

Franz Kafka's *In the Penal Colony* is a text that all law students should read. In the story, a Traveler from a foreign country is sent to observe the Penal Colony's method of punishment for wrongdoers, which turns out to be a barbaric torturous death machine that inscribes the accused's sentence on his body as it slowly kills him. The Traveler grows more and more horrified as the Officer in charge of the executions explains the machine enthusiastically, with pride and love for each of its components. The Condemned Man, a servant sentenced to death for falling asleep and neglecting his duty to "stand up every time the clock strikes the hour and salute in front of the captain's door," looks on during the explanation despite the fact that he cannot understand the language (Kafka 9). Upon finishing his explanation, the Officer asks the Traveler: "Can you now appreciate the work of the Harrow and the whole apparatus? Just look at it!" (Kafka 14). When the machine is ready to receive its next victim, the Soldier, who is there to assist the Officer, cuts off the Condemned Man's clothes and helps to strap him to the machine as the Traveler looks on in disgust.

While this travesty continues, the Officer grows concerned as he sees the Traveler's reaction, and pleads with him not to speak out against the execution method, for fear that the new Commandant will end it if he sees how strongly a respected foreigner disapproves of it. When the Traveler informs him that he will voice his opposition to this type of execution, the Officer "smile[s] the way an old man smiles over the silliness of a child," spares the life of the Condemned Man, and opts instead to throw himself into the execution machine (Kafka 29). The Soldier and the Condemned Man enjoy the macabre spectacle, and even assist the Officer as he straps himself in. The Condemned Man becomes fascinated with the machine after he is no longer sentenced to die by it, and "with his hands folded...plead[s] to be allowed to stay there" to observe it working on the Officer (Kafka 35). The machine eventually kills the Officer, but without the beauty and seamlessness he had described to the Traveler. As the Traveler notes, "what all the others had found in the machine, the Officer had not" (Kafka 37).

The story ends with the Traveler and other two men visiting the site where the old Commandant is buried—outside a tea house underneath a table where people are casually dining. The Traveler leaves, and the Soldier and Condemned Man chase after him. By the time they get to the Traveler's boat, he has already boarded and the boat takes off, taking the Traveler away from the Penal Colony and leaving the two men behind.

Kafka's distinct storytelling style, which at once both delights and horrifies the reader, is the perfect medium through which to illustrate the inefficiencies and shortcomings of any modern legal system. When read through an immigration law lens, this text perfectly illustrates what it is like to be an immigrant or refugee in the United States. From the complex system of incomprehensible rules to the stubborn obsession with entrenching those rules and preserving them at all costs, *In the Penal Colony* illustrates the life of the immigrant from his entrance into the country all the way to his inevitable assimilation into the system.

The typical person who immigrates to America enters the country a lot like the Condemned Man approaches his execution. The immigrant usually does not speak the language. Like the Condemned Man, he does his best to understand what is happening around him by carefully observing those in charge, ultimately gleaning very little in the process. If the immigrant does speak the language, it is likely that he does not speak the particular language used throughout the immigration system. Quickly, the immigrant begins to learn that the system is plagued with inconsistencies and injustice. In the story, the Officer explains the execution machine to the bewildered spectators, and the Traveler grows more and more concerned as he realizes that the

previous Commandant, who had designed the machine, was “in his own person a combination of everything;” he was “soldier, judge, engineer, chemist, and draftsman” (Kafka 7).

The Traveler is even more baffled upon learning that the Condemned Man does not know his sentence. This conjures up images of unrepresented immigrants standing in immigration court and having very little idea of why they are there or what is going to happen to them. In the story, the Officer explains the reason the Condemned Man does not know his sentence—“[i]t would be useless to give him that information. He experiences it on his own body” (Kafka 8). The immigrant experiences the truth about his status within his community in a similar fashion. Though it is not printed on his body, his systematic exposure to anti-immigrant rules and sentiments becomes imprinted on his mind.

When I immigrated to the United States from Romania as a young child, I remember people exclaiming “Welcome to America!” cheerfully, even at the airport in Dallas where my mother and I first landed. It made us feel like we had landed in paradise. That feeling was short-lived, as we soon came to learn that as an immigrant in the United States, you do not receive the same treatment as everyone else. Although my mother was paid less than her American counterparts, her immigrant status made her unable to apply for any benefits that low-income American citizens could apply for. No one will approach an immigrant outright and say “you will never be worth as much in this country as an American citizen,” but that is not necessary, because an immigrant quickly deciphers his true place in society “with his own wounds” (Kafka 15).

However, immigrants and refugees in America are still necessary for one thing: their entertainment value. In *The Penal Colony*, the Officer explains that executions in the colony used to be widely attended—everyone “came merely to watch,” and there were “fanfares” announcing the event as “the whole society—and every high official” gathered to witness the condemned person’s demise (Kafka 20). People witness executions because it makes them feel good, and they support draconian immigration measures because it makes them feel safe. Not only is “justice” served, but they get to see how another person’s life turned out so much worse than their own. They get to feel bad for the poor guy and feel good for themselves, because, after all, they’re much better off. Many immigrants have a similar experience.

As an immigrant, though you are marginalized and constantly reminded that you do not truly belong, you are also extremely *interesting*, and the sadder your story, the better. People light up when I tell them I’m from another country. They can’t wait to hear all about how horrible and miserable my life was before I moved here to the land of the free and the home of the brave. I can’t count the number of times I’ve been asked whether when I lived in Romania, I didn’t have enough food, or a home, or clothes, or a school to go to. In reality, I lived a middle class life, had access to free healthcare, lived in an apartment that we owned, and went to an excellent school, which allowed me to surpass all my peers when I started school here. But that makes me more valueless as an immigrant, because I can’t contribute to the poverty porn so many Americans feed on.

Immigrants are cool as long as they are documented and come complete with a feel-good story about how America helped them turn around their sad, worthless lives. For those who are undocumented, the battle for acceptance and inclusion is even harder. Like the Condemned Man, undocumented immigrants and refugees are not merely fighting for a specific status within society—they are often fighting for their lives, and fighting alone. In the story, the Traveler wishes to intervene on behalf of the Condemned Man, but feels uneasy about it and figures that maybe “in this place special regulations [are] necessary, and that one [has] to give precedence to military measures right down to the last detail” (Kafka 10). These are the same justifications that led to Donald Trump’s infamous travel ban. Regardless of the relevant humanitarian concerns,

ultimately, being biased against refugees or immigrants is okay, because it's a matter of national security. Or national pride. Or the fact that we already have poor people in America. Or that somehow, people fleeing the evils of terrorism in their own countries just can't wait to get to America and engage in exactly the same thing that prompted them to leave. Whatever the pretexts, Americans, even well-meaning ones, tend to take on the Traveler's initial attitude; we throw up our hands, shrug our shoulders, and tell ourselves it is not up to us to solve the country's problems.

This perpetuates the notions that immigrants and refugees are inferior and dangerous, and that regardless of whether attitudes towards them or rules governing their status are unfair, they are necessary. In the Officer's words, "Is it not necessary to try every means of saving this procedure, even those methods which may possibly be inadequate?" (Kafka 25-26). In *The Penal Colony*, this is illustrated through the Officer's desperation to hold on to the barbaric execution tactic left in place by the old Commandant, even if the rest of the colony opposes it. "I'm using all of my powers to maintain what there is at present," says the Officer as he begins to plead with the Traveler to help him keep the current system in place (Kafka 19). It may not be the best it can be, but that's not the Officer's fault—it is rather a result of the fact that the "resources for maintaining the machine are very limited at the moment" (Kafka 17).

These are the excuses given when you ask why there are refugees who have been waiting for years for someone to review their applications and grant them permission to remain in the United States permanently. There are simply too many applications and not enough resources to process them all. But if you suggest that the process would go faster if some of the roadblocks were removed and those fleeing danger could more easily obtain status, that is simply unacceptable, because it would imply having to bring the current system to a screeching halt and re-working it.

The Officer's intense paranoia about people trying to change the current penal system is palpable in the United States and shared by almost all of those who support marginalizing and excluding immigrants and refugees. One can almost hear Donald Trump screaming the Officer's words in desperation: "People are already preparing something against my judicial proceedings. Discussions, to which I am not invited, are already taking place..." (Kafka 20). As they explain why the current system must be maintained, its supporters lament the fact that it is no longer as strict as it used to be; that in the past, "the needles... dripped with caustic liquid which today we are not permitted to use anymore" (Kafka 21). Gone are the good ol' days when we didn't have to be so "politically correct" and we could just blatantly express our racism and bigotry without anybody having a problem with it. Amid cries of "build the wall!" and "go back to your country!" small voices rise up in protest, but they are quickly stifled. To those who stand up to challenge the barbarism, its supporters reply: "you are biased in your European way of seeing things" (Kafka 22).

This brings me to another point at which the immigrant becomes slightly more valuable to American society—when he gains citizenship and assimilates into the culture by casting out all previous customs and adopting the American way of life. This step is difficult to reach, particularly for those who are not white or who come from countries with vile stereotypes attached to them. It is even more difficult to reach for refugees, and almost impossible for undocumented immigrants. In the story, the Condemned Man would have presumably reached this point during the sixth hour of the execution, where even "the most stupid of [those being executed] begins to understand" the sentence that is being inscribed on his body (Kafka 15). In the Penal Colony, this was an exciting event, especially for those witnessing the execution. As the Officer explains, when people used to attend the executions, they all happily "took in the expression of transfiguration on the martyred

face” of the man who finally understood once and for all exactly who he was in the eyes of the spectators (Kafka 21).

Gaining citizenship accomplishes that transfiguration for today’s immigrant in the United States. I will never forget my own experience with this phenomenon. It begins when you first submit your documents to apply for citizenship. You await with trepidation an envelope telling you that after extensive background checks and a hefty sum of money, you have been deemed worthy enough to receive the honor of being interviewed to see if you are worthy enough to receive the honor of becoming a citizen. More envelopes follow with more instructions, and eventually you receive an interview date, dress in your best American-looking outfit, and show up to a local government building to prove that you understand something of the English language and have spent at least a few minutes looking through the booklet of information you were provided about the country’s history.

My mother studied earnestly for the interview, making sure to remember that George Washington was our first president, Barack Obama was our current president, and something pretty significant took place right around the year 1776. We walked into the building together, ready to face whatever test of our loyalty to our new country was thrown at us. The most memorable part of the entire experience was witnessing the way people were treated when they entered the building as non-citizens and comparing it to the way they were treated as they exited the building as reborn believers in the American dream.

When people entered, they were herded like cattle as they moved through a security line similar to the ones at airports. Hostility and hatred hung in the air as officers screamed “take off your shoes!” at a woman who took more than two seconds to figure out what she was supposed to do when she reached the front of the line, and every few minutes, another officer would yell “have a seat until your number is called!” over the crowd. Like the Condemned Man who had yet to decipher the inscription on his body, all the immigrants in the room looked around at each other, confused about why they were being treated like they were sub-human. The officers looked at us like piles of garbage, and we had no choice but to sit and wait until we could be transformed into something less inconvenient and unsightly.

After the whole process was complete, we proceeded to a room to take part in a ceremony celebrating our new identities. With cheers and fanfare, someone called out each country that was represented in the room, and we all stood up to roaring applause when our country was called. A welcoming video was played, followed by the national anthem and pledge of allegiance. The hateful tension we experienced upon walking in was replaced with big smiles and congratulations as those same people who had treated us like garbage hours earlier waved flags in our faces and enthusiastically encouraged us to register to vote. We had experienced the transfiguration the Officer in the Penal Colony longingly described. We had reached the 6th hour of our transformation, and we had finally gained some value in the eyes of our spectators. What seemed like a happy ending to everyone around us was, to us, simply an ending. Our faint smiles, like those of the people executed in the Penal Colony, signaled to others that we had finally understood and accepted our place. To us, they signaled the end of one kind of life and the hope for the beginning of another.

The greatest fear of those who insist that immigrants, refugees, and undocumented persons need to be excluded and oppressed is that without the proper measures, one day those people will rise up and bring the entire system to its knees. The ending of the story illustrates that fear. Here, the foreigners—the Condemned Man who did not speak the Officer’s language and the Traveler—put an end to the execution system. Every piece of the elaborate execution apparatus began

tumbling down as the machine decomposed before the viewers' eyes. Horrified, the Officer had no other choice but to become the machine's final victim; to go down with his sinking ship rather than endure another day without it. Those who wish to maintain America's dysfunctional immigration system see foreigners as a threat to every part of their way of life, and they are willing to do anything in their power to keep the machine working, regardless of who is harmed in the process. As seen in *The Penal Colony*, however, a shaky system built on fear and maintained for the sake of tradition and reverence toward its creators can only last so long before it inevitably meets its demise.

Simina Grecu, Vanderbilt Law School