

A Study of Legal Issues in Literature ——Kafka's the Trial as an Example

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ABSTRACT: The relationship between law and literature has always been the focus of interdisciplinary research of legal scholars, and the analysis of the works of specific writers is the basic way to carry out such research. Among some literary works that embody legal thoughts, Kafka's *The Trial* is particularly eye-catching. Kafka, a legal man (Doctor of law, lifelong insurance career) is also one of the greatest writers in the 20th century, is a representative of the achievements of law and literature. His most representative novel *The Trial* directly or indirectly shows the similarities and differences and integration of law and literature from the aspects of content, form, thought and so on. This paper takes this as an example to explore the relationship between law and literature. Specifically, The thesis mainly expounds the current research status of "law and literature movement" at home and abroad, the content and research status of "*Trial*", the legal issues involved in "*Trial*", and the relationship between law and literature embodied in "*Trial*", so as to comprehensively interpret "*Trial*" from the perspective of "the relationship between law and literature" and

vertically promote the proposition of "the relationship between law and literature" And then use law and literature to seek common ground while reserving differences and integration to explore effective ways to solve practical legal problems. By comparing the similarities and differences between law and literature and studying the organic integration of the two, the interaction between law and literature is more fully reflected. As a legal person, on the basis of straightening out the complicated relationship between law and literature, organically combine the rule of law with emotion, principle and concern, law popularization and humanity, profession and personality, jump out of the rigid thinking of law, draw nutrients from literature, raise the temperature of law with the tone of literature, and show the light of humanity with sound law. Through the perfect integration of law and literature to add another beautiful scenery in the legal field.

Key words: Kafka; Procedural Justice; Legal Belief; Lgeal Alienation; Law and Literactur

I. Introduction

1.1 Research background

The study of "The relationship between Law and literature" is an interdisciplinary study of law and literature that seems unrelated on the surface but is actually closely linked. It is a bold breakthrough after law breaks out of the closed and single research field, injecting fresh blood into the field of legal research, making the originally cold law become hotter because of the humanistic atmosphere, and making the public more willing and able to accept obscure legal knowledge. Kafka, a legal man, is also one of the greatest writers of the 20th century, a representative figure integrating legal and literary achievements. The man himself is the most vivid manifestation of the relationship between law and literature. *The Trial*, the most representative novel, also directly or indirectly shows the similarities and differences and integration of law and literature from various aspects such as content, form and thought.

Since the American law and literature movement in the last century, the topic of law and literature has attracted continuous attention, and Kafka's works as a legal man are more worthy of in-depth analysis. Based on this, this paper chooses the legal and literary issues reflected in *The Trial* to analyze and expound, hoping to better understand the legal issues from the perspective of literature.

1.2 Research status

1.2.1 Foreign research status

"Law and Literature" originated from the American law school, which was originally "an academic movement" and evolved into a special school of law. It arose in the 1970s, is another new research field about law and other disciplines after the cross-research theme of "law and economics", and officially entered the research stage under the banner of "The Imagination of Law: A Study of the nature of Legal Thought and legal expression". In the 1980s, with the emergence of a series of papers and works related to "law and literature", the new legal thought of "law and literature" began to spread and develop in Britain and other countries. Relevant scholars basically emphasize that there is a certain logical possibility between law and literature, which makes law a practice of producing various literary works. For example, the rhetoric and narration implied in judicial judgments, the debate and performance in courts, the competition between roles, as well as the metaphors in judicial interpretations and legal articles all reflect the role of literature and literary skills in law and practice. Moreover, law is therefore regarded as the creative process of "meaning" and becomes an indispensable and important part of modern cultural life. In 1988, the famous American judge Posner, one of the early critics of the law and literature movement, published the influential *Law and Literature—A Misunderstanding*, which wrote the earliest legendary chapter in the field of "law and literature" research, and thus Posner became a milestone figure in the law and literature movement. Ten years later, The title of Posner's reedition of *Law and Literature* has deleted the subtitle of the original edition: *A Misunderstanding*, and the chapter content has also solved the controversial problems in the "law and literature" movement through four aspects: "Literary text as a legal text", "legal text as a literary text", "literary transformation in legal scholarship" and "Law's regulation of literature". This paper analyzes the

relationship between law and literature, so that the movement of law and literature has formed four research fields: "Literature in law", "law as literature", "law through literature" and "law about literature".

1.2.2 Domestic research status

The concept of "law and literature movement" has been introduced to China for more than 20 years, among which the more influential representative works are Yu Zong's "The Intersection of Law and Literature" published in 1996, Feng Xiang's "Wooden Leg Justice—About Law and Literature" published in 1999, and Xu Mingzhong's "About Law and Literature" published in 2000 "Between Law and Literature", Liu Xing's "French in the West Window" in 2002, Liang Zhiping's "Law and Human Feelings" in 2004, Zhu Suli's "Law and Literature—Using Traditional Chinese Drama as Material" in 2006, and so on. At present, traditionally, the research on law and literature is mainly divided into two branches: "Law in literature" and "law as literature". The former "advocates to find relevant theoretical basis from specific literary works to do some expanded research in jurisprudence", focusing on the research perspective of literature to study the legal issues that may be involved; The latter believes that "the research method of literary works may be helpful to the research of legal professional knowledge", and can use the research method of literary theory and literary criticism to read legal texts (including the Constitution, administrative rules, judgment opinions, etc.) and interpret legal terms, which is called "literature in law".

A synopsis of *The Trial*

Joseph K., an officer at a bank, wakes up one morning and is arrested by a court for no apparent reason. This court is not the official court of the state, but it has greater powers than the national court, and everyone is under its supervision. Despite his arrest, K's freedom of movement was not restricted and he was still able to live his life as normal. But as soon as a trial begins, guilt is bound to be found, and no pardon can be granted (Zeng 10). In this court, there is no difference between innocent and guilty, only between those who have found you and those who have not found you. Unable to recall any wrongdoing and not knowing who might Sue him, K began to try to fight the court. He begged for help and even went to court to defend himself. He protested his innocence and charged that behind the actions of the court there was a vast apparatus at work which was corrupt, stupid and had no regard for human life. This institution exists only to falsely accuse people of daytime crimes and to subject them to absurd interrogations. But it was all in vain. In the end, K, who did not understand what crime he had committed, was taken to a quarry by two hangmen on the night before his 31st birthday and "executed like a dog"

II The legal issues involved in *The Trial*

2.1 The "procedural" trial under the dimension of "procedural justice"

2.1.1 Presumption of innocence

Presumption of innocence is a concept in the criminal procedure law, which means that anyone should be considered innocent until he is found guilty according to law. This is an important principle in the criminal judicial activities of modern countries ruled by law, and has also been accepted by various countries and international conventions around the world. In the novel, after K is tried by the court, he finds the painter Ditorelli through his uncle Carl, who has a lot of connections with the court. Before K came, the painter had already known the basic

situation of K's case through court channels. When K. tried to find a solution, the painter said, "I have not seen a single case in which the verdict was an outright acquittal, but I have seen many cases in which influential people interfered (Kafka 318)." "Therefore, even if the text proposes three ways to solve the problem - complete acquittal, casuistic acquittal, and indefinite suspension of *The Trial*, the painter can only provide help for the latter two." Because in fiction, no one can really acquit the accused.

In a series of images depicted in the novel, whether it is a court guard, a trial judge, a civil servant, or a social role such as K's uncle, a lawyer, a maid, a painter, etc., no exception is clear about what crime K has committed. In spite of this, they were convinced in their hearts that as soon as *The Trial* began, K would be guilty. Once the trial begins, the court will be like a vampire to firmly suck people, whether innocent or not, regardless of any relationship to help, without any procedural trial, the accused has been put on the guilty hat. At the Door of the Dharma there is such a philosophical passage at the end of the book: When the villager who has sought to enter the Dharma all his life experiences exhaustion and is about to die, the doorkeeper shouts in the villager's ear: "No one will be allowed to enter this door except you, because it is opened only for you." Now I'm going to close it (Kafka 352)." "This essay was published separately during Kafka's lifetime, and later incorporated into the novel *The Trial*, as part of a story told by the priest to K." Kafka included "At the Door of the Law" in "The Judgment", precisely because this short essay expressed the law in the real life, the remote and elusive view, through the priest's mouth to make it become the pen of the full text. When the Fa finds you, the Fa is designed for you alone, and you cannot escape the control of the Fa for all your life. When the court tries you, even if the verdict doesn't come, you're a guilty man. This is how the judiciary first subjectively presumes your guilt and then "proves" their reasonable presumption of guilt through an unnecessary trial.

2.1.2 Substantive trial

The essence of the trial means that the facts of the case should be determined through the court trial, and on this basis, the defendant's conviction and sentencing are decided. "The substantive trial should contain two aspects: first, the trial should become the core of the lawsuit; Second, the trial activity is the key link of the trial activity, that is, "the trial case should be centered on the trial." The investigation of facts and evidence is in the court, the conviction and sentencing defense is in the court, and the verdict is formed in the court." The substantiveness of court hearings corresponds to the vagueness of court hearings. The falsification of the trial means that the facts of the case and the criminal responsibility of the defendant are not determined through the trial method, or even decided at the trial stage, and the trial is only a formality. In *The Trial*, the conviction of defendant Joseph K. in the trial is still worth exploring. In the novel, the protagonist K still goes through all the links of criminal proceedings - filing, investigation, prosecution, trial, and execution. But reading the original book carefully, it is not difficult to find that the author does not describe the length of the trial. The reason is that the trial or court proceedings did not play any role in the judgment of K's crime. When K was first arrested at his home, the rest of the proceedings were just a formality. As mentioned above, the trial is only a formality, a means of blurring. The focus of the judiciary is on the arrest stage, not the trial stage, and the subsequent process is only to supplement and confirm the arrest or investigation.

2.1.3 Evidence centralism

Evidence centralism is one of the very important principles in evidence science, which requires the judicial organs to engage in judicial activities (Akwanya 27). We must insist on the premise of real and effective evidence, and prohibit the final judgment in the absence of evidence. In *The Trial*, neither K's final execution nor his prior arrest, there is no shadow of evidence in the courtroom of the novel. In fact, there are only three sources where K had contact with the court or its staff. They are:

First, in the first chapter, "Arrest - A Conversation with Mrs. Golubach and Miss Borstner," K wakes up early in the morning to find the guards at his house. "You're not going out. You're under arrest." "So it is, but why?" "We have no right to tell without an order. Go to your room. Stay there. A case has been filed against you. It will be clear in due course. I'm overstepping my authority by talking to you so casually (Kafka 239)."

Second, in the second chapter, "The First trial", K arrived at an attic court for the first trial. K angrily scolded the judge and seemed to get bursts of applause from the jurors present. However, at the end of the article, "the collar of the coat is glittering with colorful badges of different sizes, and looking at them, all of them are wearing these badges" showed that these people were civil servants (Kafka 262). They split into two factions of dissent, half of whom pretended to applaud in order to actually entice K to keep talking. These are just ways for the government to find fun in the trial, to make the trial session entertaining.

Third, even when it comes to the execution of the protagonist K, it is two fat workers in cargo dresses who carry K to a small, desolate quarry. Without much in the way of words, "the hands of one of the fellow travelers were already around K's throat, and another man had thrust a knife deep into his heart." K's vision was fading, but he could still see the two men in front of him. Cheek to cheek, they were watching the final scene. 'Like a dog!' he said. He probably means: He is dead, but the shame will live on (Kafka 358)." Therefore, even when K finally died like a dog, there was still no evidence to prove his guilt.

2.2 The judgment of "guilt" under the dimension of "legal belief"

2.2.1 Crime and law

When K approached the artist and asked for his help, the artist offered three solutions - an acquittal, an acquittal by sophistry, and an indefinite stay of the trial. Apart from the impossible first, the remaining two will undoubtedly not be accomplished through backroom deals and private negotiations. Therefore, the above dialogue occurs when the painter proposes a way of acquittal by sophistry. The painter pledged his personal character and lobbied other judges to convince them of the guarantor's innocence. Finally, all the "testimony" is taken before the judge to increase the inner conviction of the presiding judge. Another way to stay the trial indefinitely is to keep in constant contact with the court, go to the presiding judge every once in a while, and try to get on well with him, so that the proceedings stay at the beginning stage and do not continue further.

To sum up, the solution proposed by the painter is undoubtedly to start from illegal means and get personal contact with the court and judge, as if the law is not worth mentioning in front of them. Similarly, the experienced lawyer in the novel is able to solicit cases because of his personal friendship with the judge; When K's uncle thought of helping K deal with the lawsuit, the first thing he thought of was to find acquaintances to deal with it.

Even the judge set aside the law he was supposed to rely on during the course of the trial. Although this situation was related to the social and historical background of the entire Austro-Hungarian Empire at that time, it also reflected the citizens' contempt for the law.

According to Kafka, everyone is guilty (Kafka 183). In the faithless Austro-Hungarian Empire, anyone's disregard for the law made them guilty at heart. In the novel, K has been working on his case for a year, to no avail. Faced with stifling bureaucracy and judicial corruption, K gradually realizes that he is part of the evil world he lives in. Although he suffered deeply at this time, he also hurt others intentionally or unintentionally. Therefore, in the novel, the meaning of the second level of "judgment" is the judgment of people's inner "guilt". This meaning includes not only the guilt judgment of the characters in the novel, but also the judgment of all modern people who lack legal belief.

2.2.2 Legal belief

The definition of "faith" in Ci Hai is: "Faith refers to the extreme conviction and respect for religion or doctrine, and to act on it." According to the Modern Chinese Dictionary, "to have a strong belief in and respect for a person or a certain idea, idea, or religion, and to use it as an example and guide for one's actions." It can be seen from this that the object of belief is not only limited to religion, but also includes a person or a certain idea, so the idea that belief is a religious belief is one-sided. In Law and Religion, "Law must be believed, or it will be nothing (Berman 3)." Since then, the research on whether law can be believed has been an important debate in the domestic legal circles for nearly two decades. The legal belief combined with rational law and transcendental belief contains two meanings: one is the citizen's recognition and respect for the law, and the law as the norm (Zhang 10); Second, citizens believe that the law is a social normative behavior that can promote justice, safeguard fairness and protect legitimate rights and interests, and it is the umbrella for protection when their rights and interests are infringed. In Kafka's *The Trial*, although there is no direct reference to legal belief, the dialogue between the gatekeeper and K in the fable Inside and Outside the Gate of Law reflects Kafka's reflection on "the spirit of law" and "legal belief".

2.3 The "legal" trial under the dimension of "legal alienation"

In the judicial activities throughout the novel, Kafka accurately describes the judicial system, not only through the symbolic description of the absurdity of the satirical system, but also deeply reveals the evil of the alienation of the judicial system itself. In the words of the painter, one of the characters in the text, Kafka defines "law" as two distinct forms of expression: one is clearly defined by written law, and the other is discovered through the personal experience of the parties, "they are not the same thing at all." In the book, the author describes two kinds of personal alienation that distort their own nature, one is the alienation of human beings, and the other is the alienation of the judicial system. Institutional alienation is more universal, and by virtue of its great influence, it has become the main factor of human alienation. According to Arendt, "Kafka fully demonstrates the terrible nature of the so-called bureaucracy, when one is trapped in the bureaucracy, it means that he has been sentenced... No one can expect justice from the judicial process when such institutions operate on meaningless autopilot and have the prerogative of final decisions." The judicial system was originally created by "people" and its purpose is

to serve people, but it has a reverse effect under the participation and control of people, deviating from the original intention of people to create the judicial system, and becoming a "Leviathan" restricting "people".

Safeguarding the basic rights of citizens is the primary purpose of the national judicial system, and the judicial system should also safeguard the rule of law and fairness and justice of the whole society, so the operation of the system should be cautious, but also moderate. However, if the judicial system is alienated from its own purposes, then any operation of the judicial system will bring disaster to the individual and the society as a whole. In *Law and Literature*, protagonist K's actions and punishments are detached from the relationship (Posner 2006). Kafka not only overturned the sequence of crime and punishment in the law, but first prosecuted, and then the defendant struggled to find out what the crime was, and even decouple crime from punishment. Kafka once said, "Sin and law are attracted to each other." What was K's crime? This is the biggest mystery in the book. There is no due process for arrest, and without a warrant, the arrestee is arrested without knowing what the charge is, and the person executing the arrest is not informed of the charge. In his works, Kafka turned the law into a strange metaphor of uncertain existential meaning, used calm and objective narrative language to depict exaggerated and weird pictures for us, and linked the unreal and bizarre phenomena with the profound nature of the system, which is similar to the role played by rhetoric and sophistry in legal practice. K is ensnared in the judicial system by the alienated machinery of justice, from the notification of arrest, to the court summons, to the imposition and execution of the death penalty. The judicial system deals with issues according to its own inertial logic, and whether K is concerned about the operation of the legal process or whether K is guilty or not does not affect the process of the operation of the judicial system. K had to participate in the litigation step by step along with the judicial process. At the same time, he realized that he should reject this ridiculous trial, but he could not help giving up this idea, and still hoped that the judicial system would restore justice to him through the operation of the judicial system. It is in this background that K, the protagonist of the novel, meets the tragedy of his life.

III. The relationship between law and literature embodied in *The Trial*

3.1 Law in literature

3.1.1 Legality of trial proceedings

Trial procedure refers to the steps and norms that the court must follow to try cases and execute relevant judgments. The existing trial procedure guarantees the legitimacy of the trial to a certain extent, but it is still related to the judicial environment of the society at that time. After reading *The Trial*, most people tend to have many questions, is K guilty? What is the evidence of guilt? If he was innocent, why would he be put to death? Who accused him? Who ordered the execution? These questions do not seem to have an accurate answer in this work. However, this is exactly what Kafka shows the reader about the judicial environment in the Austro-Hungarian Empire and the so-called judicial procedure of the time. Kafka used the form of absurd literature to describe to the reader a completely alienated court, because of the Austro-Hungarian despotism, behind the court is a huge bureaucracy, it is like a beast to devour all the power, subvert the normal order of society. K was watched over by two guards from the moment he knew he was being charged, but the guard told him, "I'm not at all sure if you're being charged, or rather I don't know if you're being charged." You're under arrest, that's all right, I don't

know anything else (Kafka 15). "There was no accuser, no warrant of arrest, no judicial authority, and the charge against K thus began. On the surface, K's trial went through all the links of criminal proceedings, but Kafka did not describe the interrogation process much, because the so-called interrogation is just a formality and has no effect.

In the second chapter, "The First Trial", K goes to the attic courtroom for the first trial, where he publicly denounces the judge's corruption and tries to argue with the trial judge to prove his innocence. K. felt himself to be a hundred times more virtuous than the court, disgusted by its superficial intrigues and hypocrisies, and tried to counter it with national interest, civilization, and work. Although the speech won applause from the jurors on the spot, "as far as the eye can see, everyone is wearing this badge, and the left and right sides that appear to be on one side are actually all one." *The trial* judge and jurors did not see the trial as a serious judicial proceeding, but merely as a way for the bureaucracy to find pleasure in the trial system. In the legal system of the Halsberg Empire, the pre-trial procedure replaced the legal trial procedure and directly convicted K, without going through the substantive procedures of defense, discovery, and trial. However, in the modern legal system, the pre-trial procedure is the preparatory procedure for the trial, which is set up to ensure the correctness of the trial procedure. However, the trial court in the novel completely ignored the legitimacy requirements of the procedure and blocked the way for the parties to express their demands, so that the parties could not transmit their own values through the interactive dialogue with the trial judge to ensure the realization of their own rights and interests.

3.1.2 The protection of legal rights

What are rights? What are legal rights? The term rights comes mainly from the West, and in the legal context, rights (legal rights) are more ambiguous than any other term (Pound 43). As Kant put it, "Ask a jurist, 'What are rights? It's like asking a logician 'What is truth?' It also embarrasses him." In its most ordinary sense, a right is a reasonable expectation in the life of a citizen. Legal right refers to a reasonable expectation of citizens in law. The moral foundation of the right is the social recognition of the legitimacy of the right subject's claim, which means that a certain right is "deserved" and "should be". Justice is the moral foundation and value pursuit of rights, and rights are effective ways and important guarantees to realize justice.

As an employee of an industrial accident insurance company, Kafka made great efforts to defend the rights of workers. His idea of justice for vulnerable groups and safeguarding their legal rights ran through the trial. The value of Kafka's literary works lies in revealing social contradictions and conflicts that are ignored by laws representing state power but actually exist objectively, conducting targeted analysis and exploration around specific issues, and then summarizing common problems in reality: There is a huge gap between the state system reflected in literary works and the informal rules people are used to in real life. The contradictions and limitations of the formal system promulgated and implemented by the state in practice are far more prominent than its adaptability. In *The Trial*, the unjust legal regime imposed on the Halsberg Empire operates in an atmosphere that disregards the legitimate rights of criminal suspects, as K's privacy is violated and his trial is conducted haphazard (information necessary for his defense is blocked from him and his defenders). It can be seen that the "Trial" reveals the fact that unjust laws lead to the occurrence of unjust, false and wrong cases, as well as the reflection

on "whether the judicial system can effectively solve practical problems".

IV. Literature in law

In the field of law, literary theory and literary techniques are also applicable. The most direct aspect is embodied in the expression mode of literary expression (such as narrative) and language rhetoric (such as metaphor). Treating law as an important term in the field of literature -- story and using the theory of literary criticism to analyze the legal text is conducive to interpreting the profound legal knowledge in a familiar and easy to understand literary way, and it is also a shortcut to study the expression form of law and the art of legal rhetoric (Suo 128).

Literature and law seem to be two distinct fields, with essential differences. Literary creation depends on the author's personal thoughts and emotions, and is his view of society and life, with a distinct personal color, subjectivity, randomness and openness. The law is established in accordance with strict legislative procedures, and the language is concise, accurate and rigorous, with strong objectivity and seriousness. However, when we talk about the tension between literary narration and legal narration, we must reach a consensus on the characteristics of both, and this consensus is that literature and law are a text and a construction of language. Both literary narrative and legal narrative describe, know and understand the world through the construction of language. The narrator expresses his thoughts, feelings and value judgments in the expression and use of language.

The difference between literature and law itself naturally leads to the divergence between literary narration and legal narration. First of all, legal narrative has authenticity. Different from the fiction of literary narration, the narrative object of legal narration is the real story. The true story happens before the narrator narrates, the construction of the story plot has no direct connection with the narrator's narrative behavior, and it is a complete and independent subject. The real story follows its own timeline, without reliance on any narrative act, and without any narrative influence. In a true story, the cause, process and result of things have been decided, and the development trend of the story cannot be changed by the creation of the narrator, which is unpredictable and irreversible. This is fundamentally different from the fictional plot construction in literary works. Second, legal narrative is rational. Compared with the emotional expression in literary narration, legal narration focuses on reasoning and argumentation. The description of external social events in literary narration is the cornerstone for the author to deepen the theme and thought of the work, so the author tries to describe the whole event with vivid and vivid language. However, the purpose of legal narration is to restore the story scene with concise, precise and rigorous language, so legal narration is to reason and demonstrate on the basis of existing facts and evidence. The language in legal narration is always accompanied by reasoning and argumentation. For example, the main body of the judgment records the basic facts of the case in detail, and then the judge analyzes and demonstrates according to the legal and effective evidence, and reaches the final judgment result.

Thirdly, the verifiability of the story scene. The story scene in literary narration is the place where the characters talk and act in a certain time and space. The scene in a literary work is imagined by the reader in the language constructed by the author, and is not an intuitive scene. Compared with the fact, the story in literary narration does not actually happen, what is presented to the reader is only language, and what happens is only

language itself. In legal narratives, no matter whether the scene has been destroyed or not, the scene of the story still really happened. For example, crime scenes can be restored with sophisticated forensic techniques. The data associated with criminal activity can be corroborated by experiments. The premise of restoration and verification is that the crime scene has actually happened, that is, the story scene is real.

Finally, the narrative perspective is different. The legal narrative applies to the third person perspective, while the literary narrative perspective is more casual. The third person perspective is that the narrator is close to the perspective of God, who knows everything, whether it is the external behavior of the character or the inner activity of the character. Law is the standard of action to protect the legitimate rights and interests of citizens. Therefore, when lawmakers make laws, they must stand in the position of the vast majority of people, not only pay attention to the legal cases that have occurred, but also listen to the aspirations of citizens. In *The Trial*, the judge, as an objective and neutral person, must be free from the interference of public opinion and individuals, and only make reasonable judgments on the basis of the facts and law of the current case. In literary works, the choice of narrative perspective is completely chosen by the author at will, which is just a writing technique for the author to express the intention and thought of the work.

4.1 The fusion of law and literature

4.1.1 Similarities and differences between law and literature

The similarities between law and literature can be summarized as follows: First, from the theory of the relationship between matter and consciousness from the philosophical point of view, law and literature are social ideologies, belong to the category of superstructure, and both are determined by and serve the economic foundation. Secondly, law and literature, both products of ideology, are colored with subjective initiative, that is, people's subjective consciousness is more or less reflected in them. Thirdly, in the scientific classification of the dichotomy between natural science and social science (according to different research objects), law and literature belong to the social sciences, and they both pay attention to human beings and all natural and social life related to human beings. Law is through a series of rules and regulations to protect people's rights, guarantee a better living state. Fourth, both law and literature are closely combined with the concepts of language, text, story, narrative and rhetoric. Literature narrates stories and expresses emotions through language and words. Laws and regulations use rigorous text to describe the concise, and in court arguments, language is a tool to describe the cause and effect of events.

The differences between law and literature are mainly reflected in five aspects: First, the reasons for the emergence of law and literature are different. Law is the tool of the ruling class to govern the country, reflecting the will of the ruling class; literature is the creator's cognition of the real world, reflecting the creator's thoughts. Second, law and literature from different sources are formed at different times. Literature (indeed, it is said that oral literature), originated in ancient times, from the beginning of human thought and began to express ideas in oral form, literature was born; When human society has developed to a certain extent, law comes into being in response to the needs of the ruling class. Therefore, in terms of the time when both law and literature were produced, literature is more historical. Third, the characteristics of law and literature are different. Laws are

formulated by specific state organs in accordance with strict legislative procedures and have strong objectivity, universality and seriousness. Literature, on the other hand, is an individual's view of society and life, both in form and content, with great subjectivism, so it has subjectivity, characteristics and openness. Fourth, the social functions of law and literature are completely different. The law has a seriousness, therefore, the true rule of law in the country, everyone must be equal before the law, no individual and organization's rights can be above the law. The law is a red line that cannot be touched, and those who cross the border will be punished by law. The arbitrariness of literature will inevitably affect its propaganda effect on social morality. Unlike law, literature can not set up special social institutions at the national level to carry out relevant positive energy propaganda. It is more about praising the truth, goodness and beauty in reality through moral education, and ruthlessly exposing the dark side of society with the courage to point out current defects. Finally, law and literature belong to different subcategories.

4.1.2 The propaganda function of literary works to law

The propaganda and education function of literary works on law is embodied in three aspects: First, if the legal stories described in literature are documentary legal descriptions, the relevant legal knowledge can be directly transmitted to the readers of literary books naturally, and the ideas such as "the supremacy of law" and "reverence for law" to be expressed can be effectively conveyed to the readers. For example, in Kafka's *The Trial*, a series of legal concepts are introduced to make readers more or less aware of some legal terms. Secondly, literary works are not documentary descriptions of the law, but conceptual side illustrations of the law, so readers can often learn some negative lessons from them, and then trigger more in-depth thinking about the law. In addition, due to the rigor of the law itself, its content is rare and the audience is limited, so that the public generally feels that the legal provisions are boring and the connotation of the law is obscure. Through the form of literary works, the mysterious veil of law is lifted layer by layer, which not only enables readers to understand the general legal common sense, but also enables them to think about legal justice through the media of ethics under the background of the study of the relationship between law and literature. Under such circumstances, reading Kafka's *"The Trial"* can not only better understand the incredible proceedings, but also further criticize the unjust laws that do not conform to social morality and full of justice through sympathy for K, a small person who is inexplicably involved in it. Third, the ultimate goal of the publicity function of literary works on law is to enable readers (including legal professionals and non-legal professionals) to learn and deepen the legal issues mentioned in literary works, so as to enhance their sensitivity to people and things in real life, and further familiarize themselves with and apply the legal knowledge they have learned in real life.

4.1.3 Law enhances the educational function of literary works

As we all know, literature has the function of enlightenment, and law, as an important content of literary works, also plays an important role. For many readers with a legal background, Kafka's works have uncertain intentions and unclear themes, and if it is not the introduction of legal content, they may not be interested in reading, or even dabble in it at all. Therefore, the injection of legal content increases the reading crowd of some literary works in a certain sense, and improves the overall educational function of literary works. It has been

proved that most of the legal stories in literary classics take the law as a negative example, and Kafka criticizes the non-just law in reality in *The Trial*. It is the pursuit of literary authors to enhance the educational function of literary works while enhancing the appeal of literary works through the shaping of judicial negative images. Secondly, the unique logical rigor and systematic thinking of the law help us to better refine the central idea of the article and deepen the theme of literary education when reading literary works. Third, the role of law on literature is also reflected in the fact that law is conducive to the study of the authenticity and historicity of literature, that is, to understand the legal background involved in literary works, and then more comprehensively understand the educational role of literature as a common cultural phenomenon.

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