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Original Article

Dichotomy of Principles and Practices of Justice in Kafka's *The Trial*

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Abstract: *This article intends to delve into how far this philosophical claim would justify the course of judicial action of trial in Franz Kafka's novel The Trial. For most of this article, I would look at how the judicial trial of Kafka's state proceeds overall in the so-called case of Josef K. vs Kafka's state in Kafka's novel The Trial. How natural justice principle enacted the legal system of Audi alteram partem that means no man shall be condemned unheard. Did the natural law principle factum Probandum follow? That means the fact that it needs to be proven by trial. Did Josef K. get the opportunity of habeas corpus that he should have brought in before the judge as soon as possible to his arrest? Where the burden of proof lies in this case are the questions that must be satisfied for justice.*

Keywords: *Kafka, Dichotomy, Justice, Trial, Partem, Judicial.*

I. INTRODUCTION

Although this study is hopeful for a judiciary that must maintain an independent and efficient judicial system, it has built trust and confidence in society. It must create confidence that people should fear the consequences of committing crimes and indulging in illegal activities. It also must build trust that everybody should respect the law and that no one is above the law. Except for many other legal principles, the rule of law should be abided by all that I am studying whether these standards are maintained by Kafka's judiciary, especially in the case of Josef K. vs. Kafka's State authority. Can we say that Josef K. is heard? Did the prosecutor bring Josef K to court as soon as possible for his arrest? Apart from many of these questions, some issues are due to the judiciary.

II. CUSTOMS OF UNIVERSAL JUDICIAL SYSTEM

To justify the rationale of Josef K.'s judicial proceedings in Franz Kafka's novel *The Trial*. We should also have to take some customs of a universal judicial system that are to be considered. For instance, ancient Rome was governed by a combination of statutory laws, customary practices, and the authority of magistrates.

Accusation: The process usually begins with a private individual lodging an accusation against another person, known as the "accusatory". The accuser had to provide evidence to support the charge. Investigation: If the magistrate deemed the accusation valid, an investigation would be conducted to gather evidence and examine witnesses. The magistrate had the authority to issue warrants, conduct interrogations, and seize property if necessary.

Arrest: If the accused person was considered a flight risk or posed a threat to public safety, the magistrate could order their arrest. However, arrest was not a common practice in Roman law, as it was generally preferred to rely on voluntary appearances by the accused.

After the arrest of the suspected Pre-trial Examination: (would undergo a preliminary examination where the magistrate or official would question them to determine their guilt or innocence. If any evidence was found against the suspect, a trial would take place. The trial could be held before a magistrate, a panel of judges, or, in some cases, the Roman Senate.

To foster the trial, the accused had the right to present a defence during the trial. They could provide witnesses and evidence to support their case. After hearing the arguments and examining the evidence, the magistrate or judge would deliver a verdict. Finally, if suspected and found guilty, the accused would face punishment, including fines, imprisonment, exile, or even death. (accusation).

As a result of these customs and practices, we are here to conclude that there was a best and fair practice of criminal investigation under the Roman law system. However, they were rich because of the expansion of its unification over the surrounding small states. The Roman Empire built not only a robust empire but also a centre for knowledge, skill, and academic excellence. The Roman legal system was also influenced and shaped by natural law, and this principle was expanded and adopted

by other countries around the globe.

The idea that punishment serves a therapeutic purpose is Plato's most well-known contribution to penal theory. Because of his criminal tendencies, the perpetrator benefits positively from punishment. It transforms him. The tormented criminal spirit even finds blessings in death. However, he shall be banished or executed if he does not improve after receiving therapeutic treatment (such as non-lethal types of whipping, incarceration, and penalties). At the same time, private persons in ancient Athens brought and litigated the majority of court disputes. This implied that the first step for a prospective prosecutor was to draft an indictment and then arrange for the target of the indictment to appear before the relevant magistrate (or archon). (Nixon and Brickhouse, 7).

The prosecutor would deliver the summons, which was given orally rather than in writing. Thus, just before the scene in the Euthyphro, we can picture Meletus approaching Socrates. In front of the two witnesses that are needed, Meletus would have confronted Socrates and told him that he had been called to the king-archon's office on a certain date. He would have then stated the offence, which is likely exactly as it was stated in the official indictment:

The concept of a harsher punishment for a second conviction thus begins to take shape. The deterrent effect is the other key goal. The punishment should be harsh enough to dissuade others from doing the same offence, and the offender should be discouraged. However, Plato rejects Retribution as a justifiable goal as it only causes misery and neither reforms nor deters. (Bauman 3)

After conducting a preliminary examination, a magistrate—typically a tribune of the plebs—brings the accused before the public assembly, according to Bauman. "The magistrate suggests a punishment, which might be capital or sub-capital, depending on his judgment; if it is a fine, he specifies the amount. Following talks, the public votes on the proposition; the outcome is determined by the magistrate's judgment and the public's support" (5). "Mommsen's theory has been under constant attack over the last fifty years," he continues. The ideal enshrined in the provocation, that capital punishment was the prerogative of the people, and that no citizen should be punished without trial, was seen in the Late Republic as the bastion of liberty, the guardian of the rights of the individual" (10).

Clive claims that although the jury trial, which dates back to the Middle Ages, is frequently hailed as the foundation of British liberty, it lacked many safeguards against erroneous convictions that are in place today. The trial essentially consisted of a confrontation between the defendant and the prosecutor, who was typically the victim of the crime. The defendant was expected to defend the evidence against them, and witnesses testified on both sides. From a contemporary perspective, these processes seem to significantly harm the defence, even if their contemporaries believed they offered an acceptable way to assess guilt and innocence.

Langbein says in his The Origin of Adversary Criminals that "by the end of middle age, the trial's main purpose was to give the accused the opportunity to speak in person to the charge and evidence adduced against him" (2). Along with these instances, the writer says in this chapter that the pursuing party testifies on oath before the trial, saying, "robbed me in such a place, thou beats me, thou tookest my horse from me and pursued, thou hadest then such a coat, and such a man in the company" (13). This oath indicates that the parties involved in the accusation are aware of the consequences in the event of a failed representation in a trial. He would have no problem if he made a false statement in front of a jury. "By the early eighteenth century at least, The trial judge was intermediating the accused's questioning (cross-questioning) of the prosecution witness. In the trial of Arther Gray on burglary in 1721, the judge told the accused, if you have any question to ask, you ought to direct it to the court, and the court, if the question is proper, will require an answer from the witness" (16).

The king-archon would then schedule an anakrisis or preliminary hearing on the charges. A copy of the accusation was put up on a noticeboard in the marketplace (the agora) by the king-archon before the anakrisis. The indictment would then be read aloud during the anakrisis, and Socrates would have to submit his plea. After that, Socrates would have needed to formally announce that he had refuted the accusation against him. "Both sides of the legal case would then respond to questions from the king-archon, which would serve to clarify for all concerned what the issues were and what would be required as evidence at the trial" (Brickhouse and Nicholas 8). The writer further says, "after a vote to convict was taken and announced to the court, the defendant was given a relatively brief time to explain why he was proposing the particular penalty he was" (73).

Although we are not certain, it seems like the court was located in a vast, covered public edifice on the far southeastern side of the Athenian agora beneath the Acropolis. Although many jurors included as little as two hundred members, those presiding over the most serious trials may number in the thousands. As Thomas C. Brickhouse and Nicholas D. Smith argue in Plato and the Trial of Socrates, "The buildings that housed the courts had to be large enough to accommodate sizable jurors. A platform should exist in front of the jurors' seats where the speakers might stand. The speakers included not only the principals but also any witnesses and "supporters," whose use by both accusers and defendants was not uncommon. Their legal role was

not limited to giving speeches.

Socrates says the buildings that housed the courts had to be large enough to accommodate sizable juries. In front of the seating for jurors, there must have been a platform on which the speakers stood. The speakers included the principles and any witnesses and "supporters," or sunêgoroi, whose use by both accusers and defendants was not uncommon. Their legal role was not limited to giving speeches.

Socrates says in his answer to Meletus:

Neither Meletus nor Anytus could do anything to harm me; it isn't even possible. I don't think it is divinely sanctioned for a better man to be harmed by a worse man. "Doubtless, he could kill me, send me into exile, or take away my rights, and doubtless, he and others also think these things are great evils. But I don't. I think that what he's doing now—trying to kill a man unjustly—is a much greater evil" (135). Legal history documents the right to a fair trial: When the Assise of Clarendon became law in 1166, which "the forerunner of the modern-day indictment," it "required that in every criminal trial a full court be assembled and at least twelve freemen be present who could charge the accused with a specific offence" ("Legal History" 252).

While writing into the account of Josef K's trial, state authority is not qualified to attend the judicial procedure. Even though the state warden cannot give the actual reason for his arrest, they are also unknown to the further accusation of his trial. They just represent an immoderate state of nature. Although the state has a primary duty to protect the life and liberty of its citizens, it should be aware of the limitations of its duties and be expected to be accountable and responsible for its functions.

According to Mike Redmine's Oxford Journal of Legal Studies writing, we shouldn't be regarded with suspicion unless there is a valid reason. This is because we should be handled with civility, and beliefs may be subject to various authorities that violate our rights, such as detention and arrest, the use of which should be carefully limited.

The writer states, "We should not be treated with suspicion without good reason, not only because suspects can be subjected to various liberty-infringing powers such as arrest and detention, the use of which should be carefully limited, but also because we should be treated with civility" (Sumer 219). The relevant point here is Kent Greenawalt's account of the fight to silence, which recognizes a principle under which "we should not be expected to respond to accusations unless they are backed up with evidence. This principle certainly seems worth defending, but it cannot explain the value of the privilege against self-incrimination" (219).

Another interpretation of the presumption of innocence is that, as a principle, the state should have to make its case without help from the defendant. This 'no assistance' principle needs to be defined carefully. In this context, "assistance" should surely be considered in terms of active participation, whereas Franz Kafka's protagonist Josef K, is restricted from his right to a fair trial for his allegation.

Although Josef K. tries to explain the cause of his arrest, he asks for his guilt to make a sucky arrest. He also asks about his prosecution process, even though he requests that he be just an insurance business staff member. However, neither the reason nor his further procedure informs him. They just have an order to arrest him without a legal order. But, if we turn back to criminal justice, the state should have followed the principle of presumption of innocence that this theory deals with. The accused is considered innocent until proven guilty of a criminal offence. "This principle is considered fundamental because it is generally seen as better for the guilty to go free than the innocent to be convicted" (Tadros and Tierney 2).

This article's main argument is that "the burden of proof is placed upon the prosecution to determine all elements of a criminal defence, and to show that the accused does not fall within any defences that he might have; furthermore, the prosecution must determine those elements beyond reasonable doubt" in order to ensure the presumption of innocence (Tadros and Tierney 2). Although this principle is presumed under the right to a fair trial in the judicial process, this principle is intertwined with the nation's rule of law. The principle of the rule of law observes equality before the law so that there is no discrimination in terms of justice delivery or even in benefit sharing among the people.

III. DICHOTOMY

Despite the rule of law and the underlying principle of universal justice, Franz Kafka has presented an example of dichotomy through his novel *The Trial*: how the judiciary, as well as the police, terrorize people without any investigation and how the state is trapped in the danger of the state. The state seems irresponsible in arresting protagonist Josef K., whose warders do not have an answer to his arrest or a warrant. They cannot ensure the further judicial processing of his allegation. Kafka also characterizes the function and situation of the courthouse, as it is first placed in a difficult physical setting where one cannot find it easily.

Josef K's other observation is that the court looks like a huge crowd, like a market, and there is no hearing for the plaintiffs. They seem tired, suffocated by the courtroom. The examining judge seems incapable of settling the cases in this novel, and court staff, police, lawyers, and even judges are not accountable for their duties.

Apart from the weak physical setting of the examining court, the whole course of action of the trial is deemed unreasonable because the protagonist, Josef K., is unaware of the wrong he has committed. The right to information is the key principle of judicial procedure, but this principle is not important for the justice delivery system. It is more precise that Josef K.'s right to information about wrong is unknown, and he has been compelled to stay silent and confined to his room unless the next order is issued.

Neither was the charge sheet ready nor were any questions raised in this respect. He repeatedly asks for legal immunity from the trial, sometimes through his lawyer, sometimes regardless of the judge, and he just requests a little time to put his argument to the examining judge. Finally, state warders again capture Josef and kill him in an isolated place far from the city in the dark of the night. Kafka's novel depicts the worst situation of his contemporary judicial systems in Europe, and he has also characterized the degraded bureaucratic system and deluded justice tradition. Although The Trial is the selective masterpiece of Kafka in which he has made the climax of lower- and higher-class strata, this novel exposes the reality of society in which injustice is suffered and sustained in depth. In addition to these characteristics, this novel just represents the story of Josef K., which is a symbol of injustice, sin, and inhumanity.

IV. JUSTICE AND RULE OF LAW

In search of justice, I would focus on how Kafka's *The Trial* depicts justice and how this trial follows the rule of law so that the maxim of presumption of innocence is maintained throughout the whole trial process, along with the brutal death of Josef. Another maxim, like Audi Aulteram Partem, should have applied for the fair trial of Josef K., but he is prohibited from exercising his right to a hearing. Josef K. repeatedly asks for his hearing, even though warders have no exact reason for his confinement. According to Lawyers' Ethics by Michael G. Karnavas, "Lawyers are essential for the appreciation and application of the rule of law in all societies worldwide. Lawyers advocate for advancing human rights, protecting their clients' rights, and fostering the administration of justice" (7). In order to perform these vital duties, attorneys must always act freely and conscientiously in conformity with the law and the accepted norms and ethics of the legal profession. A lawyer must adhere to a set of minimally acceptable conduct norms known as legal ethics or professional responsibility. These guidelines include moral precepts and obligations that attorneys "owe to one another, their clients, and the courts" (7).

Most influentially, Philip Gaines argues in his book From Truth to the Technic of Trial: "The trial has always been and continues to be the focal point of Anglo-American society's conception of how justice is enacted. The truth is supposed to come out at trial, and just verdicts and fair judgments are to be rendered. It is where some of society's most consequential decisions are made" (2). The stakes in the courtroom contest may be extraordinarily high:

"In civil disputes, the loss or gain of huge sums of money may be in the balance; in criminal cases, the freedom or, for capital crimes, the very life of the defendant may be on the line. Such consequentiality is socially understood to demand the system's best efforts to discover the truth to administer justice." (2)

As mentioned above, Gaines highlights how financial well-being could be determinative in civil cases, "in this, the result of a jury's determination can be consequential in the extreme. In civil cases, vast sums of money may be in the balance, with the spectre of financial ruin lurking in the shadows or the prospect of an opportunistic and undeserved windfall being awarded" (6).

However, it is different in criminal cases because "the accused's freedom from forced incarceration is at risk, and in capital cases, the defendant's very life hangs in the balance" (Gaines 7). In a criminal trial, the jury must determine, beyond a reasonable doubt, whether the defendant is guilty of the crime for which he or she has been charged. This determination and the verdict that emerges from it are understood to be the closest approximation the jury can manage as to the truth regarding the charge. Jurors are called factfinders, and when they reach a verdict (from the Latin virus "true" + dictum "saying"), they announce it by declaring: "We find the defendant" either guilty or not guilty. To "find" is a legal notion, meaning to "determine a fact in dispute" (Garner 664).

Other concepts in discursive play in the trial, such as evidence, proof, and showing (as in "The evidence will show. . .) profile the character of the trial as an empirical pursuit, aimed—as much as possible—at discovering the truth of what was said, of who acted, of what happened, and so forth." (Kafka 8). To compare the ethical principles Philip Gaines lays out in his notion of Anglo-American Trial procedure with Franz Kafka's *The Trial*, *The Trial* without following the moral values of justice. It is influenced by the prejudices, pretence, and persecution imposed on the people.

My proposition in this segment follows this: If Josef K. is heard by the Anglo-American Trial of the same century, he would certainly be free from failed charges. We can also take an example to understand the importance of the trial from the Code

of Justinian, which stated, "Let call accusers understand that they are not to prefer charge unless they can prove by a proper witness or by circumstantial evidence that amounts to a dubitable proof, it can be seen from this statement both that the prosecutor was required to prove the charge and that evidence had to be conclusive or indubitable" (Stumer 1). Ferry de Jong and Leonie van Lent say in an article that "the presumption of innocence is wide, if not universally, recognized as one of the central principles of criminal justice, which is evidenced by its position in all international and regional human rights treaties as a standard of fair proceedings" (31).

Additionally, different authors have different normative requirements for the presumption of innocence. According to some, the presumption of innocence is a norm that is solely or at least mostly procedural and establishes strict guidelines for behaviour. The author claims that the presumption of innocence protects against erroneous convictions, which is another argument against this scholarship. This idea emphasizes the risks associated with conviction in general. "It is the very nature of the consequences of being found guilty of a criminal offence that is believed to necessitate the safeguarding of the defendant from wrongful convictions by, firstly, adhering to the in dubio pro reo principle and, secondly, burdening the prosecution with proving guilt and thereby defeating the presumption of innocence" (de Jong and Lent 34). In this article, we have traced out the common law legal doctrine, the presumption of innocence, primarily a rule of evidence, setting standards for the decision on guilt. To take in this sense, the notion dictates that the burden of proof is on the prosecution authorities, and it sets a standard regarding the threshold of required proof: "The presumption of innocence must be defeated by proof of guilt beyond a reasonable doubt before guilt can be regarded as established and a conviction can take place" (35).

The presumption of innocence, a set of rules that function as a "shield" against invasive state acts that may ultimately prove to be unjustified, has been revealed by De Jong and Lent. Whether the presumption of innocence extends to the trial phase alone or both the pre-trial and trial phases is a crucial topic in this regard. Because of this set of norms, the presumption of innocence is a concept contemplated in the criminal justice regime. It has been the most discussed and debatable conception from the Roman age to the modern legal system. The fundamental nature of this concept is that it is most applicable to both the civil and common legal systems. The reason behind this popular theory is that it first offers the benefit of the doubt to the defenders from the base with less prosecution from the state and authority.

This principal appeal offers the burden of proof to the prosecutor that conviction should be proved undeniably. The conception and characteristics of this theory promote the human rights of convicts and their right to a fair trial in any prosecution. To compare the right to a fair trial to Josef K's accusation in Franz Kafka's *The Trial*, the right to a fair trial recommends that there must be a proper reason to warrant the suspect, keeping in mind that the suspect is not guilty. The suspect should have admitted the allegation without any hesitation. In this novel, the warders have no written warrant to capture Josef.K.; he even requests to give their introduction, but he cannot find their introduction. Why Josef K. captured and put him in his room or in the limited space is unanswered. Why the police forcibly live in a room without permission is not answered, which reveals they are representing an ignoble apparatus of the state.

The warders should have written a warrant in case Josef K. made a mistake, committed a crime, knowingly or unknowingly, or violated the rule of law of a state. They should have sufficient reason to issue a warrant. They also should have informed Josef K of the mistake he had made. They also must sue Josef K. before the court, and further investigation would rely on the discretion of an independent court and justice. Because the judiciary is the basic apparatus to analyze the sufficient proof and allegation of a convict made by the authority, an independent judiciary can only decide by virtue of analyzing evidence relating to charges, questing law, and questing fact.

To compare those universal practices of the judiciary, Josef K. says neither the warders give him their introduction cause of arrest, nor do they signify the stipulation of his date, time, or manner. They just notify the time and date; they cannot say if they are also living in the room. Josef K. noticed Josef's first hearing process, but he did not have the proper court location. He reached the so-called court of accusation. Although he has many more things to clear up about his allegation, there is no time for him. Josef K. requested that his reply be put forward, but he was not heard.

V. DISCUSSION AND CONCLUSION

According to natural law procedure, a person should have the minimum number of human rights. He was notified about his next hearing, but the next hearing could not settle. He tries to convince the judge of his turn; he is unheard of. He hired the lawyer for his legal remedy, but it seems irresponsible that he did not represent Josef K. from the beginning.

Josef K. inspects the court usherer and other staff, who would pursue him to get rid of the failed accusation because he has not gotten sleep since his arrest, but no one has helped him with his case. So, what did Josef K. face in the so-called court? This seems to be an example of a modern legal system that could not have protected freedom, justice, and humanity.

Returning to the subject matter of this writing, although justice is a compound concept, John Sassoon says in his book Ancient Law and Modern Problems that "absolute justice has never existed in the real world, and what is accepted as justice has varied with time, place, and circumstance" (197).

The writer also expressed the thought that the unstable balance of conflicting and partial principles that make up the concept of justice and form the basis of any actual legal system requires that both justice and the legal system be kept under permanent review, whereas Josef K. has not asked big questions as he is frequently asking about his charge. He is just asking for the introduction of those two warders and the next legal process for his allegation. Josef K. expects everything to be done according to the rule of law and justice.

Except for all those things, John Sassoon claims the "ancient laws are full of the search for truth, while later laws emphasize how indispensable truth is by permitting torture as a means of obtaining it and death as the penalty for withholding it" (Sassoon 98). The inability to directly get the truth led to the evolution of the adversarial justice system. According to that method, if all sides can present their strongest arguments and engage in combat, typically with a jury serving as the referee, using the evidence accessible to both parties and the general public, the truth may be discovered.

In the case of Josef K., neither the accuser has any evidence nor is he allowed to put his statement before the judge. Neither did the judiciary give him sufficient time to put his argument or evidence against the charge, nor did the accuser have any evidence. To compare with the principle of justice mentioned above, according to the writer, there is no equality before the law between Josef K. and Josef K., whereas Josef K. has been taken as an enemy, just like in warfare. Josef K. has not responded, as he has been captured since his 30th birthday, and authorities have sentenced him brutally until his death on the cold night of his 31st birthday.

The novel's story ends with the death sentence of protagonist Josef K. However, this story has raised many questions about the rule of law and the universal value of justice, human rights, and the principle of innocence until proven guilty. A judicial trial has left so many questions regarding the due process of hearing, while he was expecting justice to be done to his case as the judiciary would hear the accusation and his clearance against it.

It would take the case carefully and analyze the evidence with the utmost effort. In his case, a question has been raised from the principle of an independent judiciary and efficient judgeship: what was the reason for arresting Josef K., and why did he confine himself for a long period in his own room? Why was Josef K. not given notice of a free trial in court despite his request? Why could judicial trials be accessible for all people, whereas Josef K. found it hardly surprising that there were jumbled ways to reach the courtroom?

There are many questions that the judiciary must answer, such as why Josef K. was killed without any conclusive evidence. Although the judiciary is supposed to be a law expert, ignorance of the law is no excuse for this organization to ignore this principle of law. The judiciary must answer why the life and liberty of Josef K. were taken by the state without any court investigation, given the proper time to appeal to the upper court of justice. There would be so many questions that the state would have to answer for its researchers.

At the end of this study, *The Trial* articulates deformed judicial conditions in the age of Kafka, whereas Josef K represents distress. This study comes to an end that there is still a lot for the people; despite the availability of legislation and judiciary or bilateral and multilateral conventions of the state, the rule of law and justice will never achieved until and unless judicial activism in the nation and its respective implementation is done. Such judicial systems can sometimes be no less than "Totalitarianism [that] triggers many dire consequences" in innocent people's lives (Sherma 40). Therefore, Trisha Prasad utters, "Every trial is expected to be carried out in a manner that is fair as well as legally and morally justifiable. To ensure this, the authorities must carry out the investigation, arrest, and final trial in a manner that keeps the person's rights and basic dignity intact" (207).

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