

AN ARTIST OF THE LAW

KAFKA WAS A LAWYER by training. At the age of 25, two years after getting his law degree, he began work at the Kingdom of Bohemia's Workers' Accident Insurance Institute, where he devoted himself to the implementation of the law on statutory occupational insurance, adopted by Austro-Hungary in 1887—three years behind Germany and eleven years ahead of France.¹ Kafka specialists are divided as to whether his legal career hindered or helped his literary work. His diaries and letters offer evidence to support both views, which should not be surprising, since there is barely a single affirmation from his pen that is not immediately reconsidered from another point of view. Thus he famously wrote that his legal studies involved living on sawdust, already chewed over by thousands of mouths—but promptly added that, 'in a certain sense', this was exactly to his taste.² This way of turning over the cards, not stopping at the first meaning of a fact or symbol but always examining them from the reverse perspective, is the hallmark of the legal mind—or, more precisely, of the art of the trial, which is entirely governed by the rule of *audi alteram partem*: hear the other party.

This first rule of the art of law is known today as the adversarial principle—in French, the *principe du contradictoire*. It is an ambiguous term, since consideration of the opposite point of view doesn't annul the first viewpoint but puts it to the test of truth, allowing the party defending it to rebut in turn the arguments made against it. In other words, the principle is valid only to the extent that it is at the service of the law of *non-contradiction*: that a thing cannot both be and not be at the same time. In the course of legal proceedings, the play of these successive 'speaking againsts' thus takes place on a terrain of rules that cannot themselves be contradicted and which are based in law. The parties have to submit to the same law for the trial to proceed;

it is this common submission that allows them to exchange words, rather than blows.

The law—*Gesetz* in German, meaning that which is set down—thus gives human life its institutional foundation. When it is trodden underfoot, we sink into the depths of unreason. So it was for the high mountain bridge, the protagonist and narrator of its namesake story, when a foolish traveller, imagining he is testing the bridge's solidity, 'jumps hard with both feet together on the small of its back'. The bridge, put to this test, turns over to see what is happening. 'I had not fully turned around'—the bridge itself is speaking—'when I fell, falling to pieces, broken and impaled on the sharp rocks which until then had always looked up at me so peacefully from the raging waters.'³ Where it affects the generational order that underpins the structure of the law, this 'turning over' produces those infanticidal parents who figure so frequently in myth and religion. According to that order, sons should bury their fathers. But here it is fathers who seek to bury their sons, projecting their own death drive onto their offspring. This type of parent is also encountered in daily life, not least in the academic world, where they don't assassinate their descendants but condemn them to oblivion in order to affirm their own omnipotence and to escape the generational chain. Such is the case with the father of Georg Bendemann, the central character in Kafka's story, 'The Judgement', when he issues his condemnation: 'At bottom you were an innocent being, but beneath that you were a diabolical one! . . . And therefore take note: I sentence you now to death by drowning!' Georg immediately carries out the order, going to—where else?—a bridge, whose function of carrying human life he turns into a discreet instrument for his own death.⁴

Our institutional foundation can also be undermined in another way, when the law is not overturned but unknowable. 'It is a torture', Kafka wrote, 'to be governed by laws of which one is ignorant', for one who doesn't know the laws is abandoned to the arbitrary reign of power and

¹ For further detail, see Supiot, 'Grandeur and Misery of the Social State', NLR 82, July–Aug 2013.

² 'Letter to His Father', in *Wedding Preparations in the Country and Other Stories*, London 1978, p. 63.

³ 'The Bridge', in Nahum N. Glatzer, ed., *The Complete Short Stories of Franz Kafka*, London 1999, p. 412. Translation modified.

⁴ 'The Judgement', in *The Complete Short Stories of Franz Kafka*, p. 87. Translation modified.

its representatives, real or supposed.⁵ One could legitimately ask oneself if these laws really exist or whether they merely express the whim of those in office. This is the experience of totalitarian systems, whose resources Kafka's work unveils. In a state of law, even in an empire like Austro-Hungary, it is still possible to call on the support of the law to limit the obliteration of the weak by the strong. Kafka thus dedicated his professional life to drafting legal documents to make the best possible protective use of the Austro-Hungarian law on industrial accidents. All known law that leaves itself open to interpretation is thereby a source of liberty.

Kafka extends this freedom of interpretation to his readers like a lifebuoy to keep reason afloat in the universe of his stories. Every reader can find a new meaning in them, but none can claim to exhaust their sense. This profusion is foreign to the totalitarian order, which aims to empty out the sources of interpretation, to prevent anyone from appealing to the law in order to affirm their own subjecthood. Such a regime plunges its citizens into a world of unreason, where their survival depends upon the shifting allegiances of the authorities to whom they look for protection while exposing themselves to manipulation. Kafka makes us live this plunge, while at the same time mobilizing our freedom as reader-interpreters. He gives us the poison and its antidote simultaneously, reminding us of the irreducible aspect of humanity which in each of us resists determinism.

Thus in 'The Penal Colony', the law is applied by an 'apparatus' which, over the course of twelve hours, engraves the text of the unknown law into the flesh of the condemned, who experiences the ecstasy of deciphering its meaning in the final hours of his torture. The judge, who is also the officer and executioner, ends up taking the victim's place, hoping to convince the educated foreigner (a lawyer?) of the perfection of the machine—and, perhaps, to rejoice in at last understanding the law himself. But the apparatus frustrates his will, runs amok and kills him, without allowing him that illumination. The reader finds in this story not only the material for numerous interpretations, but the resources for critical thinking that can be applied to multiple questions. Critique of the collapse of legality in the murderous onslaught of the industrial powers, if we recall that the text was written two months after the start

⁵ 'The Problem of Our Laws', in *The Complete Short Stories of Franz Kafka*, p. 437. Translation modified.

of the First World War. Critique of the inscription of religious law in the flesh of those who know nothing of it, if—setting the story alongside certain pages of Kafka’s diary—we read it as a metaphor for circumcision. Critique of the law itself, if we see in the steel tip that penetrates the forehead of the officer a reminder of the ‘horns’ of Moses as he returned, laden with the tablets of the law, having—as Kafka wrote elsewhere—‘learned nothing about the decisive things’. Or again, critique of the ‘scientific management’ of labour, which sets workers under the deadly sway of machines, if one thinks of Kafka’s professional experience which confronted him with the death and mutilation of factory employees on a daily basis.

As so often, the work of art anticipated ideas that would not be realized in society until many years later. When the machine of the Penal Colony goes haywire, it comes off the cog-toothed wheels so similar to those that would later entrap Charlie Chaplin in *Modern Times* (1936); and it is equally designed to feed the condemned, without delaying the execution . . . Better, it can be programmed, using a coded language that cannot be read by ordinary mortals but that can carve their flesh and pierce their minds. Kafka thus made visible in the early years of the twentieth century the supplementary step in dehumanization that today authorizes ‘artificial intelligence’, by which the machine is made the seat of thought and humans are treated as programmable objects.

Having joined with these few lines the innumerable crowd of Kafka glossators, I have taken my turn to chew what a thousand mouths have chewed before me and tried to communicate the taste of that diet, well known to those in law. Expressions of a sovereign liberty, Kafka’s writings have the sort of authority that seems to call for glosses. In the final pages of *The Trial*, the priest tells Joseph K.: ‘The Writing is immutable and the interpretations are often simply the expression of the despair the commentators feel.’ Reading Kafka’s work prompts one to uphold the contrary opinion: only their interpretation allows us to rise above the despair that informs them and to share the determination of their author to denounce all forms of injustice.