‘If enlightenment philosophy’s “wild fantasy” of “moral improvement” and universal humanity, of the fostering and protection of human rights, progress, universality is everywhere ridiculed, […] this is because—some would say—these concepts are responsible for bringing about the very disasters they pretend to ward off,’ writes Joan Copjec.¹ When her next sentence continues with a comment on the voluntary acceptance of ‘enslavement to “just” causes […] that have demanded the torture and execution of those who opposed them’, her invocation of the assumed complicity of enlightenment philosophy to contemporary woes seems to refer to the paradoxical practice of human rights ‘interventions’ such as the Kosovo war and ‘just’ wars such as the one in Iraq (now retroactively also rebranded as a humanitarian intervention). Her ‘polemical’ adversaries, however, turn out not to be Blair and Bush, but rather the ”poststructuralist” or “deconstructionist” turn in ethics which endeavors to discourage every utopian idea on the grounds that any practical action is by its very nature compromised’.² This turn, she says, implicates Kant’s moral law in the creation of the inevitable conditions for totalitarian bureaucratic terror.³ In final analysis, she concludes, this ‘incoherent’ interpretation leads to the proscription of action as itself unethical.

This poststructuralist position, as sketched by Copjec, seems close to what Nietzsche describes as passive or reactive nihilism, which is, in Alenka Zupančič’s words, ‘the dictatorship of the reality (principle): no great idea is really worthwhile; there is nothing fundamental that one can do or change.’⁴ It is a will not to will, rather than, the active nihilist’s will to nothingness. Nietzsche sometimes implicitly describes the relation between these two kinds of nihilism as a relation of consequence, that is to say, active nihilism leads to passive nihilism when it exhausts itself.⁵ This image mirrors the ascent of poststructuralism, which is born out of a disillusionment with large scale socialist utopias—from Futurism to Situationism and Bolshevism to Maoism, all active nihilisms which propose to destroy this world and built a new (better) one on its ruins.⁶ At other times, Nietzsche describes the two forms of nihilism as mutually co-dependant, that is to say, as sustaining the mortifying logic of either/or.⁷ This, In its turn, would mirror the present
situation which sees the poststructuralist position increasingly under pressure from a new philosophical paradigm, disillusioned by exactly the supposed political deadlock offered by poststructuralism, calling instead for a renewal of utopic activism.

In an attempt to step out of this false opposition, I want to focus on the concept of ‘resistance’. This concept has, I will argue, from Kant’s implicit conceptualization up until the various contemporary responses to Herman Melville’s 1853 story of ‘Bartleby, the Scrivener: A Story of Wall-street’, been a notion that has evaded the logic of either/or. It forges, rather, a path for an ethics of resistance outside the dualism of active and passive.

Kant’s implicit notion of resistance refuses the passive/active opposition from the start:

In a constitution so organized that the people, through its representatives (in parliament), can lawfully resist the executive and its representative (the minister) […] nevertheless no active resistance […] but only a negative resistance, i.e. refusal of the people (in parliament) is provided and permitted, not always to comply with the demands which the government allegedly finds necessary for the administration of the state; rather, were [the people always to comply], it would be a sure sign that the people is corrupt, its representatives venal, and that the head, in the government through his ministers, is despotic, the latter himself however a traitor to the people.

It is interesting that Kant uses the term negative resistance rather than the opposite of the prohibited active resistance. This runs parallel to an exposition of the ‘real’ (rather than ‘logical’) opposition between pleasure and displeasure (Lust and Unlust) that he develops in his early essay Attempt to Introduce the Concept of Negative Magnitudes into Philosophy. If we replace this opposition in Kant’s text with the conflicting pair of resistances, we get the following passage: ‘Passive resistance is […] not simply a lack of active resistance. It is a positive ground which, wholly or partly, cancels the active resistance from another ground. For this reason I call it a negative (active) resistance.’ Negative resistance, or refusal, then, is more than a negation, not merely passive, but rather a positive sensation. So while Kant disapproves of active resistance, he also denounces passive resistance, which would be a mere lack of resistance. Instead he proposes a resistance of refusal.
We might wonder why it is that Kant, who was an enthusiastic sympathizer of the French revolution, was in his writings so vehemently opposed to revolution. It led to strange contradictions in his writings, stating that ‘there is no right of sedition, much less a right of revolution’ and that when a revolution goes wrong, the ‘traitors’ who started it ‘can receive no lesser punishment than death’, but that ‘if a revolution has succeeded and a new constitution has been established, the illegitimacy of its beginning and of its success cannot free the subjects from being bound to accept the new order of things as good citizens.’ Was it, as some have claimed, his fear of persecution, that led him to these inconsistent positions? After all, the Prussian censors were strict and had rebuked him on a lesser offence than public incitement. Or was it rather Kant’s juridical, formalist and/or logical rigor that caused him to take this position. The right to revolt would undo itself as a right. Kant thus says that ‘all resistance against the supreme legislative power [which brings] the discontent of the subject into active form, every kind of rising which becomes a rebellion constitute the highest and most punishable crime in the commonwealth for they destroy its very foundations’ making lawful constitutions insecure and producing a ‘state of complete lawlessness where all rights […] cease to be effectual.’ This prohibition of active resistance remains in place even when a despotic government acts immorally or denies the autonomy of its citizens so cherished by Kant. At best this could be read as an extreme anxiety for anarchism in an age in which the purview of the totalitarian sovereign was arguably less all-encompassing than modern technology permits it to be. At worst it can be seen as a legalism bordering on insanity because one could argue that the totalitarian state is only a semblance of a lawful state.

It becomes even more incogitable when we conceive of the imperative to obey the law as a moral duty, as Kant implies it is. While on the individual level his Critique of Practical Reason advances that ‘moral law generates a duty to do all we can to bring about the highest good in the world’, on the level of the political it is our moral duty to obey a (civil) law even if it is immoral. While on an individual level we are compelled to assume our moral autonomy, in the political realm it is our moral duty to subject ourselves to the civil law even if its leaves no room for autonomy. All these paradoxes are the result of his criticism of revolutions which sits oddly with earlier appraisals of the French revolution such as this one in the Conflict of the Faculties:
The revolution of a gifted people which we have seen unfolding in our day, may succeed or miscarry; it may be filled with misery and atrocities to the point that a sensible man, were he boldly to hope to execute in successfully the second time, would never resolve to make the experiment at such cost—this revolution, I say, nonetheless finds in the hearts of all spectators (who are not engaged in this game themselves) a wishful participation that borders closely on enthusiasm, the very expression of which is fraught with dangers; this sympathy, therefore, can have no other cause than a moral predisposition in the human race.\(^\text{19}\)

This, I would say, adds puzzlement to the already abounding contradictions. How are we to maintain that Kant was a meticulous and consistent thinker? Why not open up a possibility for revolution in certain exceptional cases as Kant seemed to have pondered over in his unpublished notes and as one of his pupils had suggested in response to the publication of *On the Common Saying: This May Be True in Theory But It Does Not Apply in Practice* in 1793, writing that if ‘constitutions contradict … the first requirements of rational constitution, the human race is not only permitted, it is required, to destroy these constitutions which are opposed to the original moral law.’\(^\text{20}\) Kant rejects this response, and it is here—with this clear and strict refutation in *Theory and Practice* of what he had earlier more positively referred to as ‘reformative revolutions’—that his thought first becomes subject to the charge of creating unconditional servitude to the law and thereby opens it up to implication in the very disasters it is supposed to ward of. It is due to these ambiguities, too, that people have perceived a split between Kant’s ethical theory and his political thought.\(^\text{21}\)

Several people have tried to address these perceived inconsistencies in Kant’s work, concluding either that the paradoxes cannot be resolved, that there is some leeway between individual ethics and political ethics, or that Kant *does* leave some, albeit limited, space for revolt.\(^\text{22}\) They need not have looked further than *Religion Within the Boundaries of Mere Reason*, published in four parts over the period 1792-1794, thus contemporaneous to *Theory and Practice*, to see that his stance on revolution—while to some extent a departure from his earlier ethical works—is here again firmly squared together with his ethics. Nor his politics, nor his rigorist ethics leaves any room for active resistance: ‘A soon as something is
recognized as duty, even if it should be duty imposed through the purely arbitrary will [\textit{Willkür}] of the human lawgiver, obeying it is equally a divine command.'  

This realignment, of course, only strengthens the accusations of implication. Kant does, however, again, leave room for negative resistance, as a few sentences later he writes: ‘“The proposition, “We ought to obey God rather than men,” means only that when human beings command something that is evil in itself (directly opposed to the ethical law), we may not, and ought not, obey them.’

I would suggest that it is exactly this call for a ‘negative’ resistance of refusal which is taken up from Kant by the ‘poststructuralists’ who are, nevertheless, critical of Kant’s ethics, and according to Copjec, as a result leave no room for ‘action’ at all. I will try to repudiate her polemical conclusion with, as I set out, a recourse to Melville’s ‘Bartleby’. This minimal line of affinity that I will draw, however, does not automatically exonerate Kant from the allegation of complicity with evil itself. While Kant remains an almost ineluctable horizon in modern political thought, and thus is bound to have some lines of affinity with almost any contemporary continental philosophers’s attitudes to Kant: ‘what has philosophy not done to overturn Kant?’ Deleuze, who, according to Vincent Descombes, is ‘above all a post-Kantian’, also pointedly depicts this dualistic relationship in one of his lectures: ‘It [Kant’s] is a completely stifling philosophy. It’s an excessive atmosphere, but if one holds up, [takes] on the rhythm […], all this Northern fog which lands on top of us starts to dissipate, and underneath there is an amazing architecture.’

Giorgio Agamben is very clear on Kant’s complicity with the evils of today. Despite Kant’s concept of a resistance of refusal, which, if not anything else, at the very least invalidates Eichmann’s line of defence that he had ‘lived his whole life according to Kant’s moral precepts, and especially according to a Kantian definition of duty.’ Despite Kant’s stark contrast on the matter of revolution with, for instance, Sade, who explicitly calls for ‘necessary insurrection’, calling it the permanent state of the republic, this whole idea of permanent revolution that also enthralled fascists and communists. ‘In Kant,’ Agamben writes in \textit{Homo Sacer}, ‘the pure form of law as “being in force without significance” appears for the first time in modernity.’
This ‘being in force without significance’ is developed in relation to Kafka’s parable ‘Before the Law’ in which a man from the country asks to gain entry to the law and is denied entry ‘at the moment’ by the gatekeeper, although the gate is wide open. The man, being told that it is possible that he is admitted later, waits at the side in front of the gate. ‘There he sits for days and years,’ until, in old age and ‘already dying,’ he asks the gatekeeper why ‘in these many years no one except me has requested entry?’ upon which the gatekeeper responds ‘Here no one else can gain entry, since this entrance was assigned only to you. I’m now going to close it.’

Gerschom Scholem explains the law that is staged in this parable (and in The Trial which follows this story) as ‘the Nothing of Revelation’:

a stage in which revelation does not signify, yet still affirms itself by the fact that it is force. Where the wealth of significance is gone and what appears, reduced, so to speak, to the zero point of its own content, still does not disappear (and Revelation is something that appears), there the Nothing appears.

Thus the law is in force, but does not signify. And here Agamben draws an almost straight line from Kant’s ‘form of law in force as an empty principle’ to the ‘nihilism in which we are living’: ‘It is truly astounding how Kant, almost two centuries ago and under the heading of a sublime “moral feeling,” was able to describe the very condition that was to become so familiar to the mass societies and the great totalitarian states of our time.’ In his essay ‘Bartleby, or On Contingency’ he repeats this indictment without naming Kant specifically:

For to hold to the Nothing, non-Being, is certainly difficult; but it is the characteristic experience of the ungrateful guest—nihilism—with whom we are all too familiar today. And to hold simply to Being and its necessary positivity is also difficult; but is this not precisely the sense of the complicated Western onto-theo-logical ceremony whose morality is in secret solidarity with the guest it would like to drive away? To be capable, in pure potentiality, to bear the [suspension] beyond Being and Nothing, fully experiencing the impotent possibility that exceeds both — this is the trial that Bartleby announces.
This passage brings a few things together. First it reiterates that we are living in in a generalized nihilism. Then it subscribes to the complicity-theory, by which that which tries to ward of nihilism is secretly implicated in it. Finally, it offers us a way out of this nihilism by way of the ‘formula’ of Bartleby.

In the story of ‘Bartleby, the scrivener’, a man of the law—a self-declared ‘unambitious lawyer,’ doing ‘snug business among rich men’s bonds, and mortgages, and title-deeds’ (p. 4)—one day ‘in answer to my advertisement’ finds a motionless young man upon his office threshold. (p. 11) ‘After a few words touching his qualifications’ (p. 11) he engages him as a law-copyist. This young man, Bartleby, is given a desk in a corner of the lawyers own office, behind a high folding screen—‘thus, in a manner, privacy and society were conjoined.’ (p. 12) At the third day of employment, Bartleby is asked to help the lawyer on a specific task. In response he says ‘I would prefer not to.’ Baffled, but extremely busy, the lawyer, after being given this formula two more times, asks someone else to help him. A few days later, the same thing happens. ‘Why do you refuse?’ the lawyer asks, upon which Bartleby answers, again, ‘I would prefer not to,’ and after some more pressure and after hearing the opinions of all of his co-workers on his conduct, gives the lawyer ‘to understand that […] his decision was irreversible.’ (p. 14-5, my emipasis). Again, the lawyer, hurried by business, postpones ‘the consideration of this dilemma,’ (p. 16) to the next day, when he reflects as follows:

Nothing so aggravates an earnest person as a passive resistance. If the individual so resisted be of a not inhumane temper, and the resisting one perfectly harmless in his passivity, then, in the better moods of the former, he will endeavor charitably to construe to his imagination what proves impossible to be solved by his judgement. Even so, for the most part, I regarded Bartleby and his ways. Poor fellow! Thought I, he means no mischief; […] his eccentricities are involuntary. He is useful to me. I can get along with him. If I turn him away, the chances are that he will fall in with some less-indulgent employer, and then he will be rudely treated, and perhaps driven forth miserably to starve. Yes. Here I can cheaply purchase a delicious self-approval. (p. 17)
This status quo is maintained for some time—during which both the lawyer and his employers, involuntarily start using the word prefer ‘upon all sorts of not exactly suitable occasions’ which the lawyer took to be a sign of a serious mental affection (p. 27)—until Bartleby decides upon ‘doing no more writing.’ (p. 28) The lawyer then says he must leave, but Bartleby, of course, says he ‘would prefer not to.’ The lawyer, now in a state of ‘nervous resentment,’ (p. 33) settles himself by recalling the divine injunction ‘A new commandment give I unto you, that ye love one another’ (p. 34) After Bartleby’s decision, the lawyer believes the status quo would have continued ‘were it not for the unsolicited and uncharitable remarks obtruded upon me by my professional friends who visited the rooms,’ upon the peculiar ‘unaccountable’ presence of Bartleby in his offices. (p. 35). In the end, the lawyer, completely at a loss, decides to vacate the offices. Bartleby stays behind, gets evicted by the new occupant, but ‘persists in haunting the building generally, sitting upon the banister of the stairs by day, and sleeping in the entry by night.’ (p. 39). Consequently, he is removed to a prison as a vagrant. The lawyer visits ‘the silent man’ (p. 45) there twice. The second time he finds him ‘strangely huddled at the base of a wall’. ‘Eh!—He’s asleep, ain’t he?’ asks the grub-man, upon which the lawyer mumbles ‘With kings and counsellors.’ (p. 45)

I will not venture to give a full-fledged interpretation of this story, as the main concern of my engagement with this story is an understanding of the various utilizations of the concept of resistance. I have, nevertheless, given an extensive summary of the story, more extensive than strictly necessary for my purposes, because it will show that it reverberates Kant’s theory on many points—on self-interest, autonomy, even on the concept of Grace, that sovereign and gratuitous love of God, which “descends” on us’ as a deus ex machina (certainly so in Copjec’s essay) to help Kant ‘escape’ from the charges of complicity with contemporary evils.32

As we have seen, Bartleby’s resistance is given in the form of what Deleuze has called the ‘formula’ I would prefer not to. The lawyer calls it a ‘passive resistance’, but it is not inconsequential. The lawyer also calls it a ‘refusal’, although in an exchange where the lawyer indignantly responds ‘You will not?’ to his formula, Bartleby responds, with equal emphasis, ‘I prefer not.’ (p. 19) Agamben writes that Philippe Jarowski has observed that ‘Bartleby’s formula is neither affirmative nor negative and that Bartleby neither accepts nor
refuses, stepping forward and stepping backward at the same time’ and that Deleuze suggested that the formula ‘opens a zone of indistinction between yes and no, […] between the potential to be (or do) and the potential not to be (or do).’ In this enumeration, a small error surfaces. *Bartleby* does not ‘step forward and backward at the same time all the time; it is his formula which does so. Bartleby himself, although we only learn this in indirect quotes, at several key moments does actively ‘step forward’, that is, (upon being provoked) he irreversibly decides not to comply with a request of the lawyer (p. 15), and even more unequivocally, when he (without any provocation) decides to stop writing: ‘I noticed that Bartleby did nothing but stand at his window in his dead-wall revery. Upon asking him why he did not write, he said that he had decided upon doing no more writing.’ (p. 28)

Agamben is right to conclude that nothing is farther from Bartleby ‘than the heroic pathos of negation.’ However, he is not correct to state that ‘Bartleby does not consent [and also does not] simply refuse.’ Again, his formula is more ambiguous, leaving open the possibility that he will obey at a later moment. Bartleby himself, however, closes the door with ‘irreversible’ decisions (Lawyer: ‘Do no more writing? Bartleby: ‘No more.’ (p. 28)). This is not incongruous with Agamben’s conceptualisations; it is a suspension at the same time as it is a refusal—a refusal which suspends obeying, which suspends cooperation. Nor is it incongruous with Kant’s mathematical model. To rephrase Agamben in Kantian terms: on the threshold between ‘a’ and ‘–a’, is not the colourless abyss of the lack (Nothing) but the luminous spiral of the *positive ground* (possible, potential). Bartleby’s ‘suspension’, then, is a *resistance*, even though he does not *formulate* it as such all the time. Bartleby’s resistance is not an active resistance, nor is it a passive resistance; rather it is what Kant calls a negative resistance, a potential resistance, a possible resistance.

Now let us go back to Agamben’s implication of Kant by way of Kafka’s parable. Scholem wrote, as we saw, ‘where the wealth of significance is gone and what appears, reduced, so to speak, to the zero point, still does not disappear […], there the Nothing appears.’ Why is the law here the figure of the ‘Nothing’ and not simply in suspension? After all, the gatekeeper keeps the possibility open that the man from the country will be allowed to come in later. Whereas Bartleby refuses/suspends the law/yer, the law refuses the man and as it were also suspends him (or his right to gain access to the law).
Is it the use of the term ‘zero point’, for as Kant, in his mathematical treatise points out, if the law here is pure negation = 0, it follows that when it is combined with its opposite (lawlessness) you get no (partial) cancellation, but rather lawlessness – 0 = lawlessness?\(^{37}\) But do we actually deal here with pure lawlessness, a lack, when the law, even though it does not signify, is in force? Do we not rely here very heavily on Scholem’s tentative choice of words ‘reduced, so to speak, to the zero point’? Agamben himself writes that the man from the country is ‘delivered over to the potentiality of law.’\(^{38}\) The law as a potentiality-possibility (in the terminology of the Skeptics, dynamis), is that not irreconcilable with the law as lack? My point here is clear: Agamben’s ‘Being in force without significance’ is built on muddy grounds. We could argue that the law in cases such as Guantanamo is suspended ‘at the moment’ (just as in Kafka’s story)—however much we might object to this practice—rather than conclude that such cases signal that the exception has become the general rule. This would then give the law at least the potential of being a positive ground, and would enable us a way out of the ‘nihilism in which we are living,’—a possibility of annihilating this nihilism ‘and letting something, from Nothing, be.’\(^{39}\)

Does this then, in final analysis, exonerate Kant? I am not sure, but at least we should suspend our judgement. Let us see whether the ‘potential resistance’ that I believe is advocated by the poststructuralists (rather than, as Copjec believes, an advocacy of inaction) is strong enough to break open the mortifying nihilist logic of either/or with which we are, in Agamben’s words, all too familiar. Is it thus, in other words, strong enough to forge a ‘zone of indistinction’ with their contemporary critics, such as the generation of neo-Lacanians amongst which Copjec, Zupančič, and Žižek, or the new French star-philosophers Badiou and Rancière.\(^{40}\) A powerful coalition of ‘the thinking’, is the best preemptive strike against the evils that surround us every day.

**Post Scriptum**

Let the ending the ending of ‘Bartleby’ be of a recommendation for such a coalition. ‘With kings and counsellors,’ is generally attributed to the Book of Job, which is the first biblical book in which the morality or justice of God’s actions is questioned. I would suggest, however, that it could also be read in conjunction with Kant’s famous rebuke of Plato in *Toward Perpetual Peace*: 
That ‘kings will philosophise or philosophers become kings,’ is not to be expected.
Nor indeed is it to be desired, because the possession of power inevitably corrupts the
free judgment of reason. But kings or king-like nations, who govern themselves
according to laws of equality, should not allow the philosophers as a class to
disappear, or to be silenced; rather should they be allowed to speak forth their
maxims publicly. Nay, this is even indispensable to both for the mutual
enlightenment of their functions.41

In times of high-flying ideals, ‘wild fantasies,’ and ‘universal humanity,’ such as we are
witnessing now after the long ‘années d’hiver’ of the 1980s and 1990s, there is always the
danger of ‘philosophers’ becoming ‘kings’. This, I wholeheartedly agree with Kant, is indeed
undesirable. We could say that the generation of the poststructuralists, despite their star-
status, has in this respect always threaded carefully — perhaps too carefully, as their writings
have ‘everywhere been ridiculed’, mainly (recently) as inconsequential. They have however,
like Kant, remained ‘enthusiastic’ onlookers from the sideline (think, for instance, of their
roles in May 1968). And this is exactly the role and place for philosophers.

1 Imagine There’s No Woman (Cambridge, MA: MIT press, 2003), p. 137. The quote in the text line is from the same
page.
2 Copjec, p. 152.
3 Cf. Copjec, p. 145.
5 Zupančič, p. 65.
7 Zupančič, pp. 67-8.
parenthetically.
9 Cf. Critchley, pp. 4-5 and Zupančič, pp. 63-68.
10 Kant quoted in Wolfgang Schwarz ‘The Ambiguities of “Resistance”: A Reply to Peter Nicholson’, Ethics, 87.3
(1977), 255-259 (p. 257).
11 reprinted in Theoretical Philosophy 1755-1770, ed. by David Walford (Cambridge: Cambridge University Press,
12 Kant, ‘Negative Magnitudes’, p. 220 (quotation adapted).
423-432 (p. 423n4, n5).
Beck argues that it is unlikely that Kant would have tried to deceive the censor on the basis of letter to
Mendelssohn in which he writes he would rather be silent than say something he did not believe. This would also
be consistent with his own idea of resistance. For a slightly different take on Kant’s position vis-à-vis the censors
see: Stathis Kouvelakis, Philosophy and Revolution: From Kant to Marx, trans. by G.M. Goshgarian (London: Verso,
183). The second quote is from On the Common Saying: This Might be True in Theory but it Does Not Apply in Practice

16 Cf. Reiss, p. 190.
17 See, for instance, the quote from the Conflict of the Faculties, below.
19 Kant quoted in Axinn, pp. 425-6.
20 August Wilhelm Rehberg quoted in Beck, p. 412. On Kant’s unpublished notes, see also Beck, p. 412.
22 Cf, Beck, Axinn, and Reiss.
23 Kant, Religion, p. 110.
28 <http://www.mala.bc.ca/~johnstoi/kafka/beforethelaw.htm> [accessed 20 June 2007]
29 quoted in Agamben, Homo Sacer, pp. 50-1.
30 Homo Sacer, pp. 50-52.
32 Copjec, p. 157. See also Copjec, p 146.
37 Kant, ‘Negative Magnitudes’, p. 219.
38 Agamben, Homo Sacer, p. 50, my emphasis.
40 Incidentally, an interesting attempt at the forging of such a connection is undertaken by Katharine Wolfe, who, links up Deleuze’s and Rancière’s respective readings of ‘Bartleby’ via Kant in an article called ‘From Aesthetics to Politics: Rancière, Kant and Deleuze’ <http://www.contempaesthetics.org/newvolume/pages/article.php?articleID=382>
41 <http://oll.libertyfund.org/Texts/Kant0142/PrinciplesOfPolitics/HTMLs/0056_Pt05_Peace.html#hd_if056.head.021> [accessed 21 June 2007]