

Kafka and Legalisms

*Christian Vernon**

Franz Kafka: Office Writings, Stanley Corngold, Jack Greenberg, & Benno Wagner, eds., Princeton University Press, 2009.

Franz Kafka is best known as a literary figure, having authored such classics as *The Trial*, *The Penal Colony*, and *Metamorphosis*. He is less well known as a senior lawyer with the Austro-Hungarian equivalent of the WSIB.

This collection contains the greatest hits of Kafka's professional career, including trial briefs, legal correspondence, memoranda, jurisprudential essays, etc. Of note is Kafka's extended correspondence wherein he repeatedly demands a raise and includes detailed charts setting out the extent to which he was underpaid compared to his peers. Also included are Kafka's observations on the dangers of plying quarry workers with brandy as an employment benefit, the workplace risks posed by the new-fangled automobile, and the challenge of reintegrating World War I veterans into the workforce.

Kafka's professional writings contain a great deal of fodder for the textual interpretation of his better known literary work, but this collection also contains valuable insights for the practicing lawyer. One remarkable theme that emerges from Kafka's legal writing is how little some aspects of legal practice have changed since the early 20th century. Many practicing lawyers would likely relate to Kafka's frustration at sending letters to bureaucrats which went ignored:

I must tell you that I have spent half my life waiting for your letter – though the waiting period did include three short letters I wrote you during these three weeks (just now I'm being asked questions about insurance for convicts, my God!), and perhaps two of them can now be mailed, while the third, actually the first, cannot possibly be sent. And so your letter is presumably lost (I have just had to explain that I know nothing about a ministerial appeal by Josef Wagner in Katharinaberg) and I will not get answers to my earlier questions. [p. 189]

This passage reveals that Kafka understood the importance of the C.Y.A. letter. Where he has appeared unknowledgeable about a subject he should know about and the fault lies with another party who has not responded to his letter, he is quick to record a self-serving account of this in further correspondence. He has little expectation that this correspondence will be read by its intended recipient, but that is clearly not the purpose of this particular letter.

The editors of this volume note that one of Kafka's strengths as a lawyer was his ability to understand different parties' real world interests rather than approach legal questions from a mechanistic rights-based standpoint [p. 70]. This relates to a prominent theme of his literary writing which was the exploration of empty signifiers, especially in legal terminology and bureaucratic processes. This theme is developed in his professional writing when he addresses one of the major policy initiatives of his day: an ever-expanding compulsory insurance regime. Kafka's 1908 essay, *The Scope of Compulsory Insurance*, reveals his pragmatism. Kafka is concerned with industries that have been exempted from compulsory insurance. He notes the unfairness in a system which sees some of the riskiest work in the agricultural

sectors and cottage industries exempt from compulsory insurance. Kafka writes about how this frustrates employees and business owners alike, particularly where some employees of a particular enterprise are covered by compulsory insurance, while others are not.

Overall, this volume would be an interesting read for any practicing lawyer insofar as it confirms that certain aspects of legal practice are timeless. For example, Kafka's account of a major trial that he lost is instructive in terms of how he prepared himself for the likelihood that he would lose, and how he coped with the aftermath. Some of the material in this text may be relevant to in-house counsel or government lawyers, particularly the correspondence which reveals Kafka's double advocacy: trying to persuade opposing parties to agree to a particular resolution of a matter, while also trying to persuade his superiors of the same thing. The editorial comments and essays that introduce each chapter are particularly useful in terms of situating the sometimes disembodied professional writings within Kafka's literary and historical milieu.

This book is available at the Toronto Reference Library, 3rd Floor, and is also available on Amazon.ca.

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