



Outlived by *a lesser shamelessness*: the inscrutable subject and sensuality before the Law in Augustine, Dostoevsky and Kafka

Arthur Willemse

To cite this article: Arthur Willemse (01 Sep 2025): Outlived by *a lesser shamelessness*: the inscrutable subject and sensuality before the Law in Augustine, Dostoevsky and Kafka, Textual Practice, DOI: [10.1080/0950236X.2025.2546298](https://doi.org/10.1080/0950236X.2025.2546298)

To link to this article: <https://doi.org/10.1080/0950236X.2025.2546298>



© 2025 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 01 Sep 2025.



Submit your article to this journal [↗](#)



Article views: 177



View related articles [↗](#)



View Crossmark data [↗](#)

Outlived by *a lesser shamelessness*: the inscrutable subject and sensuality before the Law in Augustine, Dostoevsky and Kafka

Arthur Willemse^{a,b}

^aFoundations of Law, Faculty of Law, Maastricht University, Maastricht, Netherlands; ^bFaculty of Law, University of Hasselt, Belgium

ABSTRACT

This essay sets up a constellation of Augustine, Dostoevsky and Kafka. The paper will demonstrate how for these figures, self-knowledge is compromised in related, but differing ways. How can the subject maintain their identity as categorically different from its impressions, and what is the role of law therein? For Augustine, self-knowledge becomes a problem due to the structure of time, but also because of the way in which God perceives us. Between Dostoevsky and Kafka, there is a development wherein the role of God is usurped by that of a secular law, and God's judgement is deferred. If for Dostoevsky, secular law can be an instrument of divine law, for Kafka the distinction, and more importantly the hierarchy between them, seems unsustainable. The evidence to examine these hypotheses by has to do with sensuality and sensory perception: how does the subject navigate the world? The trajectory moves from the Augustinian Christian opacity, to Dostoevsky's Raskolnikov and Kafka's *The Trial*, drawing an arc from a religious and phenomenological ontology to a modern imaginary of an existence increasingly irredeemable. Indeed, this essay joins the contemporary discussions of critically engaging with subjectivity, as a bio- and psycho-political liability.

ARTICLE HISTORY Received 20 August 2024; Accepted 8 May 2025

KEYWORDS Subjectivity; Augustine; Dostoevsky; Kafka; judgement

Introduction

'[...] Thou, in whose presence I have become a problem to myself; and that is my infirmity.'¹ Here, in his *Confessions*, in the middle of a discussion of sensuality, Augustine appears to encounter a sort of limit. Like in the famous subsequent chapter on time, subjectivity (being asked a question, being

CONTACT Arthur Willemse  arthur.willemse@maastrichtuniversity.nl

This article has been corrected with minor changes. These changes do not impact the academic content of the article.

© 2025 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

subordinate to a law) and its awareness (understanding what time is, understanding what the law is) appear to be mutually exclusive. For Augustine, being seen by God, and the certainty of ultimately being judged by him, implicates his whole sense of self. Alternatively, a more secular and deconstructive reading might come up with the argument that the act of writing his autobiography itself leaves Augustine perplexed. Crucially, the theme of sensual or sensory experience is probably the most prominent theme of this autobiography, the first in Western history.

This contribution homes in on how this dynamic between subjectivity and awareness plays out in our legal imaginaries (to borrow Charles Taylor's terminology of the social imaginary),² in particular between the Russian novelist Fyodor Dostoevsky and the Prague writer Franz Kafka,³ while drawing inspiration from the way in which these, or very similar, problems and questions are encountered by Augustine. The hypothesis is that of a developing opacity between these authors: where for Dostoevsky, legal redemption remains possible – albeit in association with religious salvation, the criminal justice system is still pivotal – with Kafka, the *aporia* appears to have become absolute.⁴ Indeed, insofar as Kafka is describing an existential question that is distinctly about modernity, it may be that the loss of the separation between the secular and the ecclesiastical, and the impossibility of having a dialectic between them, is at the base of the problem. It will be demonstrated how, despite these diverging endpoints, Dostoevsky and Kafka share a strong connection, and how in fact Kafka will often develop on a *mise-en-scène* that derives from Dostoevsky. The question of legal redemption is put in a relationship with the theme of self-awareness.

More broadly still, we can connect this theme to that of the many 'wounds of philosophy': the idea that, after Hegel, philosophy cannot be comprehensive anymore. Philosophy's inability of living with itself is a well-reported theme in contemporary European thought; Martin Heidegger's Nazism is probably the first example, and Adorno voiced it best when commencing the *Negative Dialectics*: 'Philosophy, which once seemed obsolete, lives on because the moment to realize it was missed.'⁵ In his *Critique of Cynical Reason*, Peter Sloterdijk responds to a tradition in which this autoimmune reaction is, literally, vital:

It is the critically wounded in a culture who, with great effort, find something healing, who continue to turn the wheel of critique. [...] Among the great critical achievements in modern times, sores open up everywhere: the sore, Rousseau; the sore, Schelling; the sore, Heine; the sore, Marx; the sore, Kierkegaard; the sore, Nietzsche; the sore, Spengler; the sore, Heidegger; the sore, Theodor Lessing; the sore, Freud; the sore, Adorno: Out of the self-healing of deep sores come critiques that serve epochs as rallying points for *self-knowledge*.⁶

Self-knowledge rallies around these wounds and sores of thought. In that case, knowing the self was – to modernity – never a philosophical pursuit. Instead, we can only know ourselves by the *flaws* of our philosophy: identity

as a fallacy and philosophy as the mirror that only gives a reflection by its cracks – the modern hang-up with questioning reality below its surface level is on display here, where Ricoeur's 'masters of suspicion' have left their indelible mark.

If the mystery encountered by Augustine is that of *being a problem or question to oneself*, and if this problem becomes unanswerable because, instead, the subject is known by God, and because it cannot identify with its sensuality, what is experienced through Dostoevsky and Kafka is an irrationality of the self that is announced from the law. It will be a matter, then, of exploring the following matrix: for Augustine, it is the role of sensual/sensory perception, judged against the love and faith owed to God, which leaves him in a state of not knowing the self. The dynamic here is between outside world and inner spirit. For Dostoevsky, confusingly for his hero, this dynamic takes place in a more private sphere: rather than a clearly marked distinction like Augustine's sensory perceptions with a view to the self, it is the protagonist's very psychology that is thwarting his judgement – *not perception itself but one's way of perceiving*. Kafka, then, adds another, crucial twist: not the objectivity of Augustine's perceptions – that are *out there*, and *other* –, nor the subjectivity of Dostoevsky's, but the objectivity of situation, of the world. This last element is about the way in which the aberrancy of the experiences of Dostoevsky's characters has become the very fabric of reality.

From his diaries and letters, we know how close Franz Kafka thought himself to Fyodor Dostoevsky.⁷ Indeed, the influence of the Russian author on his Jewish-Czech counterpart is often noted, particularly the connection through the theme of animality, between *Notes from the Underground* on the one hand and *Metamorphosis* and 'The Burrow' on the other hand.⁸ In a very revealing moment, from the letters to Felice Bauer, Kafka declares he has 'no literary interests, but am made of literature, I am nothing else, and cannot be anything else'.⁹ This comportment challenges the hermeneutical assumptions around the human being maintaining some transparent comportment to language. Instead, as is apparent from the letter to his fiancée, with Kafka life transforms into writing – this is the original Kafkaesque gesture, only one of which manifestations is irrational bureaucracy.¹⁰ How is the Dostoevskian inspiration manifest in Kafka's writing? How are these themes of animality and textuality connected? I will argue that another of the 'blood-brothers', to invoke a more contemporary literary lineage,¹¹ is operative here, as Heinrich von Kleist's inscrutable animal announces itself in Kafka's writing, like the mysterious creature Odradek from 'The Cares of a Family Man', a form-of-life that exceeds the law and consciousness, and that for this reason surpasses the paradox of subjectivity mentioned above. This inscrutable animal is *created* by way of a law; this is the hypothesis that I will work towards in this contribution: subjectivity is a legal construct, and it divides between human existence and consciousness.¹²

The idea here is developed by Adorno in his correspondence with Benjamin: '[...] only to a life that is perverted into thingly form [is] an escape from the overall context of nature promised'.¹³ The theoretical framework around this idea cannot be re-established here, but, fortunately, its background well known: with Giorgio Agamben's work, the creation of bare life by legal means has been explored to good detail over the last two decades, albeit that Agamben's positive thought has consistently been underappreciated. Within this constellation it is often, to some perhaps surprisingly, Kafka's role to be the indicator of the *euporia*: a life beyond legal subjectivity.

In the first section, I will go over three independent readings of Augustine's *Confessions* – the philosopher Charles Taylor, the writer J.M. Coetzee, and the theologian Rowan Williams. These readings, along with other, supporting literatures, should help me assess the way in which Augustine questions the possibility of self-knowledge. These literatures, even though they engage mutually at points, hail from very distinct regions: Taylor's *Sources of the Self* presents Augustine within the story of the development of the Western self. J.M. Coetzee is relying on Augustine in much the same way as I am here, as a writer setting the ground for a literary genre: autobiography (while I take Augustine as setting the parameters within which characters may or may not be comprehensible in fiction; a question that I will put the hypothesis of the law to). Finally, Williams's essay – more recent than the other sources utilised here –, a theological exercise, takes the measure of contemporary thinking about Augustine and the self, and intervenes on what has become a dominant and complacent interpretation of Augustine's thought.

In the second section, I will present an interpretative framework to enable the following analysis: the framework sets Dostoevsky and Kafka apart in terms of the subjectivity or objectivity of the condition of the protagonist. Kafka's *realism* is the crux here.

In the third section, I will set up a series of literary vignettes that look at a series of striking coincidences – or perhaps they are citations – between Dostoevsky and Kafka. In these vignettes, I will demonstrate how recognisable, strong Kafkaesque statements from *The Trial* have immediate forebears in *Crime and Punishment*. These relate particularly to the architecture and methodology of interrogation.

In the fourth section, I will give an analysis of the trajectory from Dostoevsky to Kafka, as well as an explanation of it in terms of its religious and legal implications. In my conclusion, I will again involve Augustine, to finish the story of how human existence is unsteadied in different ways, divine and secular, and the ensuing implications for how we think of the future.

1. Augustine of Hippo

The Augustinian riddle is that of a subject that becomes opaque to itself. How does it work? The most famous part of Augustine's *Confessions* is the confession of the theft of the pears. As a boy, Augustine and some of his childhood friends stole a bunch of pears, only to feed them to the pigs. The crime was motivated not by any simple desire for the pears – the boys simply threw away what they could not eat immediately – but by a desire for sin itself; this is how Augustine understands it.¹⁴ He explains this further: 'We were ashamed not to be shameless.'¹⁵ This is a curious statement. Obviously, the boys knew shame, but this very familiarity aroused their resentment. As if there was some imperative to live *without* shame, and those who cannot live up to it experience shame as a result. The fact that the boys chose sin out of resentment of their shame is significant; it appears like an attempt to validate the shame that they were unable to disavow. The Dutch author Willem Jan Otten, who devoted a well-known essay to his long addiction to pornography (*Het Denken is een Lust*, 1985), understands his condition as a reaction to this shame of shame:

The central tenet of the Sexual Revolution of the nineteen-sixties, when I grew up, was: thou will be ashamed of thy shame. I understood I was actually being defeated. I was something other than free: shameless, presumptuous.¹⁶

Later, in his essay on Augustine, Otten appears to complete the argument as he talks about a shattering of pride: 'And it leaves the mystery of free will, which lies at the basis of it all, intact.'¹⁷

Throughout the *Confessions*, Augustine attempts to separate the proper, of what belongs to or with him, from the improper – alien elements that jeopardise his soul. When we have separated the outer domain from the inner – the outer 'is the bodily, what we have in common with beasts'¹⁸ – the inner is identified as the soul. The difficulty, however, is more complicated because the soul is actually improper too: it is not his own, but belongs to God. In juxtaposing Augustine to Plato and his fascination with the objectivity of ideas as indicative of the Good, Charles Taylor adds: 'God is also and for us primarily the basic support and underlying principle of our knowing activity. God is not just what we long to see, but what powers the eye which sees.'¹⁹ This suggests that we cannot know ourselves, not because the self is foreign, but because *knowing* is. Categorically, knowing does not so much pertain to the remote, but is instead itself distant.

Indeed, for Taylor, the relevant rubric here is that of radical reflexivity. This means a radical reflexivity outlined in contrast with a more general reflexivity: that of turning towards this or that potential of the self (my bodily or spiritual health, for instance). Radical reflexivity, alternatively, means the turn towards the awareness of awareness, or the experience of

experience. With radical reflexivity, we are disabused of the assumption of objective qualities about my health, as we start questioning in what way *my* experience is actually *mine*.

Rowan Williams, in his foray into Augustine's work, addresses a closely related issue:

To know myself truthfully is to know a speaking being trying, in word and imagination, to come to terms with absence – the absence of God as an object, the absence of final and satisfying objects in the light of the always locally absent but universally present God, *the absence of a finished self*.²⁰

However, Williams underlines how this aspect of Augustine is left out by Taylor's emphasis on reflexivity.²¹ The literature, Williams says, has moved on from Taylor's position of a radically reflective subjectivity – that conceives 'a self whose internal self-awareness or self-interpretation comes to be increasingly beyond challenge'²² – to a self considered even less substantial: it is ontologically incomplete, and waits for God for completion. Also, Williams underlines the communal element of life as more important than Taylor's reflective and withdrawn self suggests.²³ John Cavadini states where Augustinian studies are at when he says:

So firmly is it entrenched in our contemporary understanding of Augustine that one of his most characteristic accomplishments was his pioneering exploration of something called the 'self,' so easily does this idea find an agreeable and inconspicuous familiarity in our own expectations of Augustine, that we may actually forget that Augustine does not treat this topic at all, and that the English phrase 'the self' has no equivalent in Latin.²⁴

In a very different context, in J.M. Coetzee's reading of this episode, the theft of the pears has to divide into two separate confessions; Williams's assessment appears to be confirmed. Confession entails a second element that escape the confessor, because his very subjectivity is challenged by it existentially.

Augustine's plight is *truly abysmal*. He wants to know what lies at the beginning of the skein of remembered shame, what is the origin from which it springs, but the skein is endless, the stages of self-searching required to attain its beginning infinite in number. Yet until the source from which the shameful act sprang is confronted, the self can have no rest.²⁵

Through a lineage that connects Tolstoy with Rousseau, and that culminates with Dostoevsky, Coetzee asserts that confession does not work through the self, but from without: 'True confession does not come from the sterile monologue of the self or from the dialogue of the self with its own self-doubt, but [...] from faith and grace.'²⁶

It looks as if the philosopher, the theologian and the writer agree on Augustine as this unique, unfathomable descent of questioning into the

soul – albeit that Taylor attributed to Augustine a distorted role in the development of the modern self. With this move, Augustine undermines the self: it cannot sustain itself, and in fact, it has no independent existence.

So when Augustine confesses, he is walking a fine line between two depths: one that belongs to the world, full of temptation, and one that belongs to God. To interpret this with Williams: '[...] two unfathomably elusive horizons: the mystery of the infinite God and the constantly shifting and deceptive content of our human awareness of who we are and have been'.²⁷ It is only between the two that there is something like a marginal, ephemeral subjectivity. In the case of the pears, that subjectivity has to assume responsibility for choosing evil for no good reason – for no reason whatsoever.

Because a confession refers to something confessed, Augustine's *Confessions* cannot find a *conclusion* when it becomes impossible to articulate sin altogether – as in the case of the pears. The very structure and constitution of time prevent me from asking for unconditional forgiveness. Because the human being is capable of *sinning*, besides merely wrongdoing, the work of confessing asks for more than the liminal self can sustain. Yet, importantly, it is by the evidence of sinning that we know this deeper faculty of human existence. The phenomenology here is decisive: it is in the essence of time that secure foundations cannot be established. The independent existence of my self, intimately connected with time and language, is inevitably voided.

'I guarded by the inward sense the entireness of my senses';²⁸ Augustine will at every point attempt to secure the contents of his bodily and mental experience. The Augustinian phenomenology of time brings out the inevitable failure of this challenge – or, if you will, the endeavour of trusting God instead. It will be matter of accounting for this guardian-capacity, in light of the reality of the double abyssal experience of loss – loss in terms of worldly and divine non-belonging – for the modern era with Dostoevsky and Kafka.

2. Dostoevsky and Kafka

In the following paragraphs, I expand on the Augustinian narrative to go into Dostoevsky and Kafka's lawscapes.²⁹ I do so by comparing the ways in which sensory experience is compromised with these authors, and how the skepticism about one's environment pulsates with an encounter that is no longer religious in a strict sense, but juridico-religious. Therefore, while self-knowledge with Augustine was repudiated because of our existence as creatures of God, and because of the way in which the human exists in disavowal of both divinity and the profane, secular law now joins the equation.

Margaret Church's essay on the structural similarities between *Crime and Punishment* and *The Trial* lays down some essential groundwork for the comparisons I am making here.³⁰ Like her, I hold that, in Dostoevsky's *mises-en-scène* being repeated in Kafka, their meaning is altered or developed. For this reason, here it will be a matter of unpacking of how Kafka is a critical successor of Dostoevsky. However, I disagree with Church's central thesis: '*The Trial* may be seen as a retelling of Dostoevsky's plot in terms of the inner world of the dream and of the unconscious.'³¹ Yes, Kafka stages this retelling, but not one in terms of a dreamlike unconsciousness, but in terms of stark reality.

A helpful prompt for my purposes is *Kafka and Dostoyevsky: The Shaping of Influence* by W.J. Dodd that charts the topography of Raskolnikov's room to that of Joseph K.'s.³² Dodd also sees the invasion into K.'s room as an echo of Dostoevsky's literature, which indeed abounds in characters taking the private spaces of others by storm, while he also matches the psychological description between Raskolnikov and K. More importantly, Dodd's book presents Kafka not just as sympathetic towards Dostoevsky, but as criticising or competing with him. For the point of Kafka working in a kind of synchrony with Dostoevsky, Dodd refers also to Jean Starobinski.³³ Yet Starobinski's point is how for Dostoevsky, his fiction is all about the characters, while Kafka cares only for situations:

On remarquera en revanche, chez Kafka, l'absence complète d'une psychologie du caractère. L'intérêt se porte sur le nœud complexe de la situation, et non pas sur le caractère. Les éléments psychologique sont à peine indiqués. L'inconséquence, qui apparaît par surprise dans la conduite des personnages de Dostoïevski, semble s'être étalée et dissoute uniformément dans le comportement des héros de Kafka: elle en devient invisible.³⁴

Dodd's point was how the psychologies of, for instance, Raskolnikov and K. reveal certain symmetries. Yet Starobinski makes clear that for Kafka the psychology is not at the centre of fiction: psychology is a mere function of outer, objective factors.

This notion, indicated in the aphorisms too, is a staple of Kafka-exegesis. Rebecca West posited about Kafka's 'indifference to character' and Rudolf Kassner suggests how with Kafka there is no perspective on characters other than *en face*.³⁵ This calls to mind the iconic art of the Orthodox and Catholic churches, wherein the audience is always situated in full confrontation with a view to what is represented, and indeed, Stimilli offers that Kafka's fictions should be understood as *allegories* rather than as *novels*.³⁶ The representation defies (historical and subjective) perspective, which amounts to saying that the fiction asks of no one to empathise with a character: Kafka presents his situations squarely, and there is no effort to make this situation more plausible by developing the angle from which one approaches it.

That the subject cannot trust itself is a motif expanded dramatically between Dostoevsky and Kafka. Where for Dostoevsky such unreliability is an idiosyncrasy of the subject – something about Raskolnikov, undoubtedly indicative of nineteenth century Russia, but depending on his psychological constitution nonetheless –, for Kafka duplicity is a general feature of modern society. Starobinski's intuition appears a valid one. Mind that the modulation here is not that contemporary society cannot be trusted; instead, the subject cannot trust itself in society. This is an important point for our itinerary. So, if in Enlightenment thought law must be transparent,³⁷ here the hypothesis is examined that this law leaves the human being opaque. Indeed, one of Kafka's strongest themes is animality – the creature that is impervious to itself and that therefore, with Kleist, cannot be misled: 'The bear's solemnity robbed me of my presence of mind.'³⁸ In what follows, it will be explained how the shifting interiors of justice and judgement play into this conclusion in different ways for Dostoevsky and Kafka. Finally, there are juridico-theological implications regarding the conception of justice that require unpacking, and which will allow me to return to Kleist in my conclusion.

3. Sensory vignettes

a. Displacement of self: official spaces

Crime and Punishment entertains many different storylines; *The Trial* is laser-focused on the travails of K.; *Crime and Punishment* is hyperbolic, *The Trial* is understated.³⁹ *Crime and Punishment* is Dostoevsky's first in a sequence of great novels; *The Trial*, however, was never finished. Despite these being wildly different novels in terms of size, range, and style, there is a remarkable sense of overlap between *Crime and Punishment* and *The Trial* and many of Kafka's gestures appear like deliberate and concentrated citations from Dostoevsky. An early striking concurrence is that of the description of the police station in Dostoevsky, with Kafka's courtroom. Both reveal a strong *economical* atmosphere. Rather than being presented as imposing, official buildings, they are like farmhouses where life, raw or unshaped, abounds. The presence of workers, women and children illustrates this, as do the low ceilings, the stuffiness of the quarters, and ubiquity of food and food smells. Incredibly, the following statement is from *Crime and Punishment*, not *The Trial*:

The staircase was narrow, steep, and covered in dirty dishwater. The kitchens of all the apartments on all four floors opened onto this staircase and remained open almost all day long. As a result, it was terribly stuffy. [...] Some peasants were waiting inside. The stuffiness there was also extreme. [...] The rooms were all tiny and had low ceilings. Terrible impatience pulled him farther and farther in. No one took any notice of him. Some clerks were sitting and writing in the second room, dressed only a little bit better than he was, and they were all

strange-looking. [...] The clerk looked him over, but without any curiosity. He was a particularly disheveled fellow with a steadfast look in his eyes.⁴⁰

In *The Trial*, there is a very similar description of Joseph K.'s entry to the courthouse:

As he went up, he got in the way of a lot of children who were playing on the stairs and gave him angry looks as he passed through their line. [...] almost all the doors were open and the children were running in and out. In general they were small rooms with a single window, in which the cooking was also done. [...] Some women had babies in their arm and were working at the stove with their free hand. The busiest at running to and fro were adolescent girls, who appeared to be wearing nothing but pinafores. In all the rooms the beds were still being used, occupied by people who were sick, or sleeping, or lying on them fully clothed.⁴¹

Economical refers to the household. This is what these supposedly official buildings are in the fictions of Dostoevsky and Kafka. Rather than a sphere wherein the subject is ruled over by a sovereign power, life has usurped these rooms, has taken over completely – with in Kafka's case the added presence of children, and scantily dressed girls. The distinction that remains here is that K. – a senior clerk in a bank – would have been impeccably dressed, while Raskolnikov is a college-dropout and a pauper. Yet the overlap is remarkable: what has become a staple of Kafka-readership – the focus on uncomfortable stuffy spaces and their torturously low ceilings – is anticipated here in an obvious way.⁴²

b. Unsettling of self: interrogations

The way in which the police commissioner Porfiry Pétrovich sees right through Raskolnikov, but remains himself absolutely inscrutable, continues a lineage from Kleist's writing. Kleist's renowned essay 'The Puppet Theater' provides unforgettable examples of how consciousness obscures perception:

'And what advantage would these puppets have over living dancers?' 'What advantage? First of all, my friend, a negative one, namely, that they would always be without affectation.'⁴³

The reader of *Crime and Punishment*, whose impressions are most often Raskolnikov's – so thoroughly occupied with himself – hardly ever gets an objective view of how the protagonist is actually regarded by the people around him. Even if there are scenes wherein Raskolnikov is absent, the reader's knowledge about the police investigation is always exclusively identical to his. Because of this, the reader has to accompany Raskolnikov as he descends his Gorgon. From the psychology to the situation, this itinerary is connected to the more general theme that connects Dostoevsky and Kafka: that of the opaqueness of consciousness – the way in which the subject turns

impenetrable *before the law*.⁴⁴ In this paragraph, I want to look at the ways in which police and court hearings undermine the self in Dostoevsky and Kafka, a very strong resonance between whom manifests in the proto-Kafkaesque character of Porfiry Petrovich:

‘Yes, yes, yes! Don’t worry! There’s no hurry, no hurry at all, sir,’ muttered Porfiry Petrovich, pacing back and forth around the table, but seemingly without any objective, as if hastening first to the window, then to the bureau, then back to the table, first avoiding Raskolnikov’s suspicious glance, then suddenly stopping in one place and staring directly at him. His small, plump, round figure, like a ball rolling in various directions and bouncing off all the walls, seemed very strange indeed.⁴⁵

[...] if I, for instance, consider someone guilty of committing a crime, why, I ask you, would I want to alarm him prematurely, even if I had definite evidence against him, sir? For example, I’m obliged to arrest one person sooner, but someone else has a different character, sir; so why shouldn’t I let him gallivant around town, sir, haha! [...] if I were to put him in jail too soon, then I’d be giving him moral support, so to speak, ha-ha! [...] if you lock someone up before it’s time – even if I were convinced that it was him – I might be depriving myself of the means of further exposure, and why? Because I’d be giving him a definite position, so to speak, defining him psychologically and reassuring him, and he’d retreat from me into his shell: he’d understand at last that he was being accused of the crime.⁴⁶

These two quotations about Petrovich anticipate Kafkaesque characters. First, Petrovich’s unrestrained animality is brought out: quite literally, he is maniacally bouncing off the walls. Indeed, this refers back to Kleist, though without the noble romanticism of Kleist’s animals that are ‘natural’ and unaffected by conscious awareness. Kafka’s animals are, it seems, always already overcome by their own energetic nature and awareness.⁴⁷ The literature is replete with analyses on this point.⁴⁸

Another prominent factor is Petrovich’s forensic science. This appears a matter of sitting and waiting for Raskolnikov to confess on his own accord: apparently, there is a right ‘moment’ for apprehending the suspect and that moment is about them individually.

Both these features can be found in Kafka’s *The Trial*. The behaviour of various secondary characters have animalistic connotations, for instance the student that K. argues with in the fourth chapter:

‘no, no, you’re not having her,’ and, with a strength one would not have expected in him, he picked her up and ran with her to the door, his back bent, and looking up to her with a tender expression on his face.⁴⁹

There are also moments when this animal behaviour morphs into something far stranger, for instance K.’s discovery of the men arresting him earlier, Franz and Willem, thrashing each other in a closet. The animalistic focus is a well-known connection between Dostoevsky and Kafka.

Petrovich's forensics anticipate, at a more cerebral level, one of *The Trial's* most documented motifs: 'The court does not want anything from you. It receives you when you come and dismisses you when you go.'⁵⁰ Petrovich, in his own way, is voicing the same procedural conviction to Raskolnikov in the previously cited statement: 'why, I ask you, would I want to alarm him prematurely'. Admittedly, Petrovich is speaking about police investigations rather than court proceedings. Yet he is talking about finding out the truth about a crime, not through active police-work, but by patiently waiting for the suspect to surrender himself. Indeed, in *Crime and Punishment*, Petrovich represents the state, as the courts do in *The Trial*.

c. Losing of time and self: unconsciousness

Furthermore, there are temporal resonances between *Crime and Punishment* and *The Trial*: both protagonists arrive late to an essential hearing, and both of them experience faintness at their hearings. In K's case, he is summoned to a hearing on a Sunday, though he does not know the exact time at which he is due. Keen to get there early, he does end up dallying, and is told: 'You should have been here an hour and five minutes ago [...]'.⁵¹ Raskolnikov has a similar experience: 'You were told to come at nine o'clock and it's now already past eleven!'⁵² Moments later, he faints:

Raskolnikov took his hat and headed for the door, but he never made it that far ... When he came to, he saw that he was sitting on a chair, that some person was supporting him on the right, that another man was standing on his left holding a yellow glass filled with yellowish water [...].⁵³

For K., the moment of faintness comes only when the hearing has ended:

You feel slightly dizzy, don't you?' she asked. Her face was quite close to him now, it had the severe expression some women have when they are young and at their most beautiful. 'There's no need to worry,' she said, 'it's nothing unusual, *almost everyone has an attack like that the first time they're here*'.⁵⁴

So K. does not quite pass out, like Raskolnikov did. It is almost as if the girl in the scene is referring to Raskolnikov's loss of consciousness half a century before, or, this is *not the first time* K. is here, if he came before in the guise of Raskolnikov. Indeed, K. puts up a far stronger defense, and more confident for sure, compared to Raskolnikov.⁵⁵ It is as if the impact of the scene is made weaker deliberately. While Dostoevsky presents us Raskolnikov's singular condition, K. – the anonymous – becomes a lens to see a universal condition. The reading also has the advantage of explaining the differences between K. and Raskolnikov: K. is not a pauper, like Raskolnikov. K. is a paradigm of modern existence. The paradox of the example applies here: the example is excluded to the extent that it is included.⁵⁶

Another remark about the fact that K. does not faint, under the rubric of a loss of self, would be that it is arguable that K. has always already lost his self. While for Raskolnikov it is true that he loses consciousness in the police station, and then has to wake up and the scene is still going on, within the context of Kafka's writing, that kind of interval may be unnecessary, or even impossible. From the outside, Raskolnikov enters a nightmare, from which unconsciousness is a brief escape. K.'s entire existence is, in a sense, uninterrupted. In this regard, Kafka offers brief parables, within the novel, that bring out particular aspects of the story.

4. Opaque subjectivity

The development from *Crime and Punishment* to *The Trial* outlined above continues when our insight into the character's mental states is involved. This too is implied in Starobinski's formula. Where for Raskolnikov there is a gradual and floundering resolving of a choice or dilemma, for K. that difficulty is posited as always already objective. Objective here means: it was never about K. in particular, it was never about this or that subject. So while for *Crime and Punishment* the story is overwhelmingly character-driven, *The Trial* takes the theme and strips it of these particularities.

As said, Raskolnikov's condition is idiosyncratic, particular to him. *Crime and Punishment* is a highly compelling book, because it manages to make the reader identify with a character who makes irrational choices; because we are privy to Raskolnikov's psychology at an intimate level, these choices feel like ours. Raskolnikov is unreliable because he is, as his name indicates, 'raskol' or *раскол*, cleaved apart. *The Trial* goes into the opposite direction entirely: it is often alienating to the reader to have to sympathise with K.'s irrational decisions, in an irrational world.

Goldstein's analysis brings out a beautiful connection, by way of the figure of the midwife, from Socrates to Petrovich, to Dostoevsky himself, while also connecting the figures of the police officer with that of the priest: 'It is clear that to accomplish his roles of spiritual guide, midwife, and police investigator, Porfiry has to be a rather oxymoronic figure, the figure that embraces all possible contradictions' – the protean nature of Petrovich.⁵⁷ Indeed, this protean element is attributed to Dostoevsky's oeuvre at large, for instance by Willem Jan Otten, who states:

Dostoevsky, with his ten-thousand pages long *Russian Library*, is an encyclopedist. He created a character for every single possibility of unbelief, and put them in all conceivable scenarios – knowing that where meaning is concerned (or its heroic rejection) there is no such thing as ideas in isolation. They only matter as practice, behavior, choice.⁵⁸

If Raskolnikov is fundamentally divided, Petrovich, whose existence is purely instrumental, is the hinge on which he turns. The midwifery-metaphor informs Golstein's reading of the novel altogether, and this resonates with the Christian idea that Dostoevsky presents here. There is something to be found at the other end of suffering: 'Porfiry's purpose is not just to catch Raskolnikov, and not just to debunk him by challenging his intellectual, emotional, and moral defenses, but rather to facilitate the rebirth of a new man, a new Raskolnikov.'⁵⁹ Such turning moment appears entirely absent from *The Trial*.

Conclusion

The eclipse of the self occurs obviously within an experience of religious uncertainty, or of religious seeking – Augustine and Dostoevsky provide ample evidence for this: a sense of self cannot be had by way of the world. My hypothesis is that the encounter with a law, too, disallows the self, and that there is a development to be assessed from Dostoevsky to Kafka, for the latter of whom the *aporia* becomes absolute. Yet, *The Trial* begins with that well-known sentence, 'Someone must have been telling tales about Josef K., for one morning, *without having done anything wrong*, he was arrested.'⁶⁰ If K. has done nothing wrong, why would he not be able to know or trust himself? Kafka's obsession with the letter K. has attracted much speculation.⁶¹ From Kafka's diaries, the following is indicative: 'I find the letter K offensive, almost nauseating, and yet I write it down, it must be characteristic of me.'⁶² Davide Stimilli, in his contribution on the epistemology of character in literature, has offered the association with the Latin *kalumnia*, meaning slander.⁶³ As Agamben explains: 'In Roman law, in which prosecution had a limited role, slander (*calumnia*, in old Latin *kalumnia*) represented so serious a threat for the administration of justice that the false accuser was punished by the branding of the letter K (the initial of *kalumniator*) on his forehead.'⁶⁴ Agamben's essay on self-slander as the essential gesture of law, by token of which the human being becomes implicated in law in the first place: 'Indeed, the accusation is, perhaps, the juridical "category" par excellence (*kategoria*, in Greek, means accusation), that without which the entire edifice of the law would crumble: the implication of being in the law.'⁶⁵

Following Adorno's suggestion of a thingly life, a life without subjectivity, the modality of Kleist's creatures has been in the background:

[...] when knowledge has likewise passed through infinity, grace will reappear. So that we shall find it at its purest in a body which is entirely devoid of consciousness or which possesses it in an infinite degree; that is, in the marionette or the god.⁶⁶

Agamben locates the moment where distinctions between trial and punishment and between torture and truth cease to make sense. Self-slander is a

necessity, in Agamben's thought, to *remove* oneself from the scope of law – this might mean that self-slander is a symbolic act that evinces one's autonomy: I can only be free of the law, the signature move of which is accusation, when I accuse myself. Only when I accuse myself of this or that misdeed *before anyone else does*,⁶⁷ may I be free of suspicion. Or better: it is only when my guilt becomes manifest at the surface – as self-accusation – that I can be free of the law.

In *Crime and Punishment* Raskolnikov was a troubled character. This was true at the beginning of the novel. Yet his inability of understanding himself can be identified as resulting from his encounter with the law, from his becoming a murderer. With *The Trial*, it is different. In the case of this novel, the cause of the encounter with the law occurs prior to the event of the story. Its occurrence is always already presupposed, in fact, it is the transcendental condition for the story to take place: 'Someone must have been telling tales about Josef K.' All of K.'s strategic mistakes and his irrationalities are occasioned by this moment. There is nothing left of him that is *his*. For Raskolnikov, the same holds, with the difference that he is saved by Sonya, and by his love for Sonya. Redemption for K. comes only as the slightest possibility, that enigmatic figure that K., perhaps sees during the scene of his execution.

Kafka's genius is to have placed God in a closet – to have made the scullery and attic the theological place *par excellence*. But his greatness, which flashes forth only rarely in the gestures of his characters, is that he decided at a certain point to renounce theodicy and forego the old problem of guilt and innocence, of freedom and destiny, in order to concentrate solely on shame [...] only by saving for humanity at least its shame, did Kafka recover something like an ancient bliss.⁶⁸

In Agamben's reading, K. is not trying to clear his name, but, exactly on the contrary, attempting to liberate his sense of shame: 'It seemed as if his shame would live on after him.'⁶⁹ Agamben has on other occasions too attributed unexpected strategies to Kafka's characters (like to the Man from the Country, in *Homo Sacer*). Admittedly, exegetically such interpretations can appear as speculative. Yet they do chime with a dimension of his work that has always had prominent advocates.⁷⁰ The notion of shame ties in to my introduction, the care for shame in Augustine, the uninhibited being of Kleist's animals. Augustine consistently attempted to 'guard by the inward sense the entireness of [his] senses'.

So much of modern and liberal thought has been devoted to *developing* the subject and subjectivity. Yet in this age of late secularism, we find more and more how subjectivity – us being removed from ourselves – is a political and metaphysical disadvantage and liability. Agamben, as well as Byung-Chul Han, have made important contributions to this philosophical

theme, and it has been anticipated by Horkheimer and Adorno's *Dialectic of Enlightenment*.⁷¹ Augustine, Dostoevsky and Kafka demonstrate these weaknesses, and show us how the individual intent on understanding and defending subjectivity, can ultimately be left behind.

Above, I have explored a matrix of subjectivity, by way of a constellation of Augustine, Dostoevsky, and Kafka. In this constellation, subjectivity is undermined repeatedly. If for Augustine the unsustainability of sensory perception is key to the unravelling of subjectivity, and importantly, this is a religious insight, for the modern writers Dostoevsky and Kafka this occurs through their protagonists' run-ins with the law. Antithetical to this matrix, runs the vector of shame and shamelessness. It is the subject's predicament to live in *shame not to be shameless*; indeed, this appears to be the best indicator of any subjectivity at all. It is Augustine's original insight that means to move back to a prior shame that is taken up once again by Kafka. A fine example of philosophical archaeology, the methodology elaborated by Agamben evinces its special fecundity regarding questions of politics and existence for our era.

Notes

1. Augustine, *Confessions*, Book X, XXXIII, p. 50.
2. Charles Taylor, *A Secular Age* (Cambridge: The Belknap Press of Harvard University Press, 2007), p. 146: '[...] the way that we collectively imagine, even pre-theoretically, our social life in the contemporary Western world'.
3. Franz Kafka, a Jewish citizen of Bohemia – part of the Austro-Hungarian Empire – can best be introduced as a Prague writer, as he lived in what is today the Czech Republic and wrote in German.
4. Kafka's *The Trial* is aporetic in another sense as well: it is an unfinished work, recomposed by his friend and editor Max Brod. See Reiner Stach, *Kafka: Die Jahre der Entscheidungen* (Frankfurt am Main: Fischer Verlag, 2002), p. 538: 'Was allzu fragmentarisch war, ließ er [Brod] weg oder verbannte er in den Anhang späterer Ausgaben, das Übrigen ordnete er nach Gefühl. Auf so profane Weise entstand schließlich der Text, über den Generationen von Exegeten sich beugten, als handele es sich um eine Offenbarung.'
5. Theodor Adorno, *Negative Dialectics* (New York: Continuum, 1983), p. 3.
6. Peter Sloterdijk, *Critique of Cynical Reason* (Minneapolis: University of Minnesota Press, 1987), p. xxxvi. Emphasis added.
7. '[...] the four men I consider to be my true blood-relations [...]', Grillparzer, Dostoevski, Kleist, and Flaubert [...]. Franz Kafka, *Letters to Felice* (New York: Schocken Books, 1973), p. 445, September 2, 1913.
8. María José Falcón y Tella, *Law and Literature* (Leiden: Brill | Nijhoff, 2016), p. 168.
9. Franz Kafka, *Letters to Felice*, p. 304.
10. See Walter Benjamin, *Gesammelte Briefe; V.4, 1931–1934* (Frankfurt am Main: Suhrkamp, 1998), p. 479: 'In dem Versuch der *Verwandlung des Lebens in Schrift* sehe ich den Sinn der "Umkehr," auf welche zahlreiche Gleichnisse

- Kafkas—von denen ich “Das nächste Dorf” und den “Kübelreiter” herausgegriffen habe, hindrängen.’ Emphasis added.
11. ‘The literature of the 21st century’, [Roberto] Bolaño proclaimed, ‘will belong to Neuman and a few of his blood brothers’. *The New York Times*, April 17, 2014.
 12. For an analysis of the animal’s legal and theological construction, see Arthur Willemse, ‘Paradise Lost in Derrida and Agamben: Onto-Theology of Animal Life’, *International Journal of Philosophy and Theology*, 85.5 (2024), pp. 268–87.
 13. Theodor W. Adorno and Walter Benjamin, *The Complete Correspondence, 1928–1940* (Cambridge, Mass.: Harvard University Press, 1999), letter of 17 December 1934, p. 69. Cf. ‘Anders gesagt, bloß dem dinghaft verkehrten Leben ist das Entrinnen aus dem Naturzusammenhang versprochen.’ Theodor W. Adorno, *Briefe und Briefwechsel I: Theodor W. Adorno, Walter Benjamin 1928–1940* (Frankfurt am Main: Suhrkamp, 1994), p. 93.
 14. Augustine, *Confessions*, Book II, IV, p. 9.
 15. *Ibid.*, II, IX, p. 17.
 16. Willem Jan Otten, *Waarom Komt U Ons Hinderen* (Amsterdam: Van Oorschot, 2006), p. 7. My translation.
 17. *Ibid.*, p. 119. My translation.
 18. Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Cambridge University Press), p. 129.
 19. *Ibid.*.
 20. Rowan Williams, *On Augustine* (London: Bloomsbury, 2016). p. 5. Emphasis added.
 21. *Ibid.*, p. 22.
 22. *Ibid.*
 23. Taylor reportedly has moved with this development in the literature, see: John Milbank, ‘From Sovereignty to Gift: Augustine’s Critique of Interiority’, *Polygraph: An International Journal of Culture and Politics* 19/20, p. 198, n56. Indeed, his endorsement of Martha Nussbaum’s position in *A Secular Age* (2007, p. 278) suggests as much.
 24. John C. Cavadini, ‘The Darkest Enigma: Reconsidering the Self in Augustine’s Thought’, *Augustinian Studies*, 38.1 (2007), p. 119.
 25. J.M. Coetzee, ‘Confession and Double Thoughts: Tolstoy, Rousseau, Dostoevsky’, in *Doubling the Point: Interviews and Essays* (Cambridge: Harvard University Press, 1992), p. 251. Emphasis added.
 26. *Ibid.*, p. 291. The emasculation of self-knowledge is a strong theme in Coetzee’s fiction too, from *Waiting for the Barbarians*, through *Disgrace*, and including the semi-autobiographical books *Boyhood*, *Youth*, and *Summertime*. Indeed, the other side of this equation is brought out in the *Childhood of Jesus*-trilogy.
 27. Williams, *Augustine*, p. 21.
 28. Augustine, *Confessions*, I, XX, p. 31.
 29. I would like to thank the students of the MaRBLe-course Law in Historical Fiction of the academic year 2022–23, Maastricht University, for considerably improving and expanding on this overview.
 30. Margaret Church, *Structure and Theme ‘Don Quixote’ to James Joyce* (Columbus: Ohio State University Press, 1983), p. 121. Church’s essay traces the structural repetitions between Crime and Punishment and The Trial. A remarkable

find here is the repeated use of the house painter: in Dostoevsky's book, the first suspect of the murder is a painter, while K. is asked, upon entering the courtroom, whether he is a painter.

31. Ibid., p. 106.
32. W.J. Dodd, *Kafka and Dostoyevsky: The Shaping of Influence* (New York: Palgrave Macmillan, 1992), p. 114.
33. Dodd, *Kafka and Dostoyevsky*, p. 111.
34. Jean Starobinski, 'Kafka et Dostoïevski', *Obliques*, no. 3 (1973), p. 42.
35. 'Zum letztenmal Psychologie!,' see Franz Kafka, *Die Zürauer Aphorismen* (Frankfurt am Main: Suhrkamp, 2006). Rebecca West, *The Court and the Castle: Some Treatments of a Recurrent Theme* (New Haven, CT: Yale University Press, 1957), p. 301. Rudolf Kassner, 'Stil und Gesicht. Swift, Gogol, Kafka', *Merkur*, 8 (1954), pp. 737–52, 834–45. Both sources are cited from Davide Stimilli, 'Secrecy and Betrayal: On Kafka and Welles', *CR: The New Centennial Review*, 12.3 (Winter 2012), pp. 91–114.
36. Stimilli, 'Secrecy and Betrayal: On Kafka and Welles', p. 95.
37. Randall Lesaffer, *European Legal History: A Cultural and Political Perspective* (Cambridge: Cambridge University Press, 2014), p. 403: 'During the second half of the eighteenth century, France's economy went through a process of modernisation. A growing number of the elite, coming from all three estates, involved themselves with commercial, industrial, maritime and colonial activities and investments. Many fell under the spell of the Enlightenment and proposed a reform and rationalisation of government, the tax system and the law which would bring more unity, transparency and efficiency.'
38. Heinrich von Kleist, 'The Puppet Theater', *Salmagundi*, no. 33/34 (Spring-Summer 1976), DANCE, p. 87.
39. See for an example of what I mean the conclusion to George Steiner's introduction: 'The Court wants nothing of you. It receives you when you come and dismisses you when you go.' The formula comes deliberately close to being a definition of human life [...] Who but Kafka could have put it in so few words?' George Steiner in Kafka, *The Trial* (New York: Everyman's Library, 1992), p. xviii. On Dostoevsky, my assertion refers to the element of polyphony in his work, which has been widely documented since Bakhtin's *Problems of Dostoevsky's Poetics*: 'A plurality of independent and unmerged voices and consciousnesses, a genuine polyphony of fully valid voices is in fact the chief characteristic of Dostoevsky's novels.' See Mikhail Bakhtin, *Problems of Dostoevsky's Poetics* (Minneapolis: University of Minnesota Press, 1984), p. 6.
40. Fyodor Dostoevsky, *Crime and Punishment*, trans. Michael R. Katz (New York: Liveright Publishing Company, 2018), p. 98.
41. Franz Kafka, *The Trial*, trans. Mike Mitchel (Oxford: Oxford University Press, 2009), p. 30.
42. Spike Jonze's movie *Being John Malkovich* (1999) made this a crucial set-piece, when John Cusack's character finds a job at floor 7.5 of the Mertin-Flemmer building. The self-estrangement that comes with working within these confines has strong Kafkaesque connotations.
43. von Kleist, 'The Puppet Theater', p. 85.
44. There is another intuition of this, that I cannot follow up in full here, in the *Dialectic of Enlightenment*. In the excursus on Odysseus, Horkheimer and Adorno intimate that the cyclops Polyphemus, a lawless brute, turns cruel

- only upon encountering Odysseus. Indeed, it is because Odysseus's 'cunning' (*list*) that draws Polyphemus into a battle of wits that leaves him blinded. See Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford, CA: Stanford University Press, 2002), pp. 50–2.
45. *Crime and Punishment*, p. 313.
 46. *Crime and Punishment*, pp. 316–17.
 47. See Vladimir Golstein, 'The Detective as Midwife in Dostoevsky's *Crime and Punishment*': '[...] Porfiry Petrovich does appear as an uncanny figure, as someone who is less of a character and more of a device.' *Dostoevsky Beyond Dostoevsky: Science, Religion, Philosophy* (Brighton, MI: Published by Academic Studies Press, 2019), p. 1934.
 48. See for instance Eric L. Santner, *On Creaturely Life* (Chicago, IL: Chicago University Press, 2009). Marc Lucht and Donna Yarri, *Kafka's Creatures: Animals, Hybrids, and Other Fantastic Beings* (Lanham, MD: Lexington Books, 2010). Brendan Moran and Carlo Salzani, *Philosophy and Kafka* (Lanham: Lexington Books, 2013). Naama Harel, *Kafka's Zoopoetics: Beyond the Human-Animal Barrier* (Ann Arbor: University of Michigan Press, 2020). Hoang To Mai, 'The Critical Perspective of Animals in Some of Franz Kafka's Works', *Comparative Literature: East & West*, 6.2 (2022), pp. 166–78.
 49. *The Trial*, p. 46.
 50. *The Trial*, p. 160. These words appear just behind the following, in terms of the research they have generated: 'No one else could be granted entry here, because this entrance was intended for you alone. I shall now go and shut it' (p. 155), and their precursors: 'I have to close the door after you, no one else is allowed in.' 'Very sensible', said K., 'but it's too full already'. However, he still went back in' (p. 31).
 51. Kafka, *The Trial*, p. 32.
 52. Dostoevsky, *Crime & Punishment*, p. 100.
 53. *Ibid.*, p. 107.
 54. Kafka, *The Trial*, p. 53. Emphasis added.
 55. This is a lineage that continues with Kafka's *The Castle*, wherein the hero takes the offensive.
 56. Gert-Jan van der Heiden, *Ontology after Ontotheology: Plurality, Event, and Contingency in Contemporary Philosophy* (Pittsburgh, PA: Duquesne University Press, 2014), p. 10–11.
 57. Golstein, 'The Detective as Midwife', p. 298.
 58. Willem Jan Otten, *Waarom Komt U Ons Hinderen?*, p. 54. My translation.
 59. Golstein, 'The Detective as Midwife', p. 301.
 60. *The Trial*, p. 5. Emphasis added.
 61. Stimilli, 'Secrecy and Betrayal: On Kafka and Welles'.
 62. Franz Kafka, *Diaries 1910–1923* (New York: Schocken Books, 1948), 27 May 1914; George Steiner, 'K'. *Language and Silence: Essays 1958–1966* (London: Faber & Faber, 1967), p. 148.
 63. Stimilli, 'Secrecy and Betrayal'. Endnote 4.
 64. Giorgio Agamben. 'K', in *Nudities* (Stanford, CA: Stanford University Press, 2010), p. 20.
 65. Agamben, 'K', p. 15.
 66. Von Kleist, 'The Puppet Theater', p. 88.
 67. Here is an obvious avenue into Levinas' take on Dostoevsky's Zosima, 'guilty, for everything and everyone'. I will not explore this further here.

68. Giorgio Agamben, *The Idea of Prose* (Albany: SUNY Press, 1995), p. 85.
69. Kafka, *The Trial*, p. 165.
70. See Antonio Negri, 'The Discrete Taste of the Dialectic', in Matthew Calarco and Steven DeCaroli (eds), *Giorgio Agamben: Sovereignty and Life* (Stanford, CA: Stanford University Press, 2007), p. 117. See also Anke Snoek, *Agamben's Joyful Kafka: Finding Freedom Beyond Subordination* (London: Bloomsbury Academic, 2012). Ype de Boer, *Agamben's Ethics of the Happy Life Beyond Nihilism and Morality* (London: Bloomsbury Academic, 2024).
71. Agamben's *Homo Sacer*-series is the best example here. Byung-Chul Han has elaborated on this theme in his *Psycho-Politics: Neoliberalism and Technologies of Power* (London: Penguin, 2017). The *Dialectic of Enlightenment* discusses the self and subjectivity as Enlightened constructions.

Acknowledgements

I would like to thank Paul Davies of Sussex University for our conversation on the topic. Also, I am grateful to Agustín Parise and the students of the Law in Historical Fiction course at Maastricht University Law Faculty. I would like to thank Emilie Sitzia and Elene Kadagidze and the team of the Senses-Based Learning Comenius Leadership Project for their support. Finally, I would like to acknowledge the two anonymous reviewers for their valuable comments and questions.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by Senses-based learning | NRO [405.21865.709].