Kafka's Thought Experiment:
Reality Between Book and Spirit of Law

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Abstract
The author examines Franz Kafka's short story "In the Penal Colony" in the context of Austrian philosophy. Austrian philosophy stands for combination of different philosophical systems and independent thinkers, as well as writers associated with the culture of the now defunct multinational Austro-Hungarian empire. Austrian philosophy has a number of distinctive features, which can be described as an anti-Kantian orientation (due to the official Catholic faith in the empire), a baroque worldview (life in endless anticipation of the end of the world), a tendency towards empiricism and an appeal to linguistic issues. Linguistic problems were particularly acute, since the official language of the Austrian Empire was German, which was not the native language of many writers. Another problem associated with language can be identified from Kafka's work: words, according to the writer, come from the world of "false" life, and it is impossible to convey reliable information about reality. However, a significant place in this historical type of philosophizing is occupied by a thought experiment, the development of which took place in parallel directions among philosophizing "physicists" and philosophizing writers. The general context of these studies was built on a special version of Platonic idealism, implying a difficult but possible path to achieving the truth – the "world of eidos." We consider Kafka's story as a thought experiment with the book and spirit of the law, which shows the contradictions between the text of the law and the content hidden behind it, i.e. the gap between the literal interpretation and its moral and ethical content. In Kafka's story, the spirit of the law has changed, but the book has remained the same. This state of affairs is characteristic not only of the artistic world of the work in question, but also of what was happening in reality – in the world of the fading Austro-Hungarian Empire.

Keywords: Thought experiment; Law system; Social reality; Franz Kafka; Austrian philosophy

Мысленный эксперимент Франца Кафки: Реальность между буквой и духом закона

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Аннотация

В данной статье автор рассматривает рассказ Ф. Кафки "В исправительной колонии" в контексте австрийской философии. Под австрийской философией мы понимаем сочетание разных философских систем и самостоятельных мыслителей, а также писателей, связанных с культурой ныне не существующей многонациональной империей Австро-Венгрии. Австрийская философия имеет ряд своеобразных черт, которые можно обозначить как антикантианскую направленность (из-за официальной католической веры в империи), барочное мировоззрение (жизнь в бесконечном ожидании конца света), склонность к эмпиризму и обращение к лингвистической проблематике. Лингвистические проблемы имели особую остроту, так как официальном языком Австрийской империи был немецкий, не являющиеся родным для многих писателей. Еще одну проблему, связанную с языком, можно выделить из творчества Кафки: слова, по мнению писателя, приходят из мира "ложной" жизни, и невозможно сообщить достоверные сведения о реальности. При этом значительное место в этом историческом типе философствования занимает мысленный эксперимент, развитие которого происходило в параллельных направлениях среди философствующих "физиков" и философствующих писателей. Общий контекст этих исследований строился на особой версии платоновского идеализма, подразумевающего трудный, но возможный путь к достижению истины – "мира эйдосов". Рассказ Кафки мы рассматриваем как мысленный эксперимент с буквой и духом закона, который показывает противоречия между текстом закона и скрывающегося за ним содержания, т.е. разрыв между буквальным толкованием и его морально-нравственным содержанием. В рассказе Кафки дух закона изменился, а буква осталась прежней. Такое положение дел характерно не для только для художественного мира рассматриваемого произведения, но и для того, что происходило в реальности – в мире угасающей Австро-Венгерской империи.

Ключевые слова: Мысленный эксперимент; Правовая система; Социальная реальность; Франц Кафка; Австрийская философия

INTRODUCTION. THE SPECIFIC CHARACTER OF AUSTRO-HUNGARIAN MIND AND REALITY

The writer Franz Kafka belonged to the Austrian philosophical tradition, which is rarely the subject of special consideration. However, researchers highlight the following characteristic features: the influence of the Baroque tradition (the heyday before the end), greater attention to linguistic issues, similarities with British empiricism, polemics against Kant (Cherepanova, 1999, 2015, 2021).

The attitude towards the teachings of German philosophers, representatives of German idealism – Kant, Fichte, Schelling, Hegel – was ambivalent in Austria, despite the undeniable influence of German thought on world philosophy. A common language facilitated the dissemination of ideas, but Austria sought to develop its own in the cultural and political polemics with Germany of that period. The anti-Kantian orientation was expressed not only in attempts to take an opposite position, but also arose due to Austria's certain cultural backwardness. The disintegrated empire was a Catholic country, and Kant's philosophy, which opened a critical attitude to questions of morality and faith, was based on Protestantism. Kant criticized the Catholic Church's exaltation of the cult of repentance and sacrifice. According to the philosopher, this did not contribute to people's moral behavior (Kant, 2017). Catholicism in Austria served as the support of a multinational empire whose peoples spoke different languages, so criticism of it was not allowed.

Events from Austrian history formed a special attitude to reality, a "practical metaphysics" (Cherepanova, 1999, p. 21), the specificity of which was the idea that only the "heavenly" other world can be constant, while the events of earthly life are changeable and inconstant. Historical experience showed that the end of an era was never truly the end of an era, it was followed by a new end. As a result, Austrian thinking created a culture of the "Merry Apocalypse" (Johnston, 1972, p. 9), a complex and multi-level approach to reality.

Austrian thinking was also influenced by the fact that official Catholicism, actively supported by the imperial authorities, did not accept theology, which allowed for many religious interpretations, together with Kant's metaphysics, formed in the spirit of Protestantism. Catholic rejection contributed to the formation of the "Baroque worldview" – "the perception of the world as a theater" controlled by a divine director (Cherepanova, 1999, p. 18) and the preference for an experiential theory of knowledge, i.e. empiricism. Interestingly, with the conditional support of the church, positivism also spread, since it did not contradict the basic doctrines. Reality in this picture of the world was a rigid and hierarchical structure, the lower tiers of which showed the human "vain" world, and the upper ones – God.

"The Baroque worldview" is characteristic of an epoch living in anticipation of a near end – an endless series of upheavals. In such a world, constancy is expressed only in incessant change. The world is presented as a divine theatre, where Providence rules, and man can find peace only after death in the case of a righteous life. In this understanding, Leibniz's monadology gave meaning to the worship of divine wisdom (Cherepanova, 2013, p. 53). Empiricism, positivism, and scientism developing on the wave of Kant's

criticism were made up of ideas about the possibility of true knowledge about the world, based on mathematical and logical constructions. The logical analysis of language subsequently led to the linguistic turn in world philosophy.

The study of "linguistic reality" in modern humanities is a popular research approach to understanding any culture. But during the existence of the Austro-Hungarian Empire, this line of research was just emerging. And the writers and thinkers of that era, due to the specifics of their culture, were forced to pay attention to linguistic issues and the peculiarities of the competition of linguistic reality. As a result, the problem of reality and language was reflected in Austrian literature of that period.

 In an attempt to culturally unify the nation, German was declared the official state language in 1784. But this did not lead to the expected national unity. Instead, various dialects and national languages began to actively develop, which later turned into literary languages (Cherepanova, 2013, p. 51).

Austrian thinkers thought and wrote in different languages. And since language is one of the unifying symbols of the nation, it was necessary to find some solid and common foundations in language as such – German, Czech, or even Hungarian. The result of the search was a "call for silence," an attempt to destroy the language (Cherepanova, 1999).

Before the "call to silence," Austrian literature still tried to find a "pure" and "clear" language. A theatrical or conventional language was formed, characterized by understatement. The main literary form became the story. Literary reality consists of two levels: the lower – "ugly" and subjective, and the higher – universal eternal truths. These characteristic features of Austrian literature are reflected in the work of Kafka: dry conventional language, a fantastic situation, and subjective perception of the characters (Nyiri, 1987).

Kafka wrote in German, which was distinguished by its simplicity of form. German in Prague was significantly different from Viennese or Prussian German, and in Kafka's house one spoke Czech. Kafka was a German-speaking Czech Jew which allowed him to create his own literary style, characterized by great sobriety of expression. Igor Krtolica (2013) continuing Deleuze and Guattari's (1975) reasoning shows how Kafka's literary works constructs the language. It consisted of colloquial Czech, colloquial Yiddish, Hebrew, official German, the language of official documents, the language in which Goethe wrote.

THE METHODS OF DISCUSSION THE REALITY

According to Kristóf Nyíri, the features of Austrian philosophy are empiricism and platonism. Platonism is an idealistic theory of knowledge, signifying that universal concepts (abstract ideas) exist independently of their concretely embodied (material) forms (Nyiri, 1987). In Plato, the idea is opposed to any likeness or reflection that is perceived through sensory data. And therefore, sensory perceived things are always transient and changeable – there is nothing permanent and stable in them. Also, beginning with Plato, thought experiments as a procedure for proving any state of affairs became a literary form. In ancient Greece, there was no term corresponding to the modern "thought experiment." However, the technique was used in a similar way – to defend one's own

theories and refute others. Ancient Greek philosophy also used this method to suspend judgment. To do this, arguments were formulated to support two opposing points of view (Stuart et al., 2017). A thought experiment is a cognitive procedure in the form of a hypothetical situation, when a certain position (theory, hypothesis, principle, problem) is put forward, which must be resolved in the mind, that is, with the help of imagination. The epistemological function of this tool is aimed at the real world, i.e. thought experiments must somehow be solvable. This type of method is used when it is not possible to conduct a "real" (physical) experiment. The Austrian physicist and philosopher Ernst Mach was the first to use the term "thought experiment" in its modern meaning [*Gedankenexperiment*]. Mach writes that a person accumulates experience through observations of changes in the environment. This experience becomes the beginning of experimentation. An experiment in the mind or a thought experiment is used by poets, utopian thinkers, writers, physicists, researchers, and inventors, i.e., almost everyone. But unlike the natural scientists like Mach, not everyone bases their experiment on an exact reflection of the facts of reality (Mach, 1906).

The position based on Platonism and empiricism is most clearly reflected in the works of Ludwig Wittgenstein. In turn, through Wittgenstein one can understand the work of Kafka, since despite the difference in the forms of presentation, the thinkers have many points of contact.

Wittgenstein's *Tractatus* contains ideas about the individual nature of the good: the solution to the problems of life is carried out by everyone alone and cannot be communicated to another by linguistic means (Wittgenstein, 1922/2022). Ethics are conveyed only through practical forms of behavior. If good is strictly individual, then what does it consist of? To this question, Wittgenstein answers that one must point to the essence of goodness with one's life, remain silent, and not rant. Those who understand that the cause for the discrepancy between the ideal and the real lies only in themselves should not place their hopes on changes in external factors. How to survive in the real world, aware of your helplessness and recognizing the impossibility of any change? Life in the present knows nothing of death. Wittgenstein's concept of the substance of the world is close to Plato's; the world basically consists of unchanging ideal forms; only their objective embodiments change. But we know nothing about the substance of the world, so there is nothing to say about it. What cannot be said must remain silent. Kafka starts from Wittgenstein's thesis that "silence is one of the attributes of perfection." His literary heritage is small, but for the literary process of the 20th century it is very significant. The feeling of loss of reality leads Kafka to the doctrine of silence as a means of compromise with social evil. Constant awareness of one's guilt (this is a biblical motive) is a reliable path to the ethical life of every isolated individual. From here follow the principles of ethical rigorism and individualism – life is accepted as simple contemplation, cognizing the world, but not capable of cognizing oneself.

Austrian thought has its own special attitude towards death – aestheticism, therapeutic nihilism, impressionism – all this is reflected in the suicide of the officer in Kafka's infernal machine. Such a view of death was constructed through a baroque worldview, which saw death as something that made up for what life cannot give. This aspect of death is featured "In the Penal Colony." This story is a less popular subject of

analysis than other works of the writer. But nevertheless, this work clearly reveals both the specificity of Austrian thought and the specificity of Kafka's work. A traveller is invited to attend an execution carried out with the help of a special device. From the story it turns out that the form of execution is outdated and about to be abandoned. But the officer who wants to carry out the execution would like to return to the old order. To do this, he needs a traveler and a victim to demonstrate the work of the machine, which for 12 hours writes a commandment on the body of the condemned. But in the end, the officer himself becomes a victim of this device.

Kafka was not the only writer who interpreted the theme of the death penalty. Basically, writers of the 19th and early 20th centuries advocated the abolition of the death penalty. They believed that the punishment was incomparably harsher than the crime and that it is a process of hardening people instead of demonstrating the demands of justice. It is worth noting that the theme of the death penalty is particularly relevant for 20th century literature. And among the various writing strategies, one can single out a common thesis about the groundlessness and helplessness of the modern person (Mukhina, 2021).

The Austrian linguistic problem is woven into the plot of the story. One of the characters, a convict, does not know the language spoken by the officer who is a representative of the authorities. Thus, the convict does not understand what is being said to him and what is happening to him. And the traveler, the hero, who seems to understand the language and is able to influence the situation, is still a foreigner and therefore takes an observational position (Kafka, 1919/2017). But the language for the traveler and the officer is common, it is official.

Kafka expresses the moral decline of society and language. The presence of the motive of silence is explained by the mood of the era. The feeling of a loss of reality is characteristic of the era, entailing a total loss of any value expressed through language. The heightened reaction to the moral and logical degradation of the language ultimately led to complete silence. Kafka rejects cheap means – creating new words, intertwining parts, replacing sentences, replacing one thing with another. He strives for correctness, clarity and relevance to the subject.

Kafka's literary legacy can be presented as an attempt to "overcome the human" (Cherepanova, 1999). The writer's works describe structures in which there can be no concept of "citizenship" and problems of national language. Kafka also allows his readers to independently draw a conclusion about the story they have read – as a result, multiple interpretations appear. This multiplicity gives the key to understanding what is happening in reality. Note that the death of a character is an opportunity for Kafka to close a topic, and to leave knowledge of the presence of information that cannot be discussed.

RESULTS AND DISCUSSION OF A THOUGHT EXPERIMENT AND THE LAW

Reiner Stach, a contemporary German writer and biographer of Kafka, shows in a short essay that Kafka's texts age much more slowly than the texts of many other authors of his era (Stach, 2014). Stach connects the world of Kafka and modern problems of the digital environment. For example, in the United States it becomes possible to accuse a

person of any number of crimes, and he will have no way of knowing why he was targeted – "Kafka's nightmare is gradually becoming the reality of America."

Kafka didn't just depict how people become victims; it also shows the extent to which power rests on the complicity of its victims. This phenomenon goes beyond the political and touches on the ideas of psychoanalysis. If a son continues to obey his father long after the latter's death, it means that he has taken into his own hands the whip that once punished him. Kafka was deeply skeptical of the therapeutic promises of psychoanalysis, but he was captivated by the way it described the expansion of power, which resonated with his own experiences. Things become even more problematic when those in power claim that they are only implementing what we have secretly desired all along. For example, the officer from the penal colony believes that everyone secretly dreams of the return of public executions.

In the modern world, people accept consent blindly: "No one forces me to check the box confirming that I accept the rules of the social network's terms and conditions, but I do it anyway, without delving into all this nonsense. As a result, I get used to accepting contractual obligations blindly – and this is perceived as proof of my trust." Likewise, the condemned man blindly goes to his own failed execution (Stach, 2014).

Stach writes about the feeling of moral isolation in an overly complex, confusing world. Kafka was the first author to understand what it meant when people were turned into statistical units and their every move was collected as data. But for Kafka, the problem was not the machine – the bureaucracy itself is not to blame, it is not an active agent. It's the people themselves who are to blame for checking boxes and sharing their personal photos.

Georges Bataille (1957/1990) describes Kafka differently. Kafka, in his opinion, was a man who, on the one hand, sought to escape from his father's influence (just as the inhabitants of the empire sought to escape from the imperial order), but he did not really want to escape from there. And yet, one can imagine that Kafka opposed the old system and its bureaucracy and sought to replace it with something more humane. That's why in Kafka's case to abandon or return to the old order becomes a thought experiment.

If we consider Kafka's views on law as subject of thought experiments, we can imagine its embodiment in a social and legal experiment that affects all aspects of society. Attitudes towards law and order and rule-making thereby become more obvious. The legal experiment is one of the mechanisms for increasing the efficiency of legal regulation in conditions of openness and instability of the system of social relations.

For a legal experiment, a certain area of action is chosen – in Kafka's case, it is a remote island. Thereby, an experimental mode is introduced. Next, we need to consider how it affects society. The legal experiment has an expiration date. After the experiment has expired, if the regime is not effective, it does not retain power everywhere. The execution machine, described in detail by Kafka, ultimately turns out to be an ineffective regulator of social relations – the legal experiment is completed.

Regarding the regulation of modern technologies that use artificial intelligence, especially in copyright law, legal experiments are used. The main problem is that the digital environment is a relatively new environment for legal communication. It requires the development of other legal traditions, ideas and ideas to form a full-fledged legal

culture (Ladenkov, 2023). This requires a longer period of active use of digital technologies and the creation of a digital subsystem of law. The old system based on Roman law is still effective, but not in the digital world. This is metaphorically represented in Kafka's work. There is no need to discard the past; we need to supplement the "bright" future with new developments.

There is also a problem of legal understanding, expressed in the deformation of the legal consciousness of the hero of the story, the "Officer". The officer follows "legal idealism" and replaces the actual operation of the law ny personal preference, given that the old order gave purpose to his life. The problem of regulating the relationship between humanity and technology is also shown in this story. It is known that such relations are regulated by a system of technical norms, from which it follows that technology does not have legal standing in that old world which does not know of the problem of legal regulation of relations in the digital environment. But the similarity with the relevance of the problem is obvious: we know the Chat GPT devices and we know what result they should give us, but we do not understand the algorithms working in the neural network and their behavior. The same can be said about the execution machine in the story. In law, grammatical, logical, systematic and historical interpretation is possible, but when there is no written rule of law, people act at their own discretion and according to their ideas about the law.

The last significant aspect is that in the novella the machine appears to have a powerful unity, and the person enters completely into it – perhaps this is what leads to the final explosion and crash of the machine. Kafka's story depicts an epistemological gap. It illustrates this turning point of transition from one epoch to another, the replacement of one power by another. Essentially, this story describes a shift, or better yet, a leap from one penal system to another. In Kafka's story, the old model of justice represents the tortured body, but the dismantling of the machine marks the emergence of a new way of thinking about punishment, a new punitive rationality (Bareït, 2016).

CONCLUSIONS

The writer Franz Kafka belonged to the Austro-Hungarian tradition of philosophical thought. This philosophy gave the world psychoanalysis, logical positivism, phenomenology, and other important trends that are relevant in the 21st century. Despite the fact that Austrian philosophy is not a special subject of consideration in the history of philosophy, there are a number of researchers who have devoted fundamental works to this phenomenon – the Russian philosopher Ekaterina Cherepanova, the American historian William M. Johnston and the Hungarian philosopher Kristóf Nyíri. They highlight a number of features in Austrian philosophy that appear in the work of all intellectuals related to the culture of this thought: polemics with Kant, the expectation of an imminent end expressed in a baroque worldview, experience as the beginning of all knowledge or strict empiricism, the focus on language. And among the impressive intellectual heritage of the vanished empire, researchers especially highlight Franz Kafka, whose works are still not outdated and have not lost their relevance. The writer's work invites many interpretations due to its special literary form – the form of a story. The

writer implicitly inherits Plato's dialogic form of presentation, but with its own specificity, characteristic of the culture in which he worked and lived. Linguistic issues were more acute for the Austrians due to the contradictions between the official language and native languages, which left an imprint on Kafka's literary writing. Also, Plato is the source of the construction of a narrative in the form of a thought experiment, which, according to Kafka, the reader must complete. Such a narrative allows the story and the reader's "completion of the experiment" to become an outlet to social reality, because there are no other adequate tools. Kafka also offers to see part of the social reality associated with law. The problem of law enforcement and legal understanding associated with the general legal culture remains relevant centuries later. Kafka shows a certain inertia of law, lagging behind social changes. In the story "In the Penal Colony" under consideration, this lag is shown as follows: the letter of the law in the person of the officer has remained the same, but the spirit of the law has already changed and execution is no longer needed, but reforms in the field of law are needed. But who will carry them out, and how? There is no answer to this question.

The special attitude to language in Kafka's reality and modern digital reality is somewhat similar, since language is a specific way of conveying and perceiving reality. A dual reality arises – in Kafka – artistic/divine reality and the world of everyday life, and in modern times – the opposition of digital and non-digital realities. New technological challenges require "silence," that is, clear legal formulations that have not yet been created. Like the writers of Austria who did not really want change, modern society strives to regulate the new environment by old means, but this can only lead to the destruction of the old world. And even in the new world, the Machine, which embodies the "unity of writing and death" and performs a judicial function, depends on the legal understanding of those who operate it.

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