistemic divide between medieval and modern punishment. Kafka's device produces signs of power at the intersection between old and modern authoritarian regimes. As a literary technology, the device not only captures the dark underbelly of the modern industrial state, but also shows—through a satiric allegory of the effects of risk classification—that torture continues to inform our treatment of bodies in the modern era.

Bill Dodd, in his essay \textit{The Case for a Political Reading}, urges scholars engaged in a "political reading" of Kafka's texts to "justify their findings with reference to the aesthetic, semiotic, and rhetorical features" of those texts "since these appear to be designed to replicate the surface confusions and perspectival tensions of actual experience."\textsuperscript{141} With this admonition in mind, this Article now turns to Kafka's Apparatus as a feat of literary symbolism, which reflects the converging and competing power systems Kafka witnessed in his own life. \textit{In the Penal Colony} plays out a legal ideal: through the perspective of the officer who operates the law-writing Apparatus, Kafka presages Foucault's figurative descriptions of modern disciplinary practices by crafting a literal union between body and machine. Through the officer's suicide, Kafka shows that this union is but a new manifestation of medieval torture.

To illustrate how Kafka has used the Apparatus as a means of critiquing the modern industrial state, the remainder of this Article will first identify how the machine embodies elements of both of Foucault's historical modes of punishment. Then it will examine the systematic deconstruction of the Apparatus, which occurs when the officer places himself within it. Through this oddly ritualistic act of suicide/deconstruction, Kafka exposes the modern industrial state as a theater of violence. In this view of modernity, the old monarchical compulsion to torture has survived, albeit in the form of a dangerous obsession with industrial advancement.

\textsuperscript{139} DUNGEY, supra note 35, at 30.
\textsuperscript{140} Id. at 165.
\textsuperscript{141} Dodd, supra note 40, at 146.
A. A Device of Torture

The Apparatus bears indicia of medieval torture, furthering the older model's audience-centric purposes. First, the Apparatus provides a semiotic spectacle, enhanced by the transparent glass through which "anyone can look... and see the transcription taking form on the body."

The essence of this "sentence," therefore, consists of making the body a template on which to publish the letters of the "text / wound." The Apparatus executes this sentence by a prolonged operation of needles that tattoo the name of the breached law onto and around the condemned's torso, penetrating deeper and deeper into his flesh until he is drained of life. The audience gets to see not only the product, but also the process of signification as it takes place on the body. For the condemned man awaiting his sentence at the beginning of the story, the law he has broken, "HONOR THY SUPERIORS," will be published in this fashion over the course of twelve hours.

This semiotic performance, a grotesque form of publishing the law through vivisection, binds the community in a moment of shared horror and respect for the letter of the law. The Apparatus, consistent with Foucault's concept of the "spectacle of the scaffold," by its lacerations, "traces... on the body of the condemned signs that must not be effaced." Children in the colony come to learn to read the law in this visceral manner. As in the public executions documented in Discipline and Punish, where children were encouraged to observe, Kafka's public ritual affords children special preference in viewing the event. The officer remarks, "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." The shock with which such descriptions meet the modern reader reinforce Kafka's critique of the law as something one comes to learn not by mere passive reading, but by suffering under it.

The Apparatus furthers a second purpose outlined in Foucault's analysis of torture, which is deeply entwined with its semiotic function: through the marks it writes and inflicts upon the body, it conveys the infinite power of the colony's central government. In essence, Kafka achieves Foucault's "ideal punishment" through the moving parts of the Apparatus. For Foucault, this would consist of "the summum of all possible tortures. It would be an expression of infinite vengeance." The Apparatus...
approximates this ideal not by a swift, powerful blow, but rather through careful, methodical incisions. The "infinite" power resides not just in the final obliteration of the condemned, but also in the prolonged effort of the needles as they engrat the letter of the law onto increasingly vital layers of the convict's body.

Hence, the machine's "excess" resides not in elaborate rending of the limbs and spoiling of the flesh, but rather in the oppressive tedium with which it performs its semiotics. The officer remarks, "An ignorant onlooker would see no difference between one punishment and another. The Harrow appears to do its work with uniform regularity." While the text of the wound does have "embellishments," which denote a measure of visual flare, its dissymmetrical power in relation to the body of the convict manifests itself as it "keeps on writing deeper and deeper for the whole twelve hours." The delayed gratification reflects "a calculated gradation of pain" intrinsic to Foucault's study of torture. However, the calculated precision with which the machine executes the law on the flesh cannot be read simply as a medieval tactic. The closer one looks at the internal operations of the Apparatus, the more apparent its liminal quality between torture and discipline becomes.

B. A Device of Discipline

The explorer who has come to the small, sandy valley with the officer to appraise the Apparatus remains dissatisfied with its procedure, but he reminds himself that in a penal colony "extraordinary measures [are] needed and that military discipline must be enforced to the last." Although Kafka makes little further reference to the military presence on the island, the machine itself appears to embody the elements of discipline Foucault identifies as pervading militaries, schools, and penal systems. As the Apparatus's various parts act in symphony to transmit a message to the convict that he has broken a law, it furthers two central disciplinary strategies—to make his docile body conform to the colony's law and to bring enlightenment to his soul.

First, Kafka's Apparatus advances the colony's disciplinary interest in creating docile bodies. Embodying Foucault's "microphysics of power," as each offense was thought to be a direct, physical affront to the sovereign. Id. at 53-54; see also id. at 47 ("Besides its immediate victim, the crime attacks the sovereign: it attacks him personally, since the law represents the will of the sovereign; it attacks him physically, since the force of the law is the force of the prince.").

150. KAFKA, supra note 1, at 147.
151. Id. at 149.
152. Id.
153. FOUCAULT, supra note 23, at 33.
154. KAFKA, supra note 1, at 146.
155. FOUCAULT, supra note 23, at 139, 143.
the machine strictly governs the space and time in which the body takes part in the ritual. The twelve-hour process takes place on a timetable meticulously catered to the condemned’s bodily functions and emissions:

The first six hours, the condemned man stays alive almost as before, he suffers only pain. After two hours the felt gag is taken away, for he has no longer strength to scream. Here, into this electrically heated basin at the head of the Bed, some warm rice pap is poured, from which the man, if he feels like it, can take as much as his tongue can lap.156

The body is so elegantly and oddly accommodated that when the officer puts himself into the Apparatus, the explorer observes how he had only to approach the Harrow for it to rise and sink several times till it was adjusted to the right position for receiving him; he touched only the edge of the Bed and already it was vibrating; the felt gag came to meet his mouth, one could see that the officer was really reluctant to take it but he shrank from it only a moment, soon he submitted and received it.157

This scene reveals a scarce separation between officer and machine. They act in tandem, forming a relation illustrative of Foucault’s “microphysics of power,” whereby “an infinitesimal power of the active body” takes place.158 This portrait of total integration can perhaps also be seen as the artist’s self-portrait. The machine-body complex captures Kafka’s own sense of entanglement with the machines insured by his accident insurance firm.159

Docility, in the officer’s estimate, is directly linked to the second purported interest advanced by the machine, which is to render enlightenment. The officer reports that through the violence of the writing act, the body’s gradual and systematic submission allows for a spiritual awakening. Reporting on the condemned man’s progress, the officer notes: “how quiet he grows at just about the sixth hour! Enlightenment

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156. KAFKA, supra note 1, at 149–50.
157. Id. at 163–64.
158. FOUCAULT, supra note 23, at 137.
159. The penal officer resembles Kafka in both his official duties and in his final submission to the law-writing Apparatus. The officer in charge of the Apparatus holds its “guiding plans” in his wallet. KAFKA, supra note 1, at 148. These provide instructions on how to configure the machine’s Designer so as to render the appropriate lettering on the torso of the convict. When he shows these plans to the explorer, the explorer is unable to read the “labyrinthine lines crossing and recrossing each other.” Id. The meticulously codified language, which corresponds to the law the convict has broken, is the sole province of the officer and his Commandant. The plans are literary reflections of the regulations Kafka transcribed for the city of Prague to ensure that its machines operated in a smooth and efficient manner. The illegible code and “labyrinthine lines” denote the highly technical language with which Kafka had to familiarize himself and the complex designs of the wood planing devices that he helped make safer. Moreover, the plans the officer keeps in his wallet are his “most precious possessions.” Id. Like the regulations Kafka wrote, which he called his Brotheruf, or bread money, the officer’s plans are his sustenance and his currency, which are kept in billfold. See generally Ruth V. Gross, Kafka’s Short Fiction, in THE CAMBRIDGE COMPANION TO KAFKA, supra note 40, at 80–94.
comes to the most dull-witted. It begins around the eyes. From there it radiates."\textsuperscript{160} This awakening purportedly arises out of an understanding of the nature of the crime. At the sixth hour, the convict “begins to understand the inscription, he purses his mouth as if he were listening.”\textsuperscript{161} Accordingly, the machine satisfies the convict-centric interest that Foucault articulates in his analysis of penal discipline. The needles’ operations are not intended solely for visual publication, but also to transmit the law to the soul of the individual under the Harrow.

The hermeneutic function explained by the officer is inherently different from that taking place within the audience. While those observing the ritual learn the law by observing signs emitted from the victim, the victim himself “deciphers it with his wounds.”\textsuperscript{162} As Andreas Gailus notes:

Kafka’s law machine seeks the achievement of pure meaning . . . The machine does not merely apply the Law to, or inscribe it, onto the body. Rather, it passes through the body by means of registering its letters directly on the prisoner’s nervous system. For justice to be revealed, the Law must be deciphered through the pain of a body subjected to mechanical torture.\textsuperscript{163}

The Apparatus, in Gailus’s estimate, transmits “pure meaning” in a nearly unmediated fashion by registering directly on the condemned man’s nervous system. However, the nervous system is, after all, physiological. To be absolutely pure, the communication would have to take place directly between the Harrow’s needle appendages and the soul of the criminal. Because the body serves as the medium of transmission, the question arises as to how deep and how many layers the needles must probe to reach the soul. Analyzed in this vein, conveying the message to the convict appears to be more mediated than the publishing act directed towards the audience, where signs have only to touch the retina (and with significantly less wear and tear).

Gailus thus unintentionally identifies that this whole concept of enlightenment, purportedly effected by the Apparatus, is part of a legal fiction, just as any liberty interest was for Foucault. Foucault would be first to notice that the officer never experiences enlightenment as the needles ravage his body. Consistent with Foucault’s critique of discipline, Kafka satirically turns this private interest in enlightenment—as it is advertised by the officer—on its head. Placing him in the jaws of the Apparatus, Kafka ensures that he finds no private redemption. The explorer observes, “this was no exquisite torture such as the officer

\textsuperscript{160} KAFKA, supra note 1, at 150.
\textsuperscript{161} Id.
\textsuperscript{162} Id.
desired, this was plain murder.”"164 Kafka accordingly demonstrates that the colony’s purported aim to instill a moral reverence for the law in its convicts is only a thin cover for its actual interest in efficient capital punishment. As the machine falls to pieces during the officer’s act of ritual suicide, Kafka divests it of its semiotic features to reveal sheer brutality as its animating force.

As a beginning point in the analysis of the Apparatus’s deconstruction, we should consider that the officer has entered the law “BE JUST!” into the Designer, using guiding plans that no one can decipher other than himself. The explorer has already voiced his disapproval of the Apparatus. For the officer, the explorer’s mere utterance of disapproval carries the solemnity of an official verdict; it has overturned the law of capital punishment on the island.165

Hence, according to the officer, any publishing act made by the machine after the explorer’s verdict is a perversion of justice. If we accept the officer’s position, the publication “BE JUST!” is now the greatest perversion—textually perverse in the sense that the Apparatus’s printing can no longer “be just,” and politically perverse in the sense that it is promulgating law in violation of the new order.

The Apparatus’s incremental breakdown appears to be a direct result of the entry of abrogated law into its central operating system. This breakdown is not an instantaneous event—not an explosion or an implosion. Rather, true to the new antithetical nature of its justice, the machine deconstructs in the most literal and retrograde sense.

Hence, we see the piece-by-piece displacement of cogwheels from the belly of the Designer. The cogwheels are the instruments nearest the guiding plan’s text. They are the only visible mechanical intermediaries between the text on the guiding plans and the text appearing on the subject’s body. Evocative of a nineteenth-century clock, the cogwheels signify the machine’s management of a time schedule for each capital punishment. As emblems of the device’s regulatory central nervous system, they are the first to be jettisoned.

Only then do we see—through the eyes of the explorer—how this displacement within the machine manifests itself on the officer’s body. The Harrow’s needles jab him blindly; and the Bed, no longer turning his body, brings it up “quivering against the needles.”166 The failed transmission of the message “BE JUST!”, coupled with the device’s

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164. KAFKA, supra note 1, at 165.
165. Says the officer to the explorer:
1 was quite near you yesterday when the Commandant gave you the invitation. I heard him giving it. I know the Commandant. I divined at once what he was after. Although he is powerful enough to take measures against me, he doesn’t dare to do it yet, but he certainly means to use your verdict against me, the verdict of an illustrious foreigner.

Id. at 155.
166. Id. at 165.
systematic, gradual disintegration, exposes a kind of unwieldy violence animating the core of the Apparatus—a violence that persists outside the law, yet freely inhabits the law when it so desires.

By taking away the trappings of discipline from the Apparatus—namely, its timetables and its promise of enlightenment—Kafka reveals the officer’s account of the machine, its elegance, and its rehabilitative features to be the mere workings of fiction. The officer, representing the old order of the colony, is deeply invested in seeing the machine’s continued presence on the island. The machine’s success depends to a great extent upon the officer’s own success in storytelling, because he must convince the explorer of its current relevance in order to continue receiving funding from the new Commandant. The Apparatus comes to the reader’s imagination, therefore, under a form of authorial trickery.

The officer’s authorial deceit represents a more global political dissimulation. The law of the disciplines, stripped away from the Apparatus, can now be seen as barely able to contain the aggression of the colony’s government against its captives. Kafka, by placing an agent of that government under the Harrow, demonstrates that the state’s violence is indiscriminate; it is an all-consuming and self-consuming industry. This violence animates not only the administration of penal colonies; it pervades modern governments. In this respect, Kafka sees a vanishingly thin line between torture and discipline that Foucault elides in his historical analysis.167 Kafka recognizes the subtlety of the disciplines, but he glimpses in their timetables that capital punishment holds the final hour. The king’s hand, the anxiety of inversion and rebellion—these trappings of the medieval era continue to haunt the spaces in which we learn and labor. In other words:

[What] threatens us, as well as what serves us, is less reason than the various forms of rationality, an accelerated accumulation of rational Apparatuses, a logical vertigo of rationalizations which are at work and in us as much in the penal system as in the medical system or even the school system.168

For Kafka, the threat was not merely intellectual; it permeated the work site, manifested in his tuberculosis, and resulted in “plain murder.”169

The Apparatus, as Reza Banakar observes, exemplifies Kafka’s “linguistic imagination,” which can transform wood planing machines and

167. Granted, Foucault recognized that there remained “a trace of ‘torture’ in the modern mechanisms of criminal justice—a trace that has not been entirely overcome.” FOUCAULT, supra note 23, at 16. However, Foucault argued that this trace “is enveloped, increasingly, by the non-corporal nature of the penal system.” Id. Through Panopticism specifically, the “ceremonies, the rituals, the marks by which the sovereign’s surplus power was manifested are useless,” and “the external power may throw off its physical weight; it tends to the non-corporal.” Id. at 202–03.


169. KAFKA, supra note 1, at 165.
overhead cranes “into a torture instrument.” However, the device holds deeper symbolic value once we have looked at Kafka’s career at the Workmen’s Accident Institute. Benno Wagner places Kafka’s job as an insurance lawyer at the intersection of the Foucauldian “norm to discipline,” which is directed at the individual body, and the “norm of regulation,” which is directed at the body politic. Within the Institute’s jurisdiction over accident prevention and risk classification, Kafka finds ripe material to demonstrate how torture still informs industrial practices.

Kafka exposes how the emerging industrial state, borrowing its timetables from the new disciplinary order of the penal systems, remains a theater of violence. Monarchical torture survived the transition to the disciplines and began to inhabit technologies outside the scaffold. Before industrialization, for example, Austria—as with most European powers—relied on principles of Roman law to assign “guilt” in litigated injuries. In the nineteenth century, however, accident insurance diffused culpability in the workplace, and forced injured and oftentimes uneducated workers to weigh their claims for damages in administrative hearings. Torture now came on two fronts: first, in the form of unwieldy and dangerous machines hastening to meet the pace of a wartime market; and at the back end, in the form of an administrative framework that forced the injured worker to present his claims before “a board of experts.” While he is relieved of “fault” for his accident, the modern worker is forced to relive the injury in boardrooms, where he performs as an “actor” before experts classifying his injury according to a “table of compensatory payments.”

The weight of industrial advancement fell squarely on the shoulders of the laborer. Kafka wrote empathetically of this plight as a kind of modern form of torture—both in his memoranda promoting accident prevention and in In the Penal Colony. Kafka’s literary gesture of placing the officer within the torture device exposes the “dark side” of the new egalitarian framework of risk classification. It reflects the author’s own experience of “the raw reality of wounded, crippled, and killed workers and the business of compensating the harm done to them according to a calculus that estimated the impact of their injury on their potential earning capacity.” In this way, the officer’s suicide might be thought to represent a compassionate gesture on Kafka’s part—a literary attempt to step into the shoes of the injured worker.

170. Banakar, supra note 33, at 10.
171. See Wagner, supra note 34, at 40–41 (“According to Foucault, the origin of modern state power—the power to normalize individuals and populations—is located at the intersection of the ‘norm of discipline’ (directed at the individual body) and the ‘norm of regulation’ (directed at whole populations). Kafka’s job profile placed him exactly at this junction.”).
172. Id. at 27.
173. Id. at 20–21.
174. Id. at 21.
175. Id.
176. Id. at 36.
CONCLUSION

The tattooing Apparatus presents us with an allegory of the law. This is not simply the law that forces the claimant to wait interminably at its gates, but rather the law that avidly seeks out as the source of its reverie a gradual, incremental effacement of its subjects. It is a law of violent inversions, and one that seeks to cover its violence with tables of compensation—relieving the injured of “fault,” yet making them speculate on their damages and thereby reinforcing their subjection to industry.

Kafka, as an artist and as an official, was able to perceive these fictions keenly. Within the new juridical landscape of risk classification, the politics of the free subject and of his subjection came into parallax. The failed experiment of the Apparatus, perfect in theory but violently disjointed in operation, should be examined in relation to Kafka’s autobiographical sketches where he viewed himself as one unable to piece together an identity out of his fractured heritage and his father’s abuse. These failed ideals of justice and identity appear to inevitably lead to physical trauma—either in the form of retributive violence on behalf of the state, or in the form of self-mutilation.

The final puncture wounds left by the machine reflect a brutality of abstraction implicit in risk classification. By assigning each industrial firm a premium according to risk classification tables, Kafka’s Institute advanced a social policy that relieved injured workers of guilt. But this new framework turned workers’ bodies into numbers and added to the horror of industrial accidents a new responsibility for the injured worker—to assign value to his injury and convince administrative boards of that value. That the officer of the penal colony—and not the condemned man—feels these wounds recalls Kafka’s autobiographical sketches as a young artist suffering under increasingly alienating and complex manifestations of the law. In this sense, the Apparatus can be understood as an aggregate of the oppressive and hegemonic forces Kafka encountered in his life, beginning with his father and culminating in his work with the Institute.

Whereas for Foucault, hegemony’s hold on the body of the citizen began to move decidedly towards the infinitesimal and the soul by the end of the eighteenth century, Kafka, in remarkably prescient fashion, inverts the infinitesimal to expose the soul as another layer of viscera that the law perforates, devours, and jettisons. Recalling Kafka’s chewing sawdust metaphor, the law can never be fully internalized—it consumes us.177 Torture has left the scaffold in post-Enlightenment societies, but it has not disappeared. It remains—oftentimes concealed—in a modern disciplinary power that marshals the working class towards new traumas in the wake of technological advancement.

177. See supra note 49 and accompanying text.