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Apparatus and ethics

ABSTRACT

Many have taken up the question of ‘what is an apparatus (apparat)’ since it was posed to Foucault. In the concatenating series, Agamben is one such author who has published the work, *What is an Apparatus?*. In order to glean a clear understanding of Agamben’s work, Kafka’s *In the Penal Colony* must be addressed. In adopting a literary approach, the paradigm presented by Kohlberg on moral development can be useful when determining an appropriate readership for such works as mentioned above. By an inspection of such themes found within *In the Penal Colony* as the guest’s dilemma and capital punishment, one may be resituated, hermeneutically, with a renewed appreciation for Kafka’s work.

Keywords: Capital Punishment, Civil Disobedience, Civil Refusal, Corrective Justice, Moral Development, Pedagogy

Textual understanding is an ongoing process. As persons develop, gain new insights and knowledge, so too does their understanding of a particular text morph. Perhaps change, of an individual or collective mind, is a foremost important reason for textual revisitation. Kohlberg’s work, in particular, offers a research grounded framework for categorizing audience and readership. In his research, Kohlberg identified six stages of moral development, the later stages only being identified across a minority of individuals, with the 6th stage (a universal ethic) only observed in such well-known exemplars as Martin Luther King and Mahatma Gandhi.

A popular conception of Kohlberg’s work may find applicability to questions of legal maintainability (e.g. how likely someone is to obey a particular law), but what is arguably the most important benefit of Kohlberg’s work is the ability to identify at which stage of development an individual values human life and the nuances of evaluation at the respective stages. While Kohlberg’s work is not typically modeled in literature studies, Kohlberg himself relied significantly upon moral dilemmas in his research, which marries effectively with those dilemmas expressed in *In the Penal Colony* by Franz Kafka. Such texts as, *In the Penal Colony* or *What is an Apparatus?* by Giorgio Agamben present opportunities for revisitation through a moral framework, as offered by Lawrence Kohlberg and others, to better imagine their respective personal, interpersonal, and societal implications. Furthermore, the disposition of a reader may be understood to impede textual understanding or conversely, enhance it. Juxtaposing the above authorship amongst themselves and others will provide new insights and a theoretical readership not otherwise explicitly mentioned by the respective authorship.

1. The Guest’s Dilemma

Our point of departure, as it were, is to be found in Agamben’s work, *What is an Apparatus?*, wherein *dispositif* is translated into the English form ‘apparatus’ (Agamben, 2009). The translation is further explained by a secondary translation citing Agamben’s use of Kafka’s *In the Penal Colony* for the working translation of apparatus - derived from ‘apparat’ as found recurrently in Kafka’s work (Agamben, 2009, p.1). The apparatus most readily presents itself to the reader as one of many apparatus: “It’s a

remarkable piece of apparatus...” (Kafka, 1995, p.140). One then is immediately presented with an image of condemnation, a man who is to be executed publically by this particular apparatus.

The formation of structural power is between criminal (i.e. condemned man) and executor. The apparatus is then referred to as a machine (p.141) by which we “the readers” may grasp the technical associations thereby involved. The beauty or horror which invention may present is exemplified here by Kafka not necessarily by the application of the apparatus but rather by the positing of how one could invent such a thing, what set of elements could have anticipated such an apparatus. If we are to consider the apparatus in Kafka’s work as invention rather than innovation, it must be without referent, incommensurable with any other apparatus such as one might observe in medieval Europe’s implements of torture, reminiscent of the gibbet (Foucault, 1995); however, we should too retain the understanding that invention is oftentimes relative, for example, in that what may seem inventive to group (a) without greater exposure could be considered by group (b) to be innovative.

A bit later on we, the reader, are presented with the comparison of the apparatus to that which is “in hospitals” where the contrast is in the apparatus’ precision (Kafka, 1995, p.143). Then we observe what could be considered the last instance of torture: the commandment which the prisoner had disobeyed is inscribed upon his chest (p.144). We then read that in fact the condemned are unaware of the accusation made against them, unable to defend themselves (p.145).

Later on, Kafka expresses the importance of ought, rather than could or should, in relation to action or inaction (p.153). The expression is articulated in a xenological manner, whereby the explorer is referred to as a stranger rather than guest to the island. The consideration of the stranger’s presence (i.e. the explorer) is then considered coextensively with the disassembly of the apparatus. It is an important exchange, for it calls into question the rights of hospitality¹. Ought one, guest or stranger, be expected to act in a certain way, such actions presuming the possibility of inaction or might rather we consider the supposition of the commandant to suggest a vitiated articulation of rightness that perhaps more appropriately the commandant ought to have exclaimed ‘should’. In other words, does labeling of guest or stranger, afford such an individual privilege, or on the contrary, does such an apprehension precisely negate the possibility of inalienability? To be considered a soldier in the context of Kafka’s story carried the expectation of governing support, for any contrarian amongst the group was subject to persecution (as we know they were unprivileged to prosecution), but the stranger, exemplary of the empty set when inventing, existed without precedent. For the commandant it would not have been the explorer’s disagreement with the operations he was to admire, but rather a

¹ David Hume writes, “Strangers and foreigners are without protection: hence, in all polite countries, they receive the highest civilities, and are entitled to the first place in every company.” (Hume, 2008, p.73)

refrainment in his position as stranger which might pose the greatest risk.

After we come to terms with the explorer's opinions he imperturbably states that he "can neither help nor hinder..." (p.157) - in this moment one might consider the explorer an accomplice by not delating. The story then culminates with a promise of resurrection, redolent of a particular eschatology (p.167). Finally, the explorer is confronted with a moral dilemma of his own when departing the island, the explorer expresses the potential to assist the condemned man and soldier departing the land though acts against such opportunity. There is a moral decision-making process from the arrival to the departure of the explorer's visitation.

The explorer must first apprehend the possibility of visitation, then choose whether or not to visit, under whichever pretext and intentionality, then while visiting the choice of action or inaction, to speak or remain reticent, followed lastly by ability to aid or impede other human beings. It may be said that the explorer in Kafka's example delegates himself into a prescriptive morality. The explorer is, perhaps, a greater representation of control or governance than the apparatus itself. To administer the execution or torture of any person, to obey commands or orders, such behavior as often observed typically represents an earlier order of moral development whereat an individual's sense of responsibility is avouched by bureaucratic structures. To observe laws or regulations with an appreciation of such laws and regulations is exemplary of a further developed moral order, though with such a disposition too arises the possibility of transgression, to act beneath or beyond such legal expectations. What is so unfortunate about the explorer's choice to not assist the condemned man and soldier is that there was before him the opportunity to preserve a human life; on the other hand, if the explorer had transgressed the law, setting sail for his own lands, evading as it were the penalty of his transgression, it would nonetheless fall into an earlier order of moral development. However, if the explorer had, at the moment when the opportunity first presents itself, transgressed the law earlier in the story, thus challenging the commandant plenary position and furthermore incurring the penalty for his transgression, the explorer may have been understood to have displayed a further developed morality, although such was not the case.

We may suggest that the morality expressed by the situational characterization of Kafka's story, from where we draw our citation of *dispositif*, (*aparar/apparatus*), constrains one's discourse to a particular moral disposition. The disposition is one which functions with legal precepts. We thank Kafka for his contribution and in the spirit of Kohlberg agree, "If we attend to literature and history instead of textbook personality psychology, it appears that real moral crises arise when situations are socially ambiguous, when the usual moral expectations break down" (Kohlberg, 1981, p.188). The narrative of *In the Penal Colony* represents aptly the normal distribution which one may observe cross-culturally, or

what conforms itself to Kohlberg's 4/5 stages of moral development².

It may be worthwhile to consider the formulation of a narrative that will both hold a position of possibility for further development and be understood by the greatest number of adults. Expurgated works for children are most readily understood by adults but will not typically challenge an adult's moral disposition, whereas the narrative which meets a common moral disposition will too position itself by way of development. We might then begin to dissect further the moralistic setting by which Kafka presents *In the Penal Colony*, as so to better understand one's disposition when deploying such a citation as Kafka's in the wider discourse regarding the question, 'what is an apparatus'? We are reminded yet again that the apparatus in Kafka's work functions to implement a form of capital punishment.

2. Capital Punishment

Kohlberg (1981) provides a grounded and rigorous framework with which one may approach such ideas as capital punishment or corrective justice (Kohlberg, 1984, p.633), so fundamental to Kafka's work and by extension to both Agamben and Foucault. Kohlberg's theory of moral development situates itself in a similar manner as a glass ceiling theory, although more dynamic. The moral actor is able to apprehend a moral stage proceeding from their own (e.g. from 4 to 5) though is unable to apprehend two or more further stages, perhaps this is due to the logical requirements involved in such a theory³; however the case, Kafka's story may be said to exemplify Kohlberg's stages 4/5 of moral development (law maintaining) (Kohlberg, 1981, p.153). Whereby the transgressor in Kafka's work is not provided any procedural recourse for his crime, the form of justice expressed may be considered corrective.

One finds little possibility of an alternative to capital punishment as a corrective (rather than retributive) (Agamben, 1998, p.26) means in *In the Penal Colony*. The soldier, who is the principal in the act of transgression - witnessed by the explorer who may in his neglect to sound any alarm be considered an accessory - does so transgress in what may be said to constitute a conscientious act of refusal (Rawls, 1973, p.369). Had the explorer assisted in the exigent egress of the escapees, the explorer's act would constitute what might be understood as conscientious evasion, though one may too imagine the explorer serving a more diplomatic role, leading to the official questioning, through what might be regarded as proper channels, of such non-procedural acts of punishment, reliant upon such apparatus as might constitute torturous exhibitions. No matter the case of the explorer, what *In*

² "I have stressed as the key definition of Stage 4 that it is a law- (or rule) and-order-maintaining perspective. Other moral psychologists (Freud, Piaget) have failed to distinguish between the Stage 4 rules-and-authority-*maintaining* perspective and the Stage 1 rules-and-authority-*obeying* perspective" (Kohlberg, 1981, p.151).

³ "...one can be at a given logical stage and not at the parallel moral stage, but the reverse is not possible" (p.138).

the Penal Colony neglects to exemplify is precisely the potentiality of civil disobedience (Rawls, 1973; Kohlberg, 1981). That a person may exhibit developmental signs of moral decision-making processes is evidence of the possibility for further stage development. That a person exhibits moral considerations exemplary of further stage moral development is evidence of the potentiality for similar decisions of such stages. That Kafka neglects to present the reader with evidentiary potential consigns the thought of the reader to Kohlberg's stage 4/5 of moral development.

This consignment may be said to once more express itself in the work of Agamben. We might suggest that Agamben, by the incorporation of the Foucauldian narrative, also expresses a potentiality in edifying the reader to a moral disposition further than what *In the Penal Colony* provides. Agamben concludes his piece by stating what is supportive of Kohlberg's research in the consideration of "the Ungovernable, which is the beginning and at the same time, the vanishing point of every politics" (Agamben, 1998, p.24). One might interpret such a statement with both Kohlberg and Rawls' framework to typify the act of civil refusal rather than civil disobedience. Where both civil disobedience and refusal may suggest an actor's appreciation of human dignity and life, it is only the prior which may be said to socially hold such difficult and relatively rare occurrence.

As we pursue Kohlberg's hypothesis, which suggests not only a dynamic model of moral action but also the mobile ability to pass from one stage to successive stages of morality though without omission of intermediary stages, we may too suggest that of the many fabulae, both unwritten and accessible, concatenation of intelligibility (e.g. citation) might include such moralistic development as well. That to purpose a piece beyond the moral receptivity of one's audience is not only unreasonable, but possibly dangerous as well. Typical exemplars can be found cross-culturally in those whose causes have been misconstrued as universally just by sizable populations, quashed by governance, only to be resurged generationally.

The moment whereat one pursues the question, 'what is an apparatus,' one is confronted with a particular moral modality. If one holds an understanding, or at minimum a consideration, of Kafka's work to present itself as a prerequisite to Agamben's work and additionally, Agamben's work as consanguine with Foucault, one might imagine such neurophysiological impediments or more widely, educational (i.e. developmental) impediments which may define audience. It may be said that Agamben could not address the individual (likely a child) who is unable to appreciate the moral implications of Kafka's work. At minimum then, if one were to categorize, one might suggest that those individuals who satisfy Kohlberg's criteria for stage 3 development might engage with Kafka's work, though would not interpret further moralistic considerations beyond stage 4, likewise, Agamben's work might eagerly await an interpretation by that relatively small group of individuals who happen to meet the criteria for

Kohlberg's stage 5/6 of development.

An individual, who might appreciate such moral dilemmas as encountered in *In the Penal Colony* may constitute an exemplar not in the person necessarily, but in the decisions of such a person as Former Associate Justice of the United States Supreme Court Brennan (Kohlberg, p.293). Longitudinally, maintaining a rectitude of dissent may not be an easy task - although we may consider such a task less difficult when amongst a body of dissenters. It is true that the position of Supreme Court judge affords any number of benefits; the political correlative costs when expressing dissent, eddying from what are otherwise widely accepted values may be substantial. Qualitatively, one might imagine that the expression of informed dissent grows evermore necessary not solely in the echelons of governance, but throughout a social system, wherein the choice to act upon a stage 5 or stage 6 dilemma may significantly rely upon a secondary actor. We might imagine that an actor beyond the 6th stage, having recognized such a universal ethic would maintain self-determinacy in the instance of a moral wrong.

Additionally, there may exist significant ethnocentric trammels when passing such judgment or opinion on the matter of capital punishment. In the absence of capital punishment, what remains is the cell. Retainment of a sense of retribution fundamentally will perpetuate whichever economic interests rely upon said retribution. A side-effect then, of dissent from the widely concurred position in favor of capital punishment, reifies such figures as the panopticon, causing such institutional functions to fulfill otherwise unmet retributive demands in desuetude. Carceral predilections then foment, pressuring any other possible prescriptive means towards conformity, further reducing the possibility of deinstitutionalized rehabilitation.

There are elisions to be observed in the self-identificatory moralistic developmental process. If one were to exclaim, without an appreciation of social contractual agreements, one is acting with some higher cause or reasoning, it is precisely the abdication of one's position as citizen within the social order that unfortunately must renounce such an action. Neglect of and for one's responsibility to the social order while preserving the value of human life nonetheless fails to demonstrate further moral consideration. Fulfilling the moral task of accounting for one's actions so as to perpetuate systemic social change, towards the good, this is the void which presents itself as so difficult to address, articulate, and redress, undoubtedly due to the psycholinguistic limitations that our contemporary vernaculars permit.

3. Interrogating the apparatus

Acts of interrogation may be said to in some ways reinforce the stage of development so necessary to Kohlberg's 5th and 6th stages, while concurrently anchoring one's moral disposition towards a 4/5 stage. When one poses the question, 'what is an apparatus', one co-relatedly subscribes to the normative need

of arrestment, categorization, definition, determination, operationalization, and tractability. Language may be said to provide the means by which intentions are communicated, whether such intension is towards the good or otherwise open ended. To define a thing's haecceity is to preclude the potential of such a thing to be something else (e.g. many worlds theory or nominalism).

The intent of interrogation may be called into question, does one pose such a question as, 'what is an apparatus' eristically or is one aiming towards some maieutic good that may result in such a line of questioning. One may likewise be ignorant of a particular term, as a child developing within their respective environment agog to rationalize what such terms are, what purposes they serve, and so forth, there may be a particular innocence to the interrogatory act; is such innocence to be corrected, almost certainly. Whenever one opens a line of inquiry into any widely held congealed taboo, such sentimental abreactions are most commonly spurred. We do not mean to equate the notion of law with a social taboo, but what we do mean to understand is how one is to interrogate the very process from which it emanates reflexively by the very language with which it preserves. Would such a sense-making contingently necessitate a recuperation of sorts of the very language with which it sense-makes: what of the epistemological declarations that so readily operationalize themselves under the auspices of law; perhaps of utmost consideration, what community might thrive by such a linguistic self-awareness (e.g. that a particular *gesellschaft* might offer)⁴.

We might then applaud such texts as Kafka's which demand at minimum a particular disposition of the reader - such a disposition necessary for further considerations. If Agamben's citation and Kafka's texts were to articulate an earlier stage of moral development, one would not intentionally arrive upon such considerations of law. We might then suggest that the concatenation of Kafka with Agamben and with Foucault, provides a benchmark by which one's audience may be supposed.

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⁴ Kennedy reminds us too of the dialogues that "The importance of the dialogue is that for the first time it poses in detail the question of the morality of rhetoric in society and for the first time emphasizes the need for knowledge as the basis of communication." (Kennedy, 1994, p.38).

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