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Franz Kafka's Trial and the Anti-Semitic Trials of His Time

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Abstract: Franz Kafka's novel *The Trial*—one of the most famous literary works of the 20th century—was, at least to some extent, inspired by contemporary historical events. The great anti-semitic trials of his time were a blatant example of state injustice. The most (in)famous were the Tisza trial (Hungary 1882), the Dreyfus trial (France 1894-1899), the Hilsner trial (Czechoslovakia, 1899-1900) and the Beiliss trial (Russia, 1912-13). Despite the differences between the various State regimes—absolutism, constitutional monarchy, republic—the judicial system condemned, sometimes to capital punishment, innocent victims whose only crime was to be Jews.

Franz Kafka's *Trial*, written in 1914-15, was published only many years after his death; just one section of it, the short parable "Before the Law," appeared in the Journal *Selbstwehr*; "Self-Defense," published by Kafka's Zionist friends of Prague, Max Brod and Felix Weltsch.

Let us briefly recall the main episodes of the novel.

Joseph K. is arrested one morning, apparently victim of a slander. The two policemen that arrest him refuse to give any explanation for this measure—which doesn't take the form of a real imprisonment, but remains as a sort of menace suspended over his head, while he is permitted to continue his normal activities. He is judged by a Court that prevents any access to its Judges, and that does not recognize legal defense but only "tolerates" it. This Court, whose hierarchy extends into the in-

finite (*unendlich*), and whose behaviour is unexplainable and unpredictable, pretends to be infallible; its proceedings remain secret and the bill of indictment is not accessible to the accused, nor to his lawyers, and even less to the public in general. The accused is therefore unable to defend himself, since he doesn't know of what he is being accused...After this entirely untransparent proceeding, the Court sends a pair of henchmen to execute the unfortunate Joseph K.

The book became one of the most famous novels of the 20th century—as well as a remarkable film by Orson Welles—and has been the object of a huge amount of diverse and contradictory interpretations. Some of them have a strong conformist bent.

An obvious example are those readings of the novel that suppose Joseph K's guilt

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and therefore the legitimacy of his condemnation. For instance, Erich Heller—whose writings on Kafka are far from being uninteresting—after a detailed discussion of the parable “Before the Law” concludes: “there is one certainty that is left untouched by the parable as well as by the whole book: the Law exists, and Joseph K. must have most terribly offended it, for he is executed in the end with a double edged—yes, double edged—butterer’s knife that is thrust into his heart and turned there twice.”¹ Applied to the events of the 20th century, this argument would lead to the following conclusion: if this or that person, or even a few million persons, are executed by the authorities, it is certainly because they must have most terribly offended the Law...In fact, nothing in the novel does not suggest that the poor Joseph K. did “terribly offend the Law” (which one?) and even less that he deserved a death sentence!

Other readers, more attentive, acknowledge that there is *nothing* in the novel that suggests the main character’s guilt, but argue that in the chapters which Kafka did not have the time to write there would be, without doubt, “the explanation of Joseph K’s fault, or at least of the reasons for the trial.”² Well, one can speculate *ad libitum* on what Kafka would have, or should have, written but in the manuscript as it exists, one of the strong ideas of the text is precisely the absence of any “explanation of the reasons for the trial,” as well as the obstinate refusal of all the concerned instances—policemen, magistrates, Courts, executioners—to give one.

All the attempts by various interpreters to make Joseph K. guilty of something inevitably hurt against the first phrase of the novel, which simply states: “*Jemand musste Joseph K. verleumdet haben, denn ohne dass er etwas Böses getan hätte, wurde eines Morgens*

¹ Erich Heller, *Franz Kafka*, Princeton, Princeton University Press, 1982, pp. 79-80

² Casten Schlingmann, *Franz Kafka*, Stuttgart, Reclam, 1995, p. 44

verhaftet” (“Somebody must have slandered Josef K., since, without having done any evil, he was arrested one morning”).³ It is important to observe that this phrase is not at all presented as the subjective opinion of the hero—such as he manifests in the several passages of the novel where he proclaims his innocence—but as an “objective” information, as factual as the next phrase: “Mrs. Grubach’s cook (...) did not come this day.”⁴

What is common to all these sorts of exegetic efforts, is that they neutralize or erase the extraordinary critical dimension of the novel, whose central motive is, as Hannah Arendt understood so well, “the functioning of a cunning bureaucratic machine where the hero is innocently caught.”⁵ Many readers were struck by the prophetic character of the novel; which seems to foresee, with its visionary imagination, the justice of the totalitarian states of the 20th century. Bertolt Brecht was one of the first to propose such an interpretation, since 1937: “bourgeois democracies carry in their deepest interior the fascist dictatorship, and Kafka painted with a grandiose imagination what later became the concentration camps, the absence of any legal guarantee, the absolute autonomy of the state (...).”⁶ Could not the same argument apply, *mutatis mutandis*, to the Stalinist USSR? Once again

³ F. Kafka, *Der Prozess*, Frankfurt, Fischer, 1985, p. 7. All translations from *The Trial* are mine ML.

⁴ *Ibid.* By proclaiming, throughout the novel, his innocence, Joseph K. is not lying, but expressing an intimate conviction. This is the reason why, at the moment the policemen appear to arrest him, he thinks of a practical joke organized by his office colleagues. This is obviously the reaction of some one who is at peace with his consciencousness.

⁵ H. Arendt, “F. Kafka,” in *Sechs Essays* p.128

⁶ B. Brecht, “Sur la littérature tchécoslovaque moderne,” 1937, in *Le siècle de Kafka*, Paris, Centre Georges Pompidou, 1984, p.162. In an essay published in 1974, J.P. Stern proposes an interesting—but somewhat forced—comparison between Kafka’s *Trial* and the legal procedures of the Third Reich Courts (J.P. Stern, “The Law of the Trial,” in F.Kuna, *On Kafka: Semi-centenary Perspectives*, New York, Harper & Row, 1976).

it is Brecht—in spite of being a loyal fellow-traveller of the Communist movement—which says so, in a conversation with Walter Benjamin about Kafka, in 1934, i.e., even before the Moscow Trials: “Kafka had only one problem, that of organization. What seized him, is the *Angst* of the Ant-Hill-State, the way human beings alienate from themselves their forms of common life. And he predicted some of the manifestations of this alienation, like for instance the methods of the GPU.” Brecht added: “One sees with the Gestapo what the Tchecha can become.”⁷

Such a reading is a legitimate homage to the clear-sightedness of the Prague writer, who was able to grasp the tendencies, already hidden in his time as sinister virtualities, in the “constitutional” European states. However, it offers us very little insight into his own motivations, and his sources of inspiration.

Moreover, these *a posteriori* references to so-called “states of exception” (or “states of emergency”) might obscure one of the powerful ideas of the novel: the “exception,” i.e., the crushing of the individual by the State apparatuses, ignoring his rights, is the rule—I’m paraphrasing a formula from Walter Benjamin in his *Theses on the Concept of History* (1940). In other words: *The Trial* deals with the alienated and oppressive nature of the modern States, including those who self-define themselves as “Lawful States.” This is why, in the first pages of the novel, it is clearly said—again, by the neutral voice of the narrator: “K. lived however in a Legal State (*Rechtsstaat*), peace reigned everywhere, all the Laws were in force, who dared to attack him at his home?”⁸

It is not in an imaginary future but in contemporary historical events that one

should look for the source of inspiration for *The Trial*.⁹ Among these facts, the great anti-semitic trials of his time were a blatant example of state injustice. The most (in)famous were the Tisza trial (Hungary 1882), the Dreyfus trial (France 1894-1899), the Hilsner trial (Czechoslovakia, 1899-1900) and the Beiliss trial (Russia,

1912-13). In spite of the differences between the various State regimes—absolutism, constitutional monarchy, republic—the judicial system condemned, sometimes to capital punishment, innocent victims whose only crime was to be Jews.

The Tisza affair was a trial for “ritual murder” against fifteen people from a small Jewish community in a village in Northern Hungary (1882-83), accused of killing a young Gentile woman, Esther Solymosi, and collecting her blood at the synagogue in order to prepare their unleavened Easter bread (*matzos*). Of course, the tragic event could not have touched Kafka directly, since he was born in 1883. But he certainly was aware of it, through various journalistic or literary sources. The strong feelings he felt about it appear in a striking form in a letter from October 1916 to his *fiancée* Felice Bauer, which contains a moving reference to a theatrical drama, *Ritual Murder in Hungary* (Berlin 1914), by the Jewish German writer Arnold Zweig, dealing with the Tisza trial: “The other day I read ‘Ritual Murder in Hungary’ (*Ritualmord in Ungarn*) by Zweig; its supernatural scenes are as feeble as I would have expected from what I know of Zweig’s work. The terrestrial scenes on the other hand are intensely alive, taken no doubts from the excellent records of the case. Nevertheless, one cannot quite distinguish between the two worlds; he has iden-

⁷ Quoted in W. Benjamin, *Essais sur Brecht*, Paris, Maspero, 1969, p. 132, 136. Tchecha and GPU were different names of the Soviet political police. According to Brecht, in the same conversation, “Kafka’s perspective is that of the human being who fell under the wheels” of power.

⁸ F. Kafka, *Der Prozess*, p. 9.

⁹ I entirely agree with Rosemarie Ferenczi’s argument, in her outstanding book, *Kafka. Subjectivité, Histoire et Structures*, Paris, Klincksieck, 1975. Cf. p. 62: “Kafka did not pretend to be the prophet of future catastrophes, he limited himself to decipher the evil of his times. If his descriptions appear effectively as prophetic, this is because the future epochs are the logical following of Kafka’s own.”

tified himself with the case and is now under its spell. I no longer see him the way I used to. At one point I had to stop reading, sit down on the sofa and weep aloud. It's years since I wept."¹⁰ Since this is one of the few—perhaps the only!—mention of weeping in Kafka's Correspondence or Diaries, it is obvious that he was deeply moved by the story of this ugly anti-semitic trial, where a Jewish boy, Mortiz Scharf, aged 13, was pushed to testify against his father and the Jewish community. The reference to the "excellent records" of the trial suggests that Kafka had read this material before he discovered Arnold Zweig's piece; very likely, he had already some information on the Tisza affair when he started, in 1914, to write *Der Prozess*.

Paradoxically, the most (in)famous anti-semitic affair of his time, the Dreyfus trial, is hardly mentioned in his writings. In fact, we do not know what he thought of it, even if one can be sure that, as all Jewish or even European citizen from this generation, he knew the main episodes of this traumatic event. According to Frederick Karl, the Dreyfus trial is "the archetypal court case in the background of *The Trial*,"¹¹ but there is little evidence to substantiate this assessment. There is even less for Sander Gilman's statement that "the Dreyfus Affair haunted Kafka all his adult life" as well as his attempt to identify Kafka's *Penal Colony* with the Devil's Island were Alfred Dreyfus with the Devil's Island were Alfred Dreyfus was interned after his condemnation.¹²

One of the few mentions to Dreyfus appears, rather in an indirect way, in a letter from 1922 to Max Brod. Kafka refers to the cultural struggle around a controversial

Czech sculptor, Frantisek Bilek, which he then compares to a similar controversy around the Czech composer Leos Janacek. Brod's defense of Bilek is: "a fight comparable with the fight for Janacek; if I understand the matter rightly (I almost wrote: with the fight for Dreyfus)." Hardly a powerful statement about the Dreyfus affair, assimilated to an aesthetic controversy...¹³ But one can accept the hypothesis that, to a lesser extent than other anti-semitic trials, the one against the French Jewish captain was among Kafka's sources of inspiration for the novel.

Much stronger was his reaction to the Czech Hilsner trial, for the obvious reason that it took place in his own country. In spite of his young age in 1899 (sixteen years), Kafka immediately grasped the threatening significance of this affair. In this year a young Czech Jew, Leopold Hilsner, living in the town of Polna, was accused of "ritual murder" against a young Christian woman, Agnes Hurza, in order to use her blood for the Jewish Passover rituals. Found guilty, in spite of the absence of any evidence, Hilsner was condemned to capital punishment and only escaped death thanks to the campaign in his defense waged by the democratic politician Thomas Masaryk (future President of the Czech Republic); following a revision of the trial he was "only" sentenced to life.¹⁴

In a conversation reported by Gustav Janouch, Kafka mentioned his discussions on this episode with his friend and schoolmate Hugo Bergmann, as the starting point of his consciousness of the Jewish condition: "a despised individual, considered by the surrounding world as a stranger, only tolerated"¹⁵—in other words, a pariah...

¹⁰ F.Kafka, *Letters to Felice*, ed. Erich Heller and Jürgen Born, trans. James Stern and Elisabeth Duckworth, New York, Schocken Books, 1973 ; p. 530. See the chapter Kafka wept in Sander Gilman, *Franz Kafka, The Jewish Patient*, Londres, Routledge, 1995.

¹¹ Frederick Karl, *Franz Kafka, Representative Man*, Boston, 1993, p. 501.

¹² Sander Gilman, *Franz Kafka, The Jewish Patient* pp. 69-70, 81.

¹³ F.Kafka, *Briefe 1902-1924*, Frankfurt/Main, Fischer Taschenbuch Verlag, 1975, p. 402.

¹⁴ For a detailed account of the affair, see Maximilian Paul Schiff, *Der Prozess Hilsner, Aktenauszug*, Wien, 1908 and *Der Fall Hilsner, ein europäisches Justizverbrechen*, Berlin, A.W. Hayn's Erben, 1911. See also Rosemarie Ferenczi, *Op.cit.* pp. 46-58.

We know that Janouch notes are not always reliable, but we have, in Kafka's correspondence with Milena, a direct reference to the Hilsner affair, as a paradigmatic example of the irrationality of anti-semitic prejudices: "I cannot understand how people (...) came to this idea of ritual murder"; in a sort of phantasmagoric scenario, "one sees 'Hilsner' commit his crime step by step." In this correspondence with his friend and lover, there are several other references to anti-semitism, an ideology where all Jews "take the form of Negros" and make up a lower race, the "scum of the earth."¹⁶

Finally, it is very likely that Kafka was also deeply touched by the trial against the Russian Jewish shoe-maker Mendel Beiliss (Kiev, 1911-1913), equally accused of "ritual murder"—a trial followed by a violent anti-semitic campaign in the press and anti-semitic riots in Kiev. The Zionist periodical *Selbstwehr*, to which he subscribed, was obsessed with this affair, which showed, in a striking way, the dramatic condition of the Jews in the Russian Tzarist Empire: their absence of rights, their social exclusion, and their persecution by the State. For instance, an editorial under the title "Kiew," from April 12, 1912, asserts: as at the time of the Dreyfus trial, also now, in Kiev, "all the Jews of the world feel that they are on the bank of the accused" together with Beiliss. The condemnation of Mendel Beiliss would be the sign "to launch a legalised storm against the Jews" in Russia. By the summer of 1913 the trial had become so notorious in the pages of *Selbstwehr* that the name of the accused was often deleted and the affair was simply called "*Der Prozess*."¹⁷

We know that among Kafka's papers

¹⁵ G. Janouch, *Kafka und seine Welt*, Vienne, Verlag Hans Deutsch, 1965, p.55.

¹⁶ Kafka, *Lettres à Milena*, Paris, Gallimard, 1988, trad. A. Vialatte, pp. 66, 164, 255.

¹⁷ See Arnold J. Band, "Kafka and the Beiliss Affair," *Comparative Literature*, vol. 32, n. 2, Spring 1980, pp. 176-177. Beiliss was finally acquitted by the jury.

which he asked to be burned by his friend Dora Diamant just before his death, there was a narrative about Mendel Beiliss.¹⁸ This was perhaps the trial that most directly influenced *Der Prozess*, since he took place only one year before Kafka started to write it.

This rôle of the anti-semitic trials as a source for the novel is only a hypothesis. But it is a plausible one, considering also that, since 1911, after his meeting with the Yiddish Theater and his friendship with the actor Itzhak Löwy, Kafka became increasingly interested in Judaism, and started to send some of his writings to Jewish periodicals such as the above-mentioned *Selbstwehr* or *Der Jude*, Martin Buber's *Journal*.

However, *there is nothing, in the novel, that betrays a direct connexion to the anti-semitic trials*. It is true that Joseph K.'s arrest seems to be the result of a "slander"—a term which seems to have some analogy to the accusations of "ritual murder." However, the issue of the slander is not pursued in the novel. In fact there are no references to Jews and/or anti-semitism in the *The Trial*, neither directly nor indirectly. The main character, Joseph K., has little in common with either the captain Dreyfus, or Hilsner, the Scharf family of Tisza and Mendel Beiliss. What *is* common between the anti-semitic trials and the novel is a certain pattern of absurd and unjust "legal" procedure, and the crushing of the innocent individual under the wheels of the State machine. In other words: if Franz Kafka was deeply concerned about the anti-semitic trials, he did not react to them only as Jew but also as a universal spirit, who *discovers in the Jewish experience the quintessence of the human experience in modern times*. This is why in *Der Prozess* the main character, Jo-

¹⁸ Max Brod, *Franz Kafka: eine Biographie*, Frankfurt am Mein, S. Fischer, 1954, p.248. Brod mentions a testimony by Dora Dymant, Kafka's last companion: "Among the papers burned there was, according to Dora, a narrative by Kafka on the ritual murder trial against Beiliss in Odessa."

seph K., has no nationality nor religion: the choice of a simple initial instead of a name—K and not Kohn or Kreuzer—is a strong signifier of this universal identity. Joseph K. could be any one of the numerous victims of the State's legal apparatus.¹⁹

In this universalist re-interpretation of the anti-semitic trials, his sympathy for the libertarian socialist ideas has probably played a certain role. As it is known, thanks to several witnesses—Michal Mares, Michal Kacha, Gustav Janouch, among others—Kafka took part in several meetings of Prague anarchist circles, during the years 1909-1912.²⁰ Now, the issue of "State injustice" occupied an important place in the libertarian culture, which celebrates, every year, on May 1st, the memory of the "Chicago Martyrs," the anarcho-syndicalist leaders executed in 1887 under false accusations. In 1909, another "affair" provoked the indignation of anarchist—and of broader progressive—circles around the whole world: the condemnation to capital punishment and the execution by the Spanish Monarchy of Francisco Ferrer, an eminent libertarian pedagogue, founder of the Spanish Modern School, falsely accused of having inspired an anarcho-syndicalist uprising in Barcelona. According to the Czech anarchist poet Michal Marès, Kafka took part in 1909 at a Prague demonstration in protest against Ferrer's execution.

Unlike the victims of the anti-semitic trial, which were either acquitted (Dreyfus, the Tisza-Jews, Beiliss) or at least escaped capital punishment (Hilsner), Francisco Ferrer was "legally" executed, and thus has a significant common trait with Joseph K.

¹⁹ According to Rosemarie Ferenczi, the Hilsner affair, manipulated by the State, taught Kafka, beyond the limits of the Jewish reality, how far could go the "arbitrary behaviour of a unscrupulous power." (Kafka, *subjectivité, histoire et structures*, p. 61). See also p. 205: "The *Trial* is an indictment against the History of his times which made possible affairs as Hilsner's."

²⁰ On this issue, I refer to my own book, *Franz Kafka, rêveur insoumis*, Paris, Stock, 2004.

But otherwise there isn't much similarity between their stories.

How to resist the murderous machinery of State justice? For Kafka's Zionist friends, the Jewish pariahs should organize their self-defense—*Selbstwehr*—first step towards a newfound dignity. For his Czech anarchist friends, the only defense would be the direct action of the oppressed against the powers that be. Kafka probably sympathized with both; but what he shows in his novel is less optimistic and more "realist": the defeat and the resignation of the victim.

Joseph K.'s first reaction to the threat is resistance, (individual) rebellion: he denounces, protests and voices, with sarcasm and irony, his contempt for the institution that is supposed to judge him. He tends also to underestimate the danger. The characters whom he asks for help advise him to submit: "There is no way to struggle against the Court, one is forced to confess. You should therefore confess (*das Geständnis machen*) at the next occasion," explains to him Leni, the Lawyer's servant; the Lawyer himself tells K. that he should "resign himself (*abzufinden*) to the situation as it is" and not move: "Above all don't draw any attention! Keep quiet even if this seems a non-sense!"²¹ Joseph K. refuses this "friendly" advice, he has only contempt for this submissive and servile characters, described as "dog-like."

The dog, in several of Kafka's novels is the allegorical figure of voluntary servitude, of the behaviour of those who lie at the feet of their hierarchical superiors and blindly obey to their masters voice. For instance, in *The Trial*, the Lawyer Huld "humiliates himself in a doglike way (*hündische weise*) in front of the Court." At a hierarchical lower rung, the merchant Block kneels at the feet of Huld and behaves in a despicable servile manner: "He was no more a client, he was the dog of the Lawyer. If Huld would have asked him to crawl under the

²¹ Kafka, *Der Prozess*, Frankfurt, Fischer, 1985, pp. 94, 104.

bed like in a kennel and bark, he would have done it with joy."²² Joseph K., on the contrary, keeps his dignity and refuses to submit to those "above."

Which shame? Obviously the shame of dying "like a dog," i.e., in a submissive way, in a state of voluntary servitude—in the sense given by Etienne de La Boétie to this word. However, in the last chapter of the novel, his behaviour changes radically. After a brief attempts at resistance to the henchmen—"I will go no further"—he decides that any opposition is "useless" and behaves towards his executioners in an obliging way (*Entgegenkommen*), in "perfect acceptance" (*vollem Einverständnis*) of their aims. He is not only resigned to his fate, but seems willing to cooperate actively to his own punishment. It is only by lack of strength that he doesn't accomplish what he considers to be his duty: take the weapon in his own hands and execute himself. However, at the moment when the executioners plunge the knife in²³ to his heart, he is still able to articulate, before dying: "as a dog!" (*Wie ein Hund!*). The last phrase of the novel is a commentary: "It is as if the shame would survive him."

The conclusion of the novel is both pessimistic and resolutely non-conformist. It conveys Kafka's rebel Jewish consciousness, combining compassion for the victim and a critique of its voluntary servitude. One can read this last sentence as an appeal for resistance.²⁴

²² Kafka, *Der Prozess*, pp. 152, 166.

²³ Kafka, *Der Prozess*, pp.191-194.

²⁴ A few months after having written this conclusion, I came upon this beautiful text from the great non-conformist Austrian writer Peter Handke: "There is not in the writings of the peoples since their origins another text that can so much help the oppressed to resist with dignity and indignation against an order of the world that revealed itself as their mortal enemy, as this end of the novel *The Trial*, where Joseph K. is carried to be slaughtered and accelerates himself his execution (...)" (P. Handke, "Discours de réception du prix Kafka," 1979, in *Le siècle de Kafka*, Paris, Centre Georges Pompidou, 1984, p.248).