



## COMMENTS

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### MEDICO-LEGAL IATROGENESIS: A KAFKAESQUE ANALYSIS

Iatrogenesis refers to the origin of disease in interventions designed to improve health and well-being. Because the mundane discomforts, stresses and normal diseases of life are being regarded increasingly as compensable injuries, it is timely to consider the effects upon health of involvement in the medico-legal process.

The personal impact of involvement before the courts can be graphically illustrated by the plight of the central character, Joseph K, in Franz Kafka's philosophical novel *Der Prozess* (which in the English translation is entitled 'The Trial'). K. was a young, intelligent, and very capable Senior Clerk in a large commercial bank; in modern parlance, a bright young executive on the verge of promotion to senior management. He is accused, he believes without any justification, of an unstated crime. His arrest is notional and he is free to carry on his life, with periodic brief hearings to be held on Sundays so as not to interfere with his professional activities. He becomes increasingly obsessed by his case. The intensity of his preoccupation disrupts previously harmonious interpersonal relationships. He experiences an uncomfortable change in status as his involvement with the Court becomes known among workmates and even mere distant acquaintances. He has increasing difficulty concentrating, and his efficiency and efficacy at work progressively decline. His confidence in his lawyer falters as he becomes increasingly frustrated by delays in the progress of his case. He is, at once, dependent on his lawyer and convinced that he, himself, could manage his own advocacy better. Yet, when within the precincts of the Court, he becomes overwhelmed by feelings of debility and helplessness.

His acceptance of the authority of the Court was to an extent voluntary since he attended his initial hearing even though no time had been set. He was, in part, motivated by a desire to assert intellectual superiority over a

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1 Kafka F, *The Trial*, Picador Classics, London, 1977.

bureaucracy so incompetent as to lay a totally unjustifiable charge. His attitude becomes transformed, through the psychological and social effects of his status as an accused person, into a craving for complete exoneration by the Court. Thus, a somewhat contemptuous and partly optional entry into the system leads to an irrevocable commitment which eventually destroys his life.

While there is much in the above that is recognisable in the plight of the medico-legal claimant, it can be argued that this illustration ignores important differences between industrial and criminal actions, particularly in relation to the differing status before the courts, of the plaintiff in a medico-legal case and the accused in criminal proceedings. It must be remembered, however, that in medico-legal actions, the issue of contributory negligence and questions regarding the veracity of claims of disability, can expose the claimant to substantial implied accusation. The choice to treat a complaint 'through compo' may lead to feelings of alienation from workmates and a distressing perception that one's complaints are thought not entirely genuine. This may lead to an escalating desire for vindication expressed as progressive, self-justifying discomfort and disability and the quest for a commensurate monetary settlement. Even a successful return to work will be followed by feelings of harassment associated with a need to comply with the system's demands for further assessments and reports. The victim often will confide in a sympathetic listener, that the process is far more distressing than the complaint or injury, and may express feelings of entrapment within a process they do not understand and which they feel unable to terminate.

Kafka's novel, which was published in 1925, contains far more than a litany of the discomforts suffered by a person involved with the courts. An important theme is the voluntary subjugation of an intelligent individual to an arbitrary authority, and the destruction of that individual by submission to the authority's processes.

K. was not accused by any ordinary court. Prior to his arrest, he had been unaware of the existence of the Court which was separate from the orthodox courts of the Imperial Palace of Justice. His initial reaction was that his arrest was a joke or a hoax. He was persuaded of the authority of the Court by a combination of factors, including the manner of the Inspector informing him of his arrest, the apparent complicity of his landlady and fellow workers at the time and subsequently, by knowledge of involvement with the Court of persons of stature in orthodox affairs, such as lawyers at the Bar of the Imperial Palace of Justice, business acquaintances and a cleric. He did not question the basis of the Court's authority.

The idea is thus developed that people can be persuaded to submit to arbitrary instructions which are presented in an authoritative way, and which seem to be acceptable to others. The acceptance of the sick role, in response to widely accepted, but ill-founded medical advice, by a healthy person, without evidence of overt malingering, hysteria, or other major psychic dysfunction, might be regarded as a like phenomenon. This model thus warrants consideration as a possible interpretation of the induction phase of 'RSI' (repetitive strain injury) during the epidemic. Healthy and capable individuals were taught that discomforts, which many stated they had previously experienced and considered unimportant, were, in fact, manifestations of a serious and potentially progressive injury. They were

told that repetitive movements and sustained body postures caused the injury. Because these putative causal conditions were poorly defined and encompassed activities which form at least part of most peoples' lives, the population at risk was virtually universal. The targeting of certain uncomfortable jobs as constituting a special risk made workers in these areas feel especially vulnerable. The higher frequency of RSI in these occupations, while in retrospect interpretable as a self-fulfilling prophecy, at the time served only to fortify belief in the theory. Once the disorder had been induced, advice was given that activities associated with pain would aggravate the injury to the point that it could become irreversible. Victims thereby acquired enhanced attention to and apprehensive concern about normal bodily discomforts, such as pain, paraesthesia and feelings of swelling, that anyone can experience through the simple process of concentrated self-observation of regional sensory input. The result was an escalation of pain and disability, and specious proof of the profusive nature of the disorder.

The RSI dogma emanated from a range of authoritative and quasi-authoritative sources: occupational health doctors, physiotherapists, occupational therapists, union pamphleteers, magazines, newspapers, television, government publications and even a refereed medical journal. The message was seen by potential victims to be readily accepted by fellow workers, and was given further credibility and meaning through acceptance by the courts. The content of the message was not only plausible but frequently reinforced in a logically coherent manner. The message was not just persuasive but compelling. Few among the disabling professionals, let alone their victims, possessed the perspective required to consider that hypotheses be scientifically testable.<sup>2</sup> Indeed, there was little incentive to do so, since the concept yielded a greatly expanded market for a fledgling occupational health specialty, substrate for fashionable health education, ostensible benefits from union activity and grist for the medico-legal mill.

Several further similarities can be seen between the bizarre legal system depicted in *Der Prozess* and our contemporary medico-legal system. For example, K. was confronted with the dilemma of preparing a plea in response to an unknown accusation. Compare this with the situation of the notional defendant in an RSI case who is held responsible for causing an undetectable injury resulting from putative physical conditions which have not been defined in any important respect, such as force, duration or periodicity.

In the novel, once an accusation had been made, guilt was a *fait accompli*. No case of an absolute acquittal had occurred in living memory and even details of legendary examples could not be recalled. The only options open to the accused were recurrent postponement or apparent acquittal. The latter involved having the case put aside with the caveat that it could be reactivated by the Court at some future time. This situation has some similarities with an Industrial Court settlement which does not remove the possibility of a common law action. The similarity between the more usual strategy of recurrent postponement and the repeated adjournment of cases today needs no explanation.

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2 Popper KR, *The Logic of Scientific Discovery*, Hutchison, London, 1959.

Kafka depicts the Court as lacking the grandeur and prestige of the normal courts. He describes the proceedings of the Court as being undertaken at several levels. Examining Magistrates were lowly officials, who examined accused persons in the absence of their lawyers. They had a fragmentary knowledge of the judicial system and a limited perspective on the cases before them. Their contribution was to examine in relation to certain defined matters and prepare a report. The reports were remarkably detailed and lengthy. The person examined generally behaved obsequiously in the belief that a favourable impression was crucial to their case. In the event, the reports often had little impact on subsequent proceedings and, at times, were even discarded. Because appropriate details were not available to them, Examining Magistrates had no way of assessing the influence of their reports upon the outcome of cases. Doctors involved in medico-legal assessments will find much with which to identify in this description.

There has been considerable speculation about the nature of K's undisclosed offence. A favoured view is that his crime was his increasing feeling of guilt; guilt induced by an undefined accusation and escalated by involvement with the Court; guilt which culminated in voluntary submission to his own execution. In RSI, belief that one has an undefined injury is the disease; a disease promoted by harmful health education and reinforced by disabling professional advice; a disease in which commonsense interpretation of sensory experience is displaced by dogma which rivets attention on discomfort and demands radical avoidance of use, which destroys useful life.

Kafka's writings were layered with meaning and *Der Prozess* has philosophical, theological and auto-analytical dimensions. Importantly for our present considerations, a central feature of the novel is the abstraction of the essence of a professional bureaucratic system and reconstruction in a fictional form; a form which highlights the limited vision and fragmented roles of those serving the system, and the alienating and destructive effects of the system upon those whom it serves. That one can find so much of relevance to our medico-legal system today attests the depth of his analysis. That his metaphors should seem so apposite may have a personal basis. When Kafka died at the age of 42 years from tuberculosis, he was little known as a writer. His now celebrated novels were unfinished and were published post humously. He had studied law and he spent his entire working life in Prague as an official in a government-sponsored Worker's Accident Insurance Association.

Kafka said 'I have immensely absorbed the negative aspect of my time, a time which is very close to me and which I have no right to challenge, but only as it were to represent'. More than sixty years later, participants feel similarly daunted as legal laymen or medical laymen before a hybrid system in which professionalism devalues commonsense and in which the phrase 'you can't help bad luck' has no place.

In conclusion, RSI is an especially instructive example of medico-legal iatrogenesis because it presents iatrogenesis in a form isolated from accident or injury in the usual sense. As has been argued previously, the RSI concept, as it relates to putative undefined noxious stresses and undetectable injury, is not structured in a scientifically testable form.<sup>3</sup> RSI

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3 Cleland LG, RSI: a model of social iatrogenesis, *Med J Aust* 1987; 147: 236-239.

is essentially a social concept. Accordingly, it is appropriate to question the concept's utility rather than its veracity. To the extent that it has improved conditions of workers in some uncomfortable jobs, it has been useful. As a framework for medical diagnosis and treatment, it must be judged a failure, since the nocebo effect of the concept plainly outweighs any putative benefit. As a temporary aberration of the medico-legal system in Australia, it has highlighted the potential fallability of expert opinion, particularly in relation to new concepts and techniques when used in a manner which has not been properly scientifically validated. RSI also underlines the difficult task of the judiciary in discriminating between, and giving appropriate value to, what is scientific and what is merely plausible, within an adversarial system which does little to encourage balanced argument.