

**LEGAL REALITIES:
THE FICTIONAL WORLDS KAFKA CREATES
ARE VITAL TO UNDERSTANDING OUR EMOTIONS**

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I. INTRODUCTION

Works of political fiction can and do reflect social problems by highlighting abuses in society. Franz Kafka's novel, *The Trial*, demonstrates how the societal role of a legal system can be interpreted in a multitude of ways.¹ In this manner, Kafka's work influences our attitudes and beliefs. This paper examines the concepts of authority and personal well-being as depicted in Kafka's literary work. In short, Kafka's fictional characters consent to legal and familial authority in order to achieve some form of personal familial satisfaction. The question becomes whether societies primarily use the law to help people get exactly what they want. It is argued here that Kafka's fictional realm and the real world are dissimilar because Kafka focuses on the discordance between humanity's desire to seek authority and the struggle to relinquish our own autonomy.

Kafka has become an influential writer, and his importance to legal thought cannot be underscored enough. Legal and philosophical scholars have written about his novels. The development of law and literature presents us with issues that are central to explaining human behavior. A legal system is designed to give humanity a framework for organizing society. It is the means for maintaining law and order. The legal system is supposed to be applied to everyone equally. Yet, rather than a uniform and legitimate system of laws, Kafka describes an illegitimate system of laws. He demonstrates how jurisprudence may be administered in a random manner. His works are thus very important to a modern democratic society that wishes to remain free.

Our laws and morality are strongly rooted in the Judeo-Christian tradition and are based on the Biblical Ten

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¹ See generally FRANZ KAFKA, *THE TRIAL* (Edwin Muir & Willa Muir trans., Schocken Books, 1999); see also E. Weber, *Before the Law, After the Law: An Interview with Jean-Francois Lyotard*, 11 *QUI PARLE* part 2, 37 (1999).

Commandments. This is one basis by which we developed the structure of the legal system. Religious belief and religious tradition impact our sense of morality. We decide what is “right” and what is “wrong” according to religious teaching. Kafka’s work turns this notion upside down because laws are applied randomly in that fictional realm. Thomas Hobbes describes life without an organized legal system as chaotic and malevolent. This unorganized life came to be known as the *state of nature*.² We know that jurisprudence, which is rooted in legal theory, encompasses societal mores that govern behavior.³ Thomas Hobbes posits that natural law is assumed to be the direct result of our nature as human beings,⁴ and this natural law is based on the presupposition that humanity seeks to preserve itself.⁵

Therefore, it is not only entering into the social compact with society that saves us, but a jurisprudence that is rooted in rational thinking. Hobbes’s theory fits squarely with a view that our survival is contingent upon pursuing that which makes us happy.⁶ It is adherence to the natural law that takes us out of the state of nature.⁷

A. *The Nine Laws of Nature*

In that Hobbes said “every man, ought to endeavor Peace,”⁸ Hobbes’s Laws of Nature contain ideas much like those contained in our Constitution. He proposed nine laws called natural laws.⁹ For Hobbes, it is justified to go to war in order to obtain this

² See THOMAS HOBBS, *LEVIATHAN* (C.B. MacPherson ed., Penguin Books 1976) (1651); see also THOMAS HOBBS, *RUDIMENTS*; see also ROUSSEAU, *THE SOCIAL CONTRACT* 13-24.

³ See *Leviathan*, *supra* note 2. For issues of law and morality, see also O.W. Holmes, *The Path of the Law*, 10 *HARV. L. REV.* (1897) (Expressing a view that law and morality are distinct and should be separate); see also R.A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 91, 107-129 (Harv, Univ. Press 1999); see also Shiner, *Law and Morality*, in *A COMPANION TO THE LAW AND LEGAL THEORY* 436-450, 475-487 (D. Patterson ed., Oxford 1999); see also Matthew H. Kramer, *IN DEFENSE OF LEGAL POSITIVISM* ch. 5 (Oxford Press 1999).

⁴ *Leviathan*, *supra* note 2 at 189.

⁵ *Id.* at 190.

⁶ *Id.* at 190.

⁷ ROUSSEAU, *THE SOCIAL CONTRACT* Book 1: *The Social Compact*, (G.D.H. Cole trans., Hackett Pub. 1988) (1762) at 19.

⁸ *Id.* at 190

⁹ *Id.* at 188.

peace.¹⁰ Next, he advocates self-defense and the defense of others.¹¹ He urges readers to consider that people should not take freedom from others, since people fear loss of freedom.¹² Hobbes tells us to honor our agreements.¹³ Then, he encourages readers to be grateful, to serve others, to be friendly and to be amenable.¹⁴ “Give caution of the future,” he advises.¹⁵ The natural law means that one must forgive others and not hold grudges.¹⁶ Also, one must avoid contumely, i.e., not speak in hatred.¹⁷ Finally, Hobbes advises that everyone is equal in nature.¹⁸ Therefore, Hobbes’s natural law is not followed when people relinquish their will to the Sovereign. In fact, any attempt to extend the Sovereign’s authority may violate natural law. Therefore, Kafka’s fictional realms—where government officials subjugate humanity and disobey natural law—are places of chaos. Such abuses of natural law by a sovereign are what John Locke warns about in his treatise,¹⁹ and also what Kafka literally reveals to readers through his fictional realms.

B. Visual Images as Metaphors for the State of Nature

Through artistic, metaphoric passages, readers may envision how it felt to suffer under sado-masochism. Such passages enable those who are pain-free to understand and imagine the suffering of others. Kafka’s depictions teach us what life is like in the state of nature. In short, the words in Kafka’s work conjure the visual imagery of the undemocratic society. His literary talent makes it real to us, and our brains imagine the narrative versions of it; thus, Kafka enables the reader to understand how symbols in literature and art conjunctively signify oppression. These symbols represent lawlessness, e.g., a group of people held against their will and living in the state of nature. Kafka’s fictional victims forcibly surrender their freedoms, yet

¹⁰ *Id.* at 190.

¹¹ *Id.*

¹² *Id.* at 191-192.

¹³ *Id.* at 201.

¹⁴ *Id.* at 209.

¹⁵ *Id.* at 210.

¹⁶ *Id.*

¹⁷ *Id.* at 210-211.

¹⁸ *Id.* at 211.

¹⁹ JOHN LOCKE, SECOND TREATISE OF GOVERNMENT (C.B.. MacPherson ed., Hackett Pub. 1980) (1690) at 88.

rather than protection supplied by a “just” governing body, they receive pain in return. No social contract is formed, or if one is formed, it is breached by the authorities.

Kafka’s fictional realms feature humans who are subservient to their abusers with little or no resistance proffered in their own defense. This undermines natural law where, consistent with the notion of an eternal law from God, humans are guided by the principles of universal justice.²⁰ Humans desire freedom and happiness, and our laws and modern jurisprudence take that fact into account.²¹ Surely, no system of jurisprudence could have been properly legislated to contemplate the arbitrary implementation of laws. Thus, the question arises whether it should be unlawful to stand idle while government continues to subjugate the law. Corrupt governmental regimes subjugate human rights laws when they deny citizens happiness, safety, and the equal protection of just laws.

C. Connecting the Dots: How Visual Literacy Leads to Memorialization

Today, cultural identities are formed based on films and television rather than books.²² Yet, Kafka’s literary work remains important to our modern world’s values. It is important to note how visual literacy can lead to impulses of memorializing political oppression, and also how that may lead to problems. We must seek an understanding between the literal and the visual by studying them very closely. How does the reader respond to the literary work? Readers respond through their minds and their bodies. Words can and do become powerful manifestations of social consciousness when they are transformed into visual images. Such visual imagery may arise from the words contained in literature.

²⁰ See THOMAS AQUINAS, SUMMA THEOLOGICA (Dominican Province trans., 1948) Article 1, Question 1 at 91.

²¹ *Id.* THOMAS AQUINAS, SUMMA THEOLOGICA, TREATISE ON HAPPINESS, Question 5: The Attainment of Happiness. Aquinas argues that humanity cannot attain happiness by its own “natural powers,” but instead needs divine assistance in order to obtain such enjoyment of life. Here, it is argued that this divine assistance comes in the form of natural law arising from eternal origins.

²² See, e.g., CRASH (Bobyari Productions 2004). This piece looks to racial tolerance in modern America as exposing the prevailing cultural view that we are all the same because we share a common humanity that binds us all.

Likewise, jurisprudence can be understood in the cultural context of what the majority considers to be moral. It is also formulated through the use of words and interpreted by law-making bodies. Modern scholars often argue about whether—and if so—when law and morality are distinct from one another. Yet such distinctions are blurred in Kafka’s fictional world, and it is thus very dissimilar from our modern world and unimaginable to us. For Kafka, rather, it is not morality but authority that is of prime significance.

II. THE HOBBSIAN VISION OF THE *STATE OF NATURE* AND KAFKA’S LITERARY VISION

As humans, we use words to create stories. In turn, these stories help us absorb or overcome shock from traumatic experience. These created stories are stored in human memory.²³ While viewers of pictorial images from theatre and film do not know specific historical facts of the stories they view, they store visual images in memory and respond to any unfairness presented by the images in predictable ways.²⁴ Essentially, viewers remain in a maze as they struggle to believe what they see. Readers of literature, conversely, struggle to *not* believe what they read.²⁵ As they consider Kafka’s images, readers think about how the characters felt. As readers, we can thus envision just how an unfair and twisted form of jurisprudence might take hold. This will result in what Hobbes described as the state of nature or *bellum omnium*.

It should be emphasized that Kafka’s characters seem to believe their actions are rational; thus, Kafka’s use of the term “jurisprudence.” Any society endowed with legitimate rule making authority according to the social contract is vulnerable to changes in morality that may result in changes to its jurisprudence, since its members constitute a majority. These risks are present even in a democratic nation. The definition of rational behavior may change depending upon who is in power. While the natural law is based upon rational thinking, the positive law is man-made,

²³ See, e.g., ELIE WIESEL, *NIGHT* (Marion Wiesel trans., Hill and Wang 2006); see also, SIMON WIESENTHAL, *THE SUNFLOWER: ON THE POSSIBILITIES AND LIMITS OF FORGIVENESS* (Schocken Books 1997).

²⁴ JILL BENNETT, *The Aesthetics of Sense-Memory: Theorizing Trauma Through the Visual Arts*, in *TRAUMA AND MEMORY: CROSS CULTURAL PERSPECTIVES* 92-95 (Franz Katlenbeck & Peter Weibel eds., 2000).

²⁵ *Id.* at 85-95.

written law that can originate with the Sovereign.²⁶ In positive law states, if the Sovereign makes bad, immoral laws (as occurs in Kafka's fictional realm), the laws will still be accepted, because the Sovereign is the source of law and authority.²⁷ Therefore, the law does not have to be rooted in any type of morality at all—this is a form of legal positivism.²⁸

As we consider the world that Kafka creates, Kafka shows us that autonomy of the individual cannot be presumed. Authority is an overwhelming presence in Kafka's work, and the character Joseph K legitimates that authority's force and power. His consent to authority is not atypical, since no one dared to challenge how officials abused their power. Joseph K obeys every imposition, large or small, that the authoritative presence forces upon him. In a way, he accepts and consents to the human Sovereign's authority, much like people do when they enter into the social contract. His acceptance forms the basis for the subjugation of natural law (divinely-inspired law) in favor of positive law (human-created).

A. Kafka Literally Portrays the State of Nature

Authors know that our eyes register details on a page, and that the information is then transmitted to our brains for interpretation. As readers, we may choose to look away, shut our eyes, or close the book to hide from the magnitudes of injustice depicted on a page. The force of Kafka's visual imagery, however, holds us as reader-cum-viewer in a trance-like state of disbelief as we view what theorists have described as the state of nature. We actually see Kafka's characters, representing real people, endure the state of nature as unwilling victims.

For Kafka, the image of injustice not only perversely touches people in the present, it also cuts into future generations.²⁹ In a real way, the characters in his fictional realms are symbols for lost cultural values (e.g., freedom and democracy) and the lost potential of society's youth. Kafka's readers closely identify with the characters' lives; this intimacy between author

²⁶ Hobbes, *supra* note 2.

²⁷ Hobbes, *supra* note 2, at ch. 18.

²⁸ For a discussion of natural law versus positive law, *see*, NORBERTO BOBBIO, THOMAS HOBBS AND THE NATURAL LAW TRADITION 123 (U. Chicago Press, 1993).

²⁹ For how this phenomenon works, *see generally* SCHINDLER'S LIST (Universal Studios 1993).

and reader transforms Kafka's ideas into the reader's own story. The injustice distills into readers' memories. As readers, we become witnesses to the injustice, and the message becomes clear: Reader, do not let this injustice happen to you.

B. Kafka as the Deliberate Instructor

Kafka's depictions of images of political corruption are necessary to instruct readers to recognize such corruption when it happens to them. Further, the audience can make discoveries about themselves and political systems, ensuring these institutions remain responsive to what people need. In this manner, the audience makes transformations like those of the fictional characters. The author's images help the brain to integrate the acts of reading and seeing. As we read, we formulate a visual image based upon our imaginations. By writing such richly descriptive scenes, the author invites the audience in for a closer look at senseless injustice.³⁰

Do readers of Kafka's fictional worlds then become victims as well? Considering that we read about the injustice through Kafka's vision of it, it seems he desires just that outcome. Hence, the author controls our emotions as we, the readers, feel the pain resulting from the injustices depicted in his work. Readers are thankful they do not live under such a regime.

C. Kafka's Specific Intent

In order to get through to and influence readers, authors use elaborate narrative techniques, including mind tricks. Consider what makes a writing into literature: one factor includes the author's intentional use of mind tricks. The writer's descriptions should touch our emotions and help to improve our society; these are the marks of good literature. As we read, we are compelled to keep reading, even as we stare in disbelief at what happens to the characters with whom we have begun to identify. We contemplate the senselessness of it all. Authors like Kafka employ literary techniques and present images that haunt their audiences, thus highlighting what the author wants to stay in readers' minds. This deliberate use of imagery forces the audience to directly interact with the negative images, and the stories leave the audience feeling vulnerable.

³⁰JOSHUA HIRSH, AFTERIMAGE: FILM, TRAUMA, AND THE HOLOCAUST 68-69 (2004).

D. Justice and Desire

Is there any justice in Kafka's fictional realm? Many of the stories presented in Kafka's fictional realm do not conclude to our satisfaction. For example, what happens to Joseph K is not exactly anyone's idea of a happy ending. Assuming all readers want or expect the classic happy ending, this is deliberate on Kafka's part; he wants readers to feel deprived of that which they desire. Normally we all want the happy ending and believe it to be in our best interests, but in fact the happy ending may not be in the best interest of justice. Kafka skillfully plays with this tension as he toys with his readers, taking them on a roller coaster ride of emotion. As a result, both readers and Joseph K are left waiting for something to happen. Joseph K and Kafka's readers wait for something they desire, and it remains contingent and whimsical. We can only imagine what will happen next, but we do expect a happy ending to the story.

Kafka illustrates this dichotomy in his portrayal of the law itself. Joseph K physically has a hard time finding the law as he searches for it in the apartment house.³¹ There are many things in life that have this elusive quality to them. The law, for example, is unrecognizable. Further, it is hard to tell whether one is inside or outside of the law. This is also true about love, since emotions can be fleeting and relationships can also be elusive. Likewise, it is often difficult for people to determine when they are in love. Kafka captures these moments as they all play out through the characters.

E. Kafka's Own Mind

Kafka's fiction is based on his mental state as we view his writing while considering his private feelings and desires. His writing gives us insight into his mental state and serves as more than just a mere commentary on social and political authoritative institutions.³² Rather, Kafka's writing is personal and reflects his struggles with life and love. These fictional realms, which appear to be different from our real world, must be part of Kafka's own

³¹ Kafka, *supra* note 1, at 65.

³² PETER MAILLOUX, *A HESITATION BEFORE BIRTH: THE LIFE OF FRANZ KAFKA* 74-75 (1989).

deep imagination. This is so because each character is presented through Kafka's own personal vision. In particular, Kafka describes power and authority, and how both can be arbitrarily severe to humanity. Our thoughts, used in an arbitrary and severe manner, do the same, harming us and filling our lives with paranoia.

We all struggle with our inner lives as we try to relate to the outer world. Our inner lives consist of our thoughts and deepest emotions; this is where we house our regrets and fears. At times, so to speak, we feel like the walls are closing in on us. Kafka's fictional realms capture this notion all too well. He skillfully takes his readers to this special place,³³ a place deep inside his heart. There, his mind's deepest inner thoughts are revealed to us through the characters' actions, and Kafka gives us insight into this secret place of torment. Thus, by depicting what it feels like to be in that place, Kafka's characters are autobiographical.³⁴

F. Kafka's Outer World

At times, the real world conflicts with the dreams and ideas we create within our minds. As we negotiate between our inner lives and the world that we experience, we are defined by our choices. Feelings of depression can ensue when we face conflicts between these two worlds. Kafka shows his readers how powerful our imaginations are. Our ability to imagine can lead to fantasies of accomplishing great feats. This becomes a problem if undertakings are successful only when imagined within the confines of our minds.

In order to gain further insight into the special place where Kafka suffered emotional anguish, we should investigate his background. We know that Kafka originally was sent to major in Philosophy at Prague's German Ferdinand Karl University.³⁵ He later changed his concentration to Chemistry, in order to make it easier to find a job; yet when he found he did not like Chemistry, he changed his major to Law.³⁶ More importantly, Kafka took a

³³ See RONALD HAYMAN, *KAFKA: A BIOGRAPHY* 34-35 (Oxford Univ. Press 1982) (1981).

³⁴ *Id.*

³⁵ See generally ERNST PAWEL, *THE NIGHTMARE OF REASON: A LIFE OF FRANZ KAFKA* 101 (Farrar, Straus, Giroux 1984) (1983); see also Carol Weisbrod, *Family Governance: A Reading of Kafka's Letter to his Father*, 24 U. TOL. L. REV. 689 (1993).

³⁶ See Weisbrod, *supra* note 32, at 706; See also Hayman, *supra* note 29, at 34.

job as a clerk, where he worked long hours for low pay.³⁷ He did not have sufficient time for his writing, and this caused him some conflict and sadness.³⁸ He later changed jobs in order to pursue his passion for writing.³⁹

We also know that Kafka did not finish all of his projects.⁴⁰ Some level of despair had clearly befallen him (he wanted each of his creations burned!), and he stopped writing.⁴¹ He gave in to some form of human weakness and abandoned his creative imagination.⁴² These unjust experiences impacted his creative ability and gave him fertile background with which to develop his fictional realms. Perhaps, for Kafka, his own fictional realms were all too real, as his own sense of justice and fairness had been diminished.

G. The Unsettling Feeling and Our Desires

Naturally, it is hard to wait for things to change. At times, it seems almost absurd to do so. Kafka, for example, was influenced by his early careers and experiences, and he recounted much of these feelings in his fictional realms.⁴³ This is why the reader feels an unsettling and uncomfortable feeling of anticipation, uneasiness, and nervousness when reading Kafka.⁴⁴ Kafka's fictional realms provide a cathartic element as readers begin to realize their lives are not that bad. Readers may think their laws and/or justice system are not that terrible in comparison to those expressed in Kafka's stories.

Readers often feel uncomfortable with the unknown and with unexpected events. We live in a world of uncertainty. It is filled with events that produce anxiety. Many people take medications to help them make it through the day. Kafka's fictional realms magnify this feeling of anxiety ten-fold. Kafka's stories are hard to finish in one sitting, and a reader may thus need to take a rest from reading. It can be overwhelming to take it

³⁷ Samuel Wolff & Kenneth Rivkin, *The Legal Education of Franz Kafka*, 22 COLUM. J.L. & ARTS 407, 409 - 411 (1998).

³⁸ See Hayman, *supra* note 29, at 51-55.

³⁹ See *Id.* at 61-62.

⁴⁰ Kafka, *supra* note 1, Publisher's Note at vi.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Pawel, *supra* note 35, at 102.

⁴⁴ *Id.* at 101.

all in, so to speak. The anxiety stems from the things and events that we try to control. Can we control our desires? It is difficult for us to do so, but to some extent we do not feel that we have earned a sense of justice unless our desires are satisfied. This is Kafka's commentary on life and the way that human nature is ruled by its desires. The corrupt Sovereign exists to punish humanity for improperly acting on these desires, or to sanction these behaviors.⁴⁵

III. CONCLUSION

In conclusion, authority and personal well-being are two prevalent themes in Kafka's fictional realms. The notion that justice can only be served when our desires are met proves to be a plausible theme in our lives. Most people's lives fall apart while they wait for a desire to become true. These people have experiences much like Kafka: the wait for a desire to be fulfilled itself plunges people into despair because the anticipation becomes too great to handle.

Authors present two worlds in their literary works. One is the inner world, which details what the characters are thinking and includes stories about "soul searching" and the thought process. The other is the outer world, which includes the way the world is—but not the world as it should be. The struggles that the characters face, within the literary genre, stem from the tension that occurs when they try to make the outer world perfect. This tension is the ingredient needed to make the story interesting and exciting. Kafka uses his mastery to craft imagery and mind tricks that get readers involved. As Kafka's characters struggle between what their world is and what they need it to be, readers are pulled in and drawn to consider their own fates.

⁴⁵ Dimitri Zatonsky, *Kafka Unretouched*, in *FRANZ KAFKA: AN ANTHOLOGY OF MARXIST CRITICISM* 224 (Kenneth Hughes ed., 1981).

As readers, we think about justice within the context of our lives in this outer world. This is of primary importance, because most people are simply not content to achieve justice only in the inner mental world. Rather we want justice in the outer world, and we often seek retribution against those who have wronged us. It is not enough for us to imagine justice in our minds. Thus, we desire to make an abstract concept—Law—into something tangible and real. We feel that we should be able to see the Law. We elect to be subject to the Law when we enter into the social contract. Therefore, we must accept its power over our desires, and we must wait with great anticipation for our punishment when we fall outside the Law.