

# LITERARY TRIAL OF 'THE TRIAL'

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## INTRODUCTION

Franz Kafka, born in Prague (Present day Czech Republic) in the year 1833 was one of the most influential philosophers and writers of his time. He was the eldest son of a middle-class Jewish family. His father Hermann Kafka was a merchant while his mother Julie Löwy was a homemaker. Prague was the capital of Bohemia, a kingdom that was part of the Austro-Hungarian Empire. After studying law at the University of Prague, he worked in insurance and wrote in the evenings. In 1923, he moved to Berlin to focus on writing, but died of tuberculosis shortly after. His closest friend Max Brod published some of his works after he died<sup>1</sup>. Some of the most famous works of Franz Kafka are- Metamorphosis, The Trial, The Castle, Amerika etc. This research article tries to form a critical analysis of 'The Trial', a classic which talks about the ill and vague proceedings of the judicial system during the early 20th century in the Austro-Hungarian Empire. This paper shall try to justify as to how The Trial is an ethical and cultural performance. The paper shall also try to find a link between law and literature using Richard Posner's and Martha C. Nussbaum's views on the same. Lastly, the paper will try to link present case laws and the story of 'The Trial' to show its contemporary relevance.

## SUMMARY

Josef K., is woken up on his 30th birthday by two gentlemen who claim to be police officers. They say that Mr. K. has been arrested and take him out of his lodging house into another tenant's, Ms. Fraülein Bürstner's house when she was not at home. They disturb her properties and refuse to answer K.'s questions as to why he has been arrested. An inspector is seated in

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<sup>1</sup> The Editors of Enclopaedia Brittanica, Biography, Franz Kafka, Encyclopaedia Brittanica (November 21, 2006) [www.brittanica.com/biography/Franz-Kafka](http://www.brittanica.com/biography/Franz-Kafka)

her house and tells him that even the guards do not know why he has been arrested as they were never disclosed the reason. After a brief interrogation, the inspector says that K. has indeed been arrested but is free to go to work at his bank and carry on his usual daily routine life. In the meantime, K. tries to think of all the probable reasons as to why he has been arrested. He tries to think if he did something wrong as a banker in his workplace but fails to find a plausible reason.

He goes to work and when he returns to his lodging house, he decides to apologize to the landlady of the place for the inconvenience caused due to his arrest that morning. To his surprise, the landlady seemed immune to the situation and did not seem to mind. He then waits by Ms. Fraülein Bürstner's room to apologize to her for the disruption in her room because of the guards. When she arrived late night, she sees that her house seemed fine and there were no signs of disruptions in her room. K. demonstrated how the guards paid no heed to another's property and in the process of the demonstration, he woke the landlady's nephew who was sleeping in the living room. Fraülein Bürstner requests K. to leave, but K. kissed and embraced her before he left.

In the following weeks, K. is told that an inquiry of his arrest will be held the following Sunday and an address of the court was given to him. Since the time of the proceedings was not mentioned, K. decided to be at the address by 9AM. When he reached the address, he is quite surprised to see an apartment in an impoverished neighbourhood. He thought to himself that the court must be somewhere in the apartment and decides to explore it house by house. He met a washerwoman in one of the floors of the apartment who guided him to the court hall. He is surprised to see it full of people. He thought to himself as to why they had not specified the timings. There was mumbling around the hall and no one seemed to notice K. walking in. K. noticed the examining magistrate and walked up to him. It took a while for the examining magistrate to realise that K. was standing next to him. Once he did, K. introduced himself and went ahead with his argument. K. argued that he was never given a reason as to why he had been arrested. He went on to denounce the court and the officials who had arrested him stating that they were corrupt. He learnt at the end his argument that the court was filled with officials from the same team that had arrested him. He criticised them for running a corrupt administrative and judicial system. The examining magistrate told K. that he had damaged his

case by his behaviour in the court hall, but K. refused to participate in anymore proceedings and left the court hall.

Despite the early set back in his case, K. decided to go to the court the following week even though he was not summoned. He decided to go on a Sunday at 9AM like the previous week. He sees no one in the court hall and enquires with the washerwoman who says that the court was not in session. She asks him to stay and helps him explore the court hall. In the process, K. learns that the washerwoman was the wife of the court's usher. While exploring, he finds the examining magistrate's notebook. He was disappointed to find out that the notebook had nothing about the case. The washerwoman tried to seduce K. while they were walking around the court hall when a young man, whom K. assumed to be a lawyer walked in and carried the woman away. K. tried to stop the man, but soon realised it was not worth it as the usher's wife herself told K. to not get involved. The court usher meets K. after the lawyer leaves and volunteers to take K. on a tour of the court offices. When K. walked into one of the defendant's rooms, he sees the physical condition of the defendant and realises the wear and tear required to undergo a trial. K. starts feeling dehydrated and nauseous in this atmosphere and requests the usher to guide him back to the outside. He feels relieved when he walked out of the place and breathed fresh air.

One fine day at the bank, K. was staying back after hours to complete his work. He heard some noise coming from one of the rooms and decided to go check it out. He opens the door of the room from where the noise was coming and was shocked to see the two guards that had arrested him being flogged. He asked the flogger the reason behind this and the two guards told that they had not done their duty properly when they arrested K. and therefore were sentenced to get flogged. They were crying in agonising pain and K. felt sorry for them. One of the guards said that the flogger could be stopped if K. himself told that he did not wish the guards to be flogged. K. felt guilty and wondered what he had to do as this emotional blackmail by the guards made him feel bad. But at the same time, if he told the flogger to stop, he too would become a party to this corrupt system. Therefore, K. left the room while the guards were screaming in pain. It was surprising that this flogging session was happening in his bank and none of his supervisors seemed to have any problem with this. Later, K.'s uncle visits K. after he learnt that K. had been arrested. He berates K. for not taking due care and pursuing the case with more intent. He takes K. to his old friend Huld, a defence lawyer. Huld's maid servant

opens the door as Huld is very sick. The chief clerk happened to be visiting Huld at the same time. K.'s uncle, Huld and the chief clerk discuss K.'s case but seemed least interested as Leni, the maidservant distracted him. She takes K. to Huld's office and seduces him while the others are by Huld's bed. After making love with Leni, K. left the apartment and saw his uncle waiting outside. He railed against K. for his carelessness which was destroying every chance of winning he had in the case.

As the trial wears on, K. is increasingly distracted at work. He finds it very hard to concentrate in the bank as he still does not know why he had been arrested, why the trial had been so vague etc. K. is dissatisfied with Huld's work as he feels that Huld is not making any progress in building up a case. At the bank, one of his clients, a manufacturer, offers him a letter of introduction to Titorelli, the court painter. K. visits Titorelli at his studio, where he views Titorelli's portraits of judges. Titorelli explains to K. that acquittal is unheard of, and K.'s only option is to endlessly defer his final judgment. After pushing K. to buy some of his landscape paintings, Titorelli shows K. the exit, which, to K.'s surprise, opens out onto the court offices.

K. finally decides that he must dismiss Huld and take trial matters into his own hands. When he arrives at Huld's, he meets another client, Block the merchant. Block has put everything he's had, including his business, into his defense. K. then barges into Huld's bedroom and informs Huld that he wants to dismiss Huld. Huld asks K. to reconsider, and calls Block into the room. Huld's humiliation of Block fails to impress K., who leaves as Block grovels at Huld's bed.

Sometime later, K. is asked by his bank to take an Italian client on a tour of the local cathedral. When K. arrives at the cathedral, the Italian client fails to show up. After gazing at some of the cathedral's art, K. is about to leave when a priest calls out his name. The priest happens to be the prison chaplain and chastises K. for his indifference to his case. The chaplain then tells K. a parable about a man from the country who seeks access to the Law but is prevented from doing so by a gatekeeper. After discussing the numerous possible interpretations of this parable, K. asks the chaplain for help with his case, but the chaplain refuses.

It has been a year since the day of K.'s arrest, and he decides to go out in the evening on his 31st birthday. He is quite surprised to find two gentlemen standing outside his house. They him to a quarry outside town, where they say that K.'s time has come. K. does not try to fight back and obliges. They take out a butcher knife and K. is expected to stab himself but refuses to do

so. Therefore, one of the gentlemen holds his neck by the shoulder while the other takes the knife and stabs him twice. K. utters his last words “Like a dog”.

## **INTERPRETATION OF THE TRIAL WITH REFERENCE TO RICHARD POSNER’S VIEWS ON LAW AND LITERATURE**

The Trial by Franz Kafka is an excellent piece of literature which clearly indicates the vague closed nature of the judicial system during the early 1900s in the Austro-Hungarian Empire<sup>2</sup>. Richard Posner believed law and literature have a clear distinction and cannot be one. He did however, admit that certain literary works showed excellent depiction of law with an ethical and cultural background. Richard Posner in his article Law and Literature: A Relation Reargued<sup>3</sup> said that classics like William Shakespeare’s Merchant of Venice, Franz Kafka’s The Trial etc showed excellent usage of law in literature. In his article, Richard Posner stated that even though these classic novels spoke about the law, he would not read the novels for the sake of the laws involved. Rather, the novels are read for entertainment. The legal themes used by great writers in their novels were not for learning about the law per se, rather, it was supposed to give an image of an ethical and cultural performance about the society at that time when the novel was written. He says that The Trial by Franz Kafka must not be read as just a novel, but as a book to learn about the atrocities of the corrupt judicial system of the Austro-Hungarian Empire during the time of its writing in the year 1914. Richard Posner talks about two ways to read something. The ‘Intentionalist’ approach and the ‘new critic’ approach. The intentionalist approach talks about an approach where the reader learns the background, the circumstances, and the mindset of the author before forming an opinion of their own. Richard Posner suggests the judges to use this approach to interpret statutes as it will help them arrive at a probable solution. The New Critic approach on the contrary, is where the reader forms an opinion without giving much thought to the background and circumstances leading to the writing of a book. Therefore, this approach is suggested to a reader reading a novel as one can

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<sup>2</sup> Martha S. Robinson, The Law of the State in Kafka's the Trial, 6 ALSA F. 127 (1982)

<sup>3</sup> Richard A. Posner, Law and Literature: A Relation Reargued, Virginia Law Review, Vol. 72, No. 8 (Nov., 1986), pp. 1351-1392

say a novel has truly lived through its time with the rise of different opinions of readers after they read the book.

In Posner's opinion, "The Trial prefigures uncannily the methods by which the Nazis and other twentieth-century totalitarians deformed judicial procedure to their unsavoury purposes. Nevertheless, I do not think the book is about law or legal procedure in any interesting sense. The "court" in which the trial takes place inhabits a rabbit warren of rickety tenements; its personnel are masochists in funny clothes; and the proceeding itself is dreamlike and grotesque, with weird erotic overtones. The reader seems meant to take it all as a kind of huge though sinister prank on the hapless defendant. Because Kafka indicates that the defendant is free to opt out of the proceeding at any time, his eventual execution takes on aspects of suicide; indeed, the entire novel has a strong masochistic flavour. The meaning of *The Trial* is quite unclear, in part because Kafka never finished it and in part because he was a most enigmatic writer. Most scholars, however, do not think that the novel's legal aspects have more than a symbolic significance. Thus, Professor Robin son's admirably thorough and, so far as I can judge, accurate elucidation of Kafka's borrowings of Austro-Hungarian criminal procedure seems neither to illuminate the meaning of the novel nor to explain its fascination. The literary significance of *The Trial* is unlikely to derive from its description of Austro-Hungarian criminal procedure. Very few of Kafka's readers have any interest in Austro-Hungarian criminal procedure or, for that matter, in due process of law (the failure to notify the protagonist of the charge against him and to accord him a proper hearing before his execution are, of course, flagrant violations of due process), just as few readers of *The Merchant of Venice* give a fig about the enforcement of penalty clauses in contracts."<sup>4</sup>

Here, Posner suggests that even though the book was written in 1914, it gives a reasonable justification of how the Nazis and the twentieth century totalitarians corrupted the entire judicial system. However, Richard Posner refuses to believe that the novel tried to shed light on the law or legal sense in any interesting sense. On the contrary, he feels that the entire novel is a sick sophisticated masochistic prank on the protagonist of the book. This is because Josef K., the protagonist is arrested without any justifications and is yet free to go about his daily routine even though he has been arrested. Posner feels that *The Trial* is quite unclear as the

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<sup>4</sup> *Supra* Note 3 at 1357, 1358

author died before he could finish writing, but Posner vouches that anyone who reads the book, will not read it for the sake of learning the judicial system of the Austro-Hungarian Empire.

## **INTERPRETATION OF THE TRIAL WITH REFERENCE TO MARTHA C. NUSSBAUM'S VIEWS ON LAW AND LITERATURE**

Martha C. Nussbaum believed that a poet must be a true judge as a poet judges as not how a judge judges, but rather how the sun casts its rays on every object without any discrimination. She believed that a true judge must also have an Aristotelian conception of practical reasoning. Therefore, a judge must not only have a poetic view on the legal aspects, but also a rational perspective which shall help in their legal scenarios. But, another essential characteristic a judge must have is literary imagination. A literary artist must be able to answer various questions such as sex equality, right to privacy, and questions as to what a reasonable person would do at a certain situation. A literary artist must be able to reason judiciously with poetic and Aristotelian views. Three essential aspects of literary imagination that Martha thinks as important are- qualitative differences, individual separateness and appropriately constrained emotions. These are salient aspects that one must look at if one were to form an opinion of another. Each quality of a separate individual must be observed and analysed without letting one's emotions slide.<sup>5</sup>

In 'The Trial', Josef K., the protagonist is arrested on his 30th birthday with no apparent reason. He is made to struggle without knowing the reason for his arrest in a closed court system which is filled with corrupt officials for an entire year before being killed on his 31st birthday. K., till the end does not know the reason for his arrest. Here, if we apply Martha's views of literary imagination to form a neutral opinion, then we have to look at each of K.'s qualities separately. K. is portrayed as an honest successful banker who is working quite well in his position at work and is respected at work as well as his lodging house. In the story, we can see how the landlady shows respect to K. during the first few chapters of the story. Although K. has been cavaliered in his personal life by sleeping with various women throughout the course of the book, he

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<sup>5</sup> Martha C. Nussbaum, Poets as Judges: Judicial Rhetoric and the Literary Imagination, *The University of Chicago Law Review*, Vol. 62, No. 4 (Autumn, 1995), pp. 1477-1519

seems to be a reasonable man who tries to make sure no person is hurt because of him. This quality of K. though is contradictory, as even though K. tries to take up the responsibility to make sure no woman gets hurt because of him, he does not show the same attitude towards the two guards who had arrested him. He did not stop the flogger from flogging the guards even though they begged for mercy. The guards had apparently failed to do their duty properly when they arrested K. and were sentenced to flogging by the corrupt judicial system. K. had the power to stop the flogger from flogging the guards, but he did not ask them to stop. K. did not know the reason behind his arrest and yet he decides to argue in court. He was ignorant of the laws involved and fired his lawyer as he felt that the lawyer was not doing his duty properly. K. tried to prove his innocence using this ignorance of law.<sup>6</sup>

The judicial system in the book was very corrupt and vague. There was no definite order in the court proceedings and even the courts were in apartments and attics with the examining magistrates being part of the corrupt administrative system. In one of the later chapters, K. learns in a cathedral that there has been no history of acquittal cases. Here, the reader can infer the magnitude of corruption involved.

Martha talks about how a literary judge/ judicious spectator must make their opinions after literary imagination of using all three aspects for the same. From here, we can infer that K. has done nothing wrong and has yet been arrested. He does not know the reason behind his arrest till the end. In the cathedral, he learns that he will not win the case no matter how hard he tries. In fact, all the arguable moral wrongs K. has done during the book, has been after he has been arrested.<sup>7</sup>

Therefore, as a judicious spectator, one would be wrong to sentence K. to death for a crime he has not even been proven to have committed. In the Indian Context, the Supreme Court case of *Shreya Singhal V. Union of India*<sup>8</sup>, the petitioner had been accused of defaming a minister. However, the court ruled that Shreya was exercising her Right to Expression and not doing anything legally wrong even though it can be argued as a moral wrong. However, in *The Trial*, K. does not get the right sentence due to the corrupt nature of the judicious system.

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<sup>6</sup> *Supra* Note 2 at 131

<sup>7</sup> Robin West, *AUTHORITY, AUTONOMY, AND CHOICE: THE ROLE OF CONSENT IN THE MORAL AND POLITICAL VISIONS OF FRANZ KAFKA AND RICHARD POSNER*, Georgetown Public Law and Legal Theory Research Paper No. 11-04, 99 Harv. L. Rev. 384 (1985-1986)

<sup>8</sup> *Shreya Singhal V. Union of India* [AIR 2015 SC 1523]

## THE TRIAL- ETHICAL AND CULTURAL PERFORMANCE

The Trial was written in 1914 by Franz Kafka. It is a story about Josef K., a banker who gets arrested on his 30th birthday without reason and gets killed on his 31st birthday for the same unknown reason. Martha S. Robinson, in her article talks about how The Trial depicts the corrupt judicial system of the Austrian-Hungarian Empire during the early twentieth century<sup>9</sup>. The story of the ‘The Trial’ in fact, is a perfect example of the criminal procedure in the empire at that time. Martha as clearly justified that the Austro-Hungarian Empire too had a judicial system that was directly linked to the administration of the empire. This gave them the political power to handle any case they wanted in any manner they wished to. The decisions of the courts had already been decided before the trials took place and the criminal procedure was just a mere formality before sentencing. The magistrates of the courts had the authority to hear witnesses, inspect premises, order domiciliary searches and proceed with an arrest. The accused would not necessarily be informed about the investigations nor will the court proceedings be made public. This goes against all forms of ethics as a person has a right to be made aware of what is happening to him.

The book is also a cultural performance as certain segments of the book highlight various cultural aspects. Let us take the two prominent examples from the novel. The story highlights the importance of church during the time of its writing. The most important character personality change occurs in the church when K. learns that no person has been acquitted after he has been accused of a crime. This was a very important moment in the story if we look at the last scene where K. did not stop the two gentlemen who went with K. to the quarry to kill him. The other important cultural performance in the novel is its showcase of women. In the entire novel, women are considered as nothing but a sexual object. In more than one occasion, K. is seen making love with women whom he just met. From this, the reader can infer that the women were not respected as much as they are in the modern day.

James Boyd White once said, “Every literature is an ethical and cultural performance”. The ethics involved in the literature makes the reader learn more moral values while reading. The

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<sup>9</sup> *Supra* Note 2 at 133

cultural aspects of the literature include the background, the society, the circumstances during which the work was done<sup>10</sup>. Thus, 'The Trial' is an ethical and cultural performance.

## THE TRIAL- CONTEMPORARY RELEVANCE

Survival is the greatest test for a novel. A classic should be read even after centuries of after its publication and must still be found relevant to the present. This is possible with the power of rhetoric. The authors must use rhetoric to preserve a novel<sup>11</sup>. The Trial is one such novel which is being read even after 100 years since its publishing. In Martha S. Robinson's opinion, the book was written depicting the corrupt criminal proceedings of the Austro-Hungarian Empire<sup>12</sup>. Richard Posner, in his article stated that The Trial can represent how the Nazis and other totalitarians amended the judicial systems to their benefits<sup>13</sup>. This shows that the novel was interpreted in different ways at different time periods. The novel is relevant in the contemporary world for popularising one of the most prominent legal maxims "*Ignorantia juris non excusat*"- Ignorance of law is not an excuse. It has already been explained how K. was ignorant of laws and yet pleaded that he was innocent<sup>14</sup>. In the Indian context, the case of '*State Of Maharashtra vs Mayer Hans George*'<sup>15</sup>, is a Supreme Court judgement which stated that ignorance of law cannot be used as an excuse and the legal maxim of 'Ignorantia juris non excusat' prevailed. The brief necessary facts of the case are that the defendant, Mayer Hans George, a citizen of Manila had carried gold into an aircraft. When he landed in Mumbai, he was checked and was found to have been carrying gold. Thus, he was accused of smuggling gold. When he took the defense of not knowing the law, the judge stated that ignorance of law was not an excuse.

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<sup>10</sup> James Boyd White, Law and Literature: No Manifesto, 39 Mercer L. Rev. 739 (1988)

<sup>11</sup> *Supra* Note 3 at 1375

<sup>12</sup> *Supra* Note 2 at 133

<sup>13</sup> *Supra* Note 3 at 1357

<sup>14</sup> *Supra* Note 2 at 131

<sup>15</sup> State of Maharashtra V. Mayer Hans George, AIR 1965 SC 722: 1965 (1) SCR 123

## CONCLUSION

Through this article, I have critically analysed Franz Kafka's 'The Trial' with the help of rhetoric, Intentionalist and New Critic approach, literary imagination, judicial spectatorship to suggest that the novel is an ethical and cultural performance which has contemporary relevance in the legal aspect. I have given case laws to justify for the same. The Trial is a classic that originally tried to bring out the atrocities of the corrupt judicial system back in the early twentieth century in the Austro-Hungarian Empire. The novel however, has retained its heritage even after 100 years by surviving as one of the most popular books relating to law in literature.

