

Rereading *The Trial*: A Search for Contemporary Legal Values

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Abstract

The novel *The Trial*, one of Kafka's classic masterpieces, is rich in legal elements and the author's reflections on the spirit of law. Although the novel explores the law of the Austro-Hungarian Empire in the twentieth century, the excavation of the inherent shortcomings of the law is still worth exploring. Firstly, the judicial injustice in the novel is analyzed to highlight the significance of procedural justice; secondly, the religious theology Kafka believes in and the unique sense of guilt he carries are analyzed in the context of the novel's storyline; and lastly, the issue of persecution of human beings around the alienation of the law is explored. Re-examining *The Trial* from a legal perspective not only allows for a multi-dimensional interpretation of the novel's themes and creative ideas, but also triggers many thoughts on modern legal issues.

Keywords: *The Trial*, procedural justice, legal alienation

1. Introduction

Being in the era of the impending collapse of the Austro-Hungarian Empire, and with the influence of writers such as Nietzsche, Spinoza, and Darwin, most of Kafka's works have absurdist and expressionist colours, boldly revealing the darkness of the ruling class as well as the helplessness of the people at the bottom of the suppressed society. Kafka did not produce many works in his lifetime, but most of them are classics. Marginalised outsiders are often the protagonists of his works. From Joseph K. in *The Trial*, who constantly seeks help but is caught in the law, to K. in *The Castle*, who tries his best but is unable to set foot on the gate, to the teenager lost in the crowd in *America*, these characters are filled with loneliness and strangeness.

Concerned about the persecution of people by the law at the time, Kafka chose to use literature to reveal the absurd nature of the operation of judicial power, especially in his novel *The Trial*, in which he uses a ludicrous trial to show the oppression that the law was inflicting on Joseph K. The main story line of the novel revolves around the trial of the main character, Joseph K. Over the course of a year of being tied up in lawsuits, K. constantly seeks help and gets into trouble, and is ultimately put to death. Years of experience in the legal profession have enabled Kafka to create this novel in a very scrupulous and realistic reproduction of the legal landscape of the era, both in terms of the spirit of the law and the details of the courtroom. Of course, the details of the law are certainly worth studying, but the higher value of his work lies in his profound reflection on the law of the time and the plight of the people brought about by the judicial process. The whole story's graphic presentation of the dark social environment and judicial system of the Austro-Hungarian Empire has made it an important material for many legal scholars to study the legal system, ethics and morality.

2. An Unregulated Legal Procedure

The Trial was written during the Habsburg period of the Austro-Hungarian Empire, when the empire, which ruled over twelve nationalities, was on the verge of collapse. The link between the twelve nationalities was not a common cultural bond and national identity, but the remnants of feudal power and the old administrative system. The large amount of detail is enough to show that the legal system that kept the country running at that time had long been reduced to a tool for officials to gain power. Kafka recreates the corruption of the judiciary to the readers through a great deal of detail, portraying the ugliness and greed of the public officials to the fullest.

As the English judge Denning once said, when you choose this road you must remember that there are two great goals to be achieved: one is to remember that the laws are just; the other is that they are fairly enforced (Shen, 2003, p. 89). These two goals are the two main components that legal justice encompasses: substantive justice and procedural justice. One of the values of procedural justice is to ensure the subjectivity of human beings, to

ensure that each person can express his or her opinion in a trial in which his or her interests are at stake, and that this opinion will be given weight by the same procedure. In this way, everyone can truly become an influential and binding party, rather than a helpless “outsider” waiting to be sentenced. In addition, procedural justice requires the judiciary to recognise the dignity of citizens and respect their rights in the process of resolving disputes. In judicial trials, a pragmatic and instrumental attitude will only lead to the procedure becoming a bunch of cold and icy rules, and may even be reduced to a “cloth of shame” for the will of power.

The legitimacy of the trial process is the first and foremost prerequisite for achieving procedural justice. After reading the novel, readers will inevitably have questions as to whether K. is guilty? If guilty, what was the evidence? If not guilty, why was he executed in the end? Who accused him? And who ordered the execution? None of these questions seem to find accurate answers in the work. However, this is exactly what Kafka shows his readers about the judicial environment in Austria-Hungary and the so-called trial procedure at that time. He uses the form of dystopian literature to show the reader a completely alienated courtroom. Due to the authoritarianism of the Austro-Hungarian Empire, behind the courtroom lies a huge bureaucracy that devours all power like a beast and subverts the normal order of society. K. is watched by two guards from the moment he learns that he has been accused, but the guards tell him, “I’m not at all sure that you’re being accused, or I should say that I don’t know if you’re being accused”.

There is no accuser, no arrest warrant, no authority to pass judgement, and the case against K. begins. In Chapter 2, “*The First Trial*”, K. travels to the courtroom in the attic for the first trial, where he openly denounces the corruption of the judge and tries to argue with the trial judge to prove his innocence. Although this speech wins applause from the jurors on the spot, “as far as the eye could see, everyone wore such badges that the left and the right, which appeared to be on their own side, were in fact all in league” (Kafka, 2016, p. 59). The trial judge and the jurors do not see this trial as a serious judicial proceeding, but merely a way for the bureaucratic class to find amusement in the system of interrogation. In the legal system of the Habsburg Empire, the pre-trial procedure replaced the legitimate trial procedure and convicted K. directly, without going through the substantive procedures of defence, discovery of evidence and trial. Habermas’s conception of legitimacy has made an argument for the legitimacy of procedure. According to him, the procedure is a platform for interactive dialogue among different subjects, who transmit their personal demands and values through debates, and finally reach a decision that is agreed by all parties. The trial court in the novel, however, completely ignores the legitimacy requirement of the procedure, blocking the way for K. to express his demands, so that K. cannot transmit his personal demands through communication with the trial judge.

The defence of legal rights is the goal of procedural justice. Legal rights are the rights guaranteed by law that all members of society enjoy in accordance with the law. Access to a fair trial is the fundamental legal right enjoyed by criminal suspects in a case. In order to safeguard basic human rights, the courts need to uphold the principle of presumption of innocence in the administration of criminal justice, i.e., any person should be regarded as innocent until proved guilty in a due process of trial. However, in novel, when K. seeks help from the painter, the painter explains to him the three ways in which the trial process can be handled: true acquittal, apparent acquittal, and delay. If the court’s final judgement is a true acquittal, no one can change the outcome; unlike the latter two, many influential people are able to sway the court’s decision.

None of the series of characters that appear in the novel, whether Mrs Gulubach, Miss Büstner, the lawyer, the painter, the factory owner, the merchant Brock, or the uncle who is K.’s guardian, knows what K. is accused of. But what they all agreed was that K. was guilty as soon as the trial proceedings began. “Judgements are not handed down suddenly; trial proceedings gradually turn into judgements” (Kafka, 2016, p. 250). That is to say, once the trial begins, regardless of whether there is actual guilt or not, the trial proceedings attach themselves to the defendant in one form or another, and there is no way to get rid of them until they are imprisoned by the law. It can be seen that the unjust judicial process at that time completely disregarded the legal rights of the parties.

The judiciary is a key factor in guaranteeing the fulfilment of both. A competent judicial officer needs to possess not only excellent professionalism but also moral qualities. However, unethical judiciary occupies a lot of writing in the novel, with judges, lawyers, and even so-called witnesses being portrayed as evil. The entire judiciary is rife with pedantry, “employing not only bribe-taking guards, stupid inspectors, and what can only be called mediocre trial judges at the best of times, but also a cadre of judges of the highest and most elevated ranks, together with innumerable indispensable attendants: workmen, clerks, gendarmes, and other assistants, and perhaps executioners” (Kafka, 2016, p. 57). The power of the court is inextricably linked to sex, and both the court worker’s wife and Renee are women sent by the court to seduce K. The judiciary in the novel is convinced of K’s guilt on the basis of evidence that is not known to them, and even though they know that the evidence they have is inadequate or even wrong, this does not in any way affect the trial court’s conviction of K. The

entire judiciary is totally devoid of judgemental impartiality and the essence of judgement has been replaced by power. The portrait of the judge also implies that legal justice is gone, and the “Goddess of Justice” in the painting becomes a trinity of the Goddess of Justice, the Goddess of Victory, and the Goddess of the Hunt, with K. commenting that “the Goddess of Justice must be still, otherwise the scales will shake and it will be impossible to pass a just judgement!”. Indeed, Justice must stand still so that the scales of justice are not swayed by external factors.

As “visible justice”, procedural justice has its own independent value. The realisation of procedural justice relies on lawful trial procedures and fair and qualified judges, and its fundamental purpose is to safeguard the legitimate rights and interests of human beings. Although procedural justice may not necessarily lead to justice, strict observance of procedural justice can make the outcome of a trial as fair and reasonable as possible.

3. Multiple Concepts of Crime

As early as the late nineteenth century, Nietzsche claimed that “God is dead!”. Not only is God the supreme leader who serves as the judge of the end of time, but he dominates the morality and rationality of mankind. So, what is mankind to do after God’s death? After God’s death, society is disorganised and Kafka’s sense of sin is born. In Kafka’s eyes, everyone have sin, and this sense runs through Kafka’s life, and he uses the negative energy generated by the sin to express the sublime order of the universe. Unlike legal sins, metaphysical sins are sins of religion, morality, responsibility, and so on. Kafka’s thinking about the world has gone beyond the thinking about legal sins in the real world to a kind of transcendental cognition.

The fable “*Before the Law*” is the best episode in *The Trial*, reflecting Kafka’s philosophical thinking on the nature of “law”, a metaphysical interpretation of the law. The countryman waits day after day at the door, and until the end of his life he is not able to enter. The gatekeeper, before he dies, tells him that “no one else is allowed to enter this gate, for it is set aside for you” (Kafka, 2016, p. 15). K. argues that both the gatekeeper and the countryman are deluded, and that even if the light shines out of the entrance of the law, the law is still nothing and has no essence. The priest counters that “the gatekeeper is appointed to this task by the law, and to doubt his dignity is to doubt the law. It is not necessary to regard everything as real, but only as necessary” (Kafka, 2016, p. 261). This parable highly summarises Kafka’s interpretation of law. He believed that the essence of the law was that it had no essence. Law is God incarnate and controls the power to judge everything. The so-called judgement is not a judgement of the crimes people actually commit, but a self-examination of life, an eternal and never-ending judgement. As the German title of the novel, *Der Prozess*, means the never-ending process, that is to say, the judgement of K. is a state of truth that is always in dynamic interpretation. This implies two meanings: firstly, how the dark forces of the judiciary step by step force K. to confess his guilt until he is put to death; secondly, how K. learns to internalise the externalised power into an understanding of his original sin and is finally put to death willingly.

The origin of guilt comes from original sin in Christianity, also known as the sense of sin. As a Jewish writer with a sense of exile, God and religion occupy an important place in Kafka’s spiritual world, but his artistic pursuits are by no means confined to the will of religious theology. The original sin of Kafka’s perspective is that “we try to place our own small, finite world above the large, infinite world. In doing so, we interfere with the normal functioning of things. This is our original sin. All the phenomena of the universe and the earth move in a circle like celestial bodies, perpetually going round and round, except for the human being, the concrete human being, the creature that travels in a straight line from birth to death. For man there is no personal recurrence. He feels only subsidence. In this way, he intersects with the cosmic order, which is the original sin” (Zhang, 2009, p. 58). In other words, if man puts his own will, his own limited perception, on what he considers to be “God”, then this “God” will be degraded because of man’s finitude, and thus become finite as well.

For this reason, unlike law in the usual sense, the law and the court as described in novel need to be understood in a religious sense. The court is God, the omnipotent power that can judge all. Just as the “God” who is truly the highest and the best and who can guide people is necessarily not limited by human cognition, language and morality, but is an existence that transcends human beings in all aspects. K.’s constant endeavour to find the highest court is a step-by-step process of finding God. Just as the countryman vaguely senses the light coming through as he is dying, so his search for the law is a search for God. K. previously felt certain that his trial would have a good ending, but then began to have self-doubts. He never realised what his guilt was, and no matter how much he sought help from those around him, he could not find the highest court, and even instead moved further and further away from it. It wasn’t until just before his execution that K. realised he was guilty. For this evil world seeks to challenge the order of the universe, and he himself is a part of this world, and thus part of the sin.

Although he was still puzzled as to where the Judge, whom he had never seen before, was and where the High

Court was, when “his eyes fell on the top floor of the house by the quarry. As if by a flash of light, there were two windows open, and a man sprang out and stretched his arms out of them” (Kafka, 2016, p. 271). The penthouse here echoes the courthouse, which is located in the attic. All this time, K. has tried to find an external law to save himself, without realising that the only law that can save him is the one that is truly his own, and he has been searching for the wrong source of light. It was not until this moment that K really found his own source of light, and realised that in the human world, the attic may already be the highest place, and judges may think that they have mastered judgement and justice, but there is still a vast sky above the attic. And that true justice, like true God, needs to be looked up to, honoured, and pursued continuously by human beings. Until this moment, the door for him had been slowly opened, but unfortunately, his life ended.

4. The Loss of Human Subjectivity

The law can become one of the means of social governance not only because of its basic characteristics such as democracy, procedure and justice, but also because of its social functions such as guidance, education and coercion. Ideally, the law should serve people and safeguard their interests, but in reality, the law can be alienated for some reasons, running its own judgement logic without caring about people as the subject. Alienated law becomes unsympathetic, not only is it not understood by people, but it even stands against them and becomes an accomplice in suppressing and infringing upon the people.

There are no rules for the judges' application of the law in *The Trial*. This has been true from the morning of K.'s arrest. This is because K. was arrested on the morning of his thirtieth birthday, lying in bed. The bed is one of the most private places for people, and being arrested in bed is enough to demonstrate the arbitrariness of law enforcement in the society of that time. Judges also treated the complaints of suspects in a casual and irresponsible manner, they did not even read the materials at all. K.'s lawyer once told him about the judges' attitude towards the complaints of defendants, “Unfortunately, the first few complaints often don't work because the court doesn't even look at them. The judges shove them into the file and say that the examination and trial of the defendant is more important than any written complaint at this time. The first pleadings are often misplaced or even disappear, and even if they survive to the end, they are seldom read” (Kafka, 2016, p. 15).

The judge has no definite logic in deciding a case, sometimes he may have overheard some people's casual comments, and then he makes the final decision; sometimes, under the inducement of the lawyers, the judge affirms certain views in favour of the defendant, but when the judge returns to the court, the result of the judgement he has made may be diametrically opposed to the previous views, and they may even sentence the defendant to a harsher penalty. Even a judgement that has already taken effect can be changed at the whim of the judge. At some point, on a whim, a judge may inadvertently pick up a judgement that has already been made public and read it carefully. If the judge feels that the prosecution of the case is still valid, he may sign an order for the re-arrest of the poor defendant. In this case, the defendant, who has been acquitted of the charges, is relieved to be able to live a normal life, only to be suddenly re-arrested by the court. As such, the defendant can only wait passively, facing the persecution of the law against him without any chance or ability to resist. From this it can be seen that the complaint does not play much of a role in the final judgement, and the basis on which the judge hears the case and makes his judgement is even more arbitrary and repetitive, with the outcome depending on the judge's mood, the circumstances, and other irrational factors.

This legal alienation is inflicted on the population and naturally leads to individual alienation. Kafka describes the defendants as being as obscene as beggars. Because of their daily fear, they are close to a nervous breakdown. Those defendants even absurdly thought that they could judge the outcome of the case from a person's appearance, which shows how much it will affect a person's body and mind once he is involved in a lawsuit. In addition to K., Kafka also portrays another defendant, Brock, the grain merchant. Though both of them are caught in the whirlpool of law, they hold different mentalities. K. chooses to resist actively, not accepting any unfair trial imposed on him, and dares to expose the corruption of the judicial personnel in the courtroom to safeguard his dignity. Brock, on the other hand, chooses to adapt, willingly accepting the “wanton insults” of lawyers and the law, and ultimately becomes an alienated man.

In order not to lose his case, Brock hired a formal lawyer along with five other informal lawyers, and his business was on the verge of bankruptcy because he had no time for it. He did this all because he didn't want to lose his lawsuit, once he did, it would mean death. Therefore, he spared no detail and grasped hard at any possible bit of hope. He sold his company and properties, spent all his money on the lawsuit, and went from being the owner of a big company to a small attaché. The reason why his business was deteriorating was not that he pulled out all the money, but that the lawsuit consumed all of Brock's energy and he had no time to manage the business.

However, Brock lost much more than money, career and time, but also his human dignity. Sometimes it is not uncommon to wait for days at a lawyer's house to see him. The lawyer, who had agreed to meet him, might change his mind because of a momentary change of mood. In front of the lawyer, he behaved with fear and trembling, and could not even stand up steadily. In order to ask for the lawyer's forgiveness, he went so far as to kneel down to the lawyer. In the end, his case dragged on for five years. Although unlike K., who was executed a year after his arrest, he was ruined by the courts, deeply mired in the law, with no redemption other than death.

Under an alienated legal system, the law and the judiciary, which are supposed to serve human beings, become detached from human beings themselves and develop into an evil force that exploits and oppresses human beings, making the people living in them devoid of any freedom and dignity, and turning them into alienated individuals (Guo, 2014). If one fights back like K., he may risk death; if commiserates like Brock, he will live on without dignity. No matter what the choice is, there is no way to escape from the circle of "law".

5. Conclusion

As one of Kafka's classic works, *The Trial* is rich in legal concepts and spirit. The treachery of law and the uncertainty of man are thus condensed in Kafka's fable (Zeng, 2016). Contemporary American jurist D'Enrico once said with great emotion that "all Western legal discourse is nothing more than Kafka's footnotes". When reading the novel, only by linking the environment of Kafka's time with his unique way of thinking and legal experience, and organically combining macroscopic interpretation and microanalysis, can we really see through the trial in *The Trial*. During the Austro-Hungarian era, Kafka's view of the law was a contradiction between his unlimited reverence for the rule of law and the trampling of the law in reality. This contradiction also makes the work full of philosophical thoughts after the absurdity. It is precisely this intense contradiction and conflict that makes this novel a world-famous work.

The characteristics of literature in reflecting and criticising reality determine that it can be an important force in promoting the progress of the rule of law. Excellent literature is a mirror for our understanding of society and law. *The Trial* contextualises the application of law in Austria-Hungary in the twentieth century. In particular, Kafka's psychological depiction of people facing the law gives us a reference to make value judgements about the law of the time. This is something that cannot be obtained by simply reading the legal texts. Starting from literature, we can go beyond the rules and regulations of legal theories and stand on a higher perspective of caring for human nature and all mankind to make up for the rigidity of the law, which is also the significance of the study of law and literature.

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