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# BOOK REVIEW ESSAY

## KAFKA: THE WRITER AS LAWYER

FRANZ KAFKA: THE OFFICE WRITINGS. Edited by Stanley Corngold, Jack Greenberg, and Benno Wagner. Princeton: Princeton University Press, 2009. Pp. 404. \$45.00.

*Richard A. Posner\**

Franz Kafka was born in Prague in 1883 to a German-speaking Jewish family. Prague at the time was part of the Austro-Hungarian Empire and had a large German population. In 1908, after receiving a law degree and working briefly for an Italian insurance company, Kafka was hired by the Workmen's Accident Insurance Institute for the Kingdom of Bohemia in Prague, Bohemia being the province that, along with Moravia, constitutes today's Czech Republic. The Institute was a government agency that administered the Austro-Hungarian workmen's compensation law in Bohemia. Kafka was employed there as a lawyer until he retired on grounds of ill health in 1922, though after he was diagnosed with tuberculosis in 1917 he worked only sporadically. Almost all his fiction was written between 1908 and 1917, when he was working full time for the Institute. Although he would have much preferred to write full time, he was a diligent and conscientious employee, highly valued by his superiors and entrusted by them with a variety of responsible assignments relating to legal analysis and advocacy, but also to broader issues of policy.<sup>1</sup> He repeatedly expressed loathing for his job at the Institute,<sup>2</sup> and yet the intensity of that expression is hard to square with the quality of his work and the high regard in which it and he were held by his superiors—despite his being the only Jew in a responsible position in the Institute in a time and place when anti-Semitism was rife.

It has long been understood that Kafka's "day job" as a lawyer in a Central European bureaucracy that dealt with industrial injuries influenced his fiction.<sup>3</sup> Law is a prominent theme in it, notably but not only in his unfinished novel *The Trial*. And bureaucracy is depicted in *The Trial*, in another unfinished novel, *The Castle*, and also in many of his

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1. Reiner Stach, *Kafka: The Decisive Years 284–89* (Shelley Frisch trans., Harcourt 2005) (2002).

2. Ruth V. Gross, *Kafka's Short Fiction*, in *The Cambridge Companion to Kafka* 80 (Julian Preece ed., 2002).

3. See, e.g., Max Brod, *Franz Kafka* 80, 84 (G. Humphreys Roberts & Richard Winston trans., Schocken Books 1960) (1937); Douglas E. Litowitz, *Franz Kafka's Outsider Jurisprudence*, 27 *Law & Soc. Inquiry* 103, 109–10 (2002) (book review).

stories, as being both sinister and ridiculous, while familiarity with industrial accidents is thought to have informed his depiction of the torture-killing machine in his great story "In the Penal Colony."

Because creative writing is so economically precarious an occupation, writers often have another career, often a career that, unlike journalism, teaching, or publishing, might seem to be completely unrelated to writing. Trollope worked for the post office, Melville for the customs office, T.S. Eliot for a London bank, and Wallace Stevens, like Kafka, was an insurance lawyer and executive, though for a private company. Milton was a high government official, Conrad a sailor before he turned to writing—the list goes on and on. There is a natural curiosity about the effect of the writer's day job on his creative work, especially when it is apparent, as in Kafka's case, that the writer is borrowing themes or incidents from it.

The issue has been discussed at length in Kafka scholarship,<sup>4</sup> but *Franz Kafka: The Office Writings* explores it in unprecedented depth, through the ingenious device of translating into English a number of the documents that Kafka wrote, or is believed (sometimes on weak evidence) to have written, in his official capacity as an employee of the Institute, and of attempting to relate each of them to his fiction. The editors are an American and a German literature professor (Corngold and Wagner, respectively) and an American law professor (Greenberg). Corngold and Wagner contribute introductory chapters, on the relation between Kafka's literary and office writings, and on the Austro-Hungarian workmen's compensation system and Kafka's career in it, respectively, and Greenberg contributes an afterword discussing some of the interrelations of Kafka's fiction and office writings and some implications of his fictional treatment of law for American law. In between are eighteen documents or sets of documents attributed by the editors to Kafka, though intermingled with other documents, such as excerpts from litigants' briefs. Each of the eighteen document chapters is followed by a brief commentary by the editors relating the documents to Kafka's fiction.

Before discussing the substance of the book I am obliged to note a methodological problem. The editors did not translate any of the office writings themselves. The title page states that the translations are by "Eric Patton with Ruth Hein," but nowhere in the book is anything said by or about them. Both are professional translators and Patton, at least, has taught German literature. I have no reason to doubt the accuracy of their translations. What is missing is any discussion of their approach to translation. Were they trying to render the literal meaning of the original documents? Impart a literary flavor? Or translate the originals into colloquial American English? Anyone familiar with English translations of Kafka's fiction knows how much they differ from each other and (if one

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4. See *supra* note 3; see also Richard Heinemann, *Kafka's Oath of Service: "Der Bau" and the Dialectic of the Bureaucratic Mind*, 111 PMLA 256 (1996).

has read Kafka in the original German) how difficult it is to capture the flavor of the original in an English translation and how inaccurate in certain places the best-known English translations (which are by Willa and Edwin Muir) are.<sup>5</sup> One would, for example, like to know what German terms are translated in *The Office Writings* as “lucky break” (p. 128) and “seed money” (p. 339), and what German word is translated as “ploy” (p. 181).

It would have been a big help as well had the editors included a few of the documents in the original German as well as in translation—for many, perhaps most, of the readers of the book will have some knowledge of German—and also if they had published some documents by other professional employees of the Institute. For without the readers’ being able to compare any of the English translations to the German originals, and without any documents written by Kafka’s fellow employees, the reader cannot tell whether the style of Kafka’s office writings is *his* style in any meaningful sense, as distinct from an official style on which the translators have superimposed their own translationese. The editors do invite us to compare the “clumsy German” in the first part of one of the documents, written, they believe, by Kafka’s immediate superior, with Kafka’s “elegant command of the language” in the second part (p. 78). But there is no indication of where the first part ends and the second part begins; and the style of the entire document, at least in its English translation, is uniform, which is consistent with the skepticism expressed by one Kafka scholar that Kafka’s office writings are distinctive.<sup>6</sup>

A further complication is that apart from letters asking for a raise, none of the documents are signed by Kafka. Some are signed by the head of the Institute; most are not signed at all. Some can be ascribed pretty confidently to Kafka, for example on the basis of letters he wrote to his fiancée Felice Bauer—it is unlikely that he would have claimed authorship falsely. Others the editors attribute to him because of style or because the subject was one for which he was responsible. Some of these attributions are speculative, and there is no indication that the editors used any of the computer programs that have been developed for resolving disputes over authorship. I would have also preferred the editors to have selected a *representative* sample of the documents that Kafka wrote for the Institute, one that would have given an accurate picture of the scope and character of his work, rather than limiting the selection to those “articles and briefs with literary value that are at the same time relevant to his literary work” (p. xvii).

The documents, at least in their translated form, are very well written, very clear, and not at all bureaucratic. Some of them had been writ-

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5. See Richard A. Posner, *Law and Literature* 231 (3d ed. 2009); Osman Durrani, *Editions, Translations, Adaptations*, in *The Cambridge Companion to Kafka*, supra note 2, at 206, 214–19.

6. See Anthony Northey, *Myths and Realities in Kafka Biography*, in *The Cambridge Companion to Kafka*, supra note 2, at 189, 200.

ten for publication in newspapers, but those documents are only a little less formal than those, the majority, that were official communications by the Institute. Since Kafka was a very skillful writer, it is a fair guess that the quality of the prose in the documents he wrote for the Institute is not an artifact of the translation or of the Institute's official style. But it is only a guess; one cannot be certain without the missing materials—a translators' preface, documents in original German, documents written by colleagues of Kafka, and evidence that all the documents attributed to him by the editors were actually written by him.

What is reasonably clear and unlikely to be an artifact either of translation or of an official office style is that Kafka was a highly competent lawyer. This is apparent not only from the documents but from the responsibilities that were placed on him by his superiors from the outset of his employment by the Institute.

The \$64,000 question is what light the documents cast on Kafka's enigmatic fiction. Less I think than the editors (more precisely the two literature professors) claim. But to substantiate the criticism I need first to explain the rudiments of the Austro-Hungarian workmen's compensation system as revealed in the documents.<sup>7</sup>

In its broadest outlines the system was similar to a modern workmen's compensation (now called "workers' compensation") system. The Institute assessed insurance premiums on the companies under its jurisdiction, basing the premiums on risk classifications of the different types of activity in which the company engaged (mining, agriculture, construction, quarrying, milling, textile manufacture, etc.) and on the total wages paid by the employer (p. 28). The risk classifications were based in turn on accident statistics for the activity in question; the riskier the activity the higher its risk classification and so the higher the premium; and within each classification the premium was scaled to the total wages paid by the employer. The premiums were invested to generate a fund out of which workers' claims for compensation were paid, but this side of the Institute's work is not much discussed in the documents (pp. 19–48).

Like any accident insurer, the Institute tried to get the companies that it insured to improve the safety of their workplace so that the Institute's liability to injured workers would be less (p. 40). Kafka was particularly concerned with this side of the Institute's work. He (always assuming the editors' attributions of authorship are correct) wrote a nice paper advocating the substitution of a device for planing wood that he thought would reduce the number and severity of accidents to workers operating wood-planing machines, and he included diagrams that support his argument (p. 108). He also wrote a piece about the danger of

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7. There is very little material in English, at least as far as I have been able to discover, concerning the system as it existed in Kafka's day. The best I have been able to find is Herbert Hofmeister, *Austria, in The Evolution of Social Insurance 1881–1981*, at 265, 288–327 (Peter A. Köhler & Hans F. Zacher eds., 1982), although it covers social insurance generally, with only intermittent references to insurance for industrial accidents.

accidents to quarry workers and illustrated it with photographs of quarries (p. 273).

A number of the documents that the editors attribute to Kafka exhibit frustration with the workmen's compensation program. The Institute had a lot of trouble obtaining accident statistics and was not authorized by law to inspect companies' workplaces to determine the safety of their practices directly. Because of that lack of access the Institute also could not determine whether companies were reporting their wage bills accurately, and suspected they were not. Inspection had been delegated to a trade inspectorate that apparently was under the control, or malign influence, of the employers—or so at least the Institute believed. Several documents relate to a frustrating litigation that Kafka conducted against an employer named Renelt who owned both an orchard and a quarry. Orchard workers were exempt from the workmen's compensation law, presumably because the danger of being seriously injured while picking fruit was slight, and Renelt claimed implausibly that all his workers worked in the orchard rather than the quarry—and he won (p. 226).

One gathers the impression that the Austro-Hungarian bureaucracy was inefficient, or at least that Kafka thought so, but that he exempted the Institute itself from this criticism and believed that other parts of the imperial bureaucracy were responsible for the deficiencies in the workmen's compensation program. He seems to have been sympathetic to injured workmen and inclined to blame employers for indifference to safety rather than workers for carelessness.

The editors make two claims for Kafka's official writings. The first and less plausible is that they display the literary skills found in his fiction, and indeed are continuous with it as works of literature. The claim is advanced most emphatically by Corngold in a chapter entitled "Kafka and the Ministry of Writing." Although I have read a good deal of literary criticism in my time and written at some length about Kafka's fiction,<sup>8</sup> I cannot make any sense out of Corngold's chapter. It is full of sentences like: "At the outset of Kafka's writing career, we find the deep mutual involvement of the radically solitary, monstrous other and the sought-after protobureaucratic ministry as figures of writing" (p. 6) (footnote omitted). "The superior is never in fact anonymous or impersonal; the affect that binds one to the office cannot be readily distinguished from the affect that binds one to the officeholder" (p. 7) (footnote omitted). "He has forecast the multiplication of the opportunities for unintelligibility in what is called the media" (p. 10). "Until now we have seen Kafka define the sense of his strange, deep-seated second nature through the metaphor of writerly being. Now we see him defining this strangeness to self through the metaphor of 'bureaucratic being,' but it should come as no surprise, since both metaphors have in common the fact that they are

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8. See Posner, *supra* note 5, at 170–86 & ch. 6.

uncentered writing agencies" (p. 16). I cannot figure out what Corngold is trying to say.

There are a few striking phrases in the office writings, as when Kafka says that certain "reports succeeded in damping all the Institute's hopes for the future; the Institute seemed simply to be a corpse, whose only living element was its growing deficit" (p. 153). Or, "As long as the Institute simply vegetated for 20 years without actual output, we had to be content with wishing that fundamental reforms would appear, and we were idealists of necessity" (p. 160). But these are few and far between, and the two passages I just quoted are from a newspaper article, where Kafka was writing with greater freedom than in a brief or memo. If we didn't know (or think) that the author was Kafka, we would think the author a career bureaucrat who had a flair for writing that he allowed from time to time to peep through the officialese of his memos and briefs.

The editors exaggerate both the quality of Kafka's official prose and the link between his office writings and his fiction, as in their commentary on the sentence: "But there was no one to provide the necessary explanation and to say something like the following" (p. 337). This sentence appears in a proposal by Kafka to establish a psychiatric hospital for victims of "shell shock" (what is now called post-traumatic stress disorder) in World War I (p. 343). The explanation that he provides is a description of the disorder and of the need for treatment of it. About the sentence the commentary states that,

The narrator inserts into his report a second narrative voice, one marked by its conspicuous absence in the public debate on the welfare of war veterans—"there was no one to provide the necessary explanation and to say something like the following"—thus adding to the gaze of the man in the street the statistical knowledge of the man in the field. This bifocal gaze on the particular case (man as individual) and on the statistical field of which it belongs (the "average man") is an epistemic figure, cutting across the borderline between Kafka's office writings and his literature (p. 344).

This is making a mountain out of a molehill.

The second claim is that Kafka borrowed for his fictional works events he encountered, or experiences he had, while working for the Institute. This point has been made by previous critics,<sup>9</sup> but nowhere (at least in the English academic literature) in as great depth. It is convinc-

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9. For example by Max Brod, Kafka's closest friend, who said:

It is clear that Kafka derived a great amount of his knowledge of the world and of life, as well as his skeptical pessimism, from his experiences in the office, from coming into contact with workmen suffering under injustice, and from having to deal with the long-drawn-out process of official work, and from the stagnating life of files. Whole chapters of the novels *The Trial* and *The Castle* derive their outer covers, their realistic wrappings, from the atmosphere Kafka breathed in the Workers' Accident Institute.

ing to a degree, although the editors overdo it. The parody of law and bureaucracy in *The Trial*, and of bureaucracy in *The Castle*, seems a natural expression of the frustrations that Kafka expressed in his official writings for the Institute. The torture-killing machine in “In the Penal Colony” seems a natural extension of his interest in technology, as manifested in the paper on the wood-planing machines. Also, as the commentary points out, the officer’s complaint about the difficulty of obtaining spare parts for the torture-killing machine may have been suggested by shortages of replacement parts for industrial machinery because of the strains that World War I placed on Austro-Hungarian industry; the lack of replacement parts caused frequent accidents to workers (pp. 334–35).

Among still other examples of Kafka’s borrowing for his fiction material from his day job, the incident involving a character named “Rennell” in Kafka’s unfinished novel *Amerika* does seem based on the Renelt litigation (pp. 225–40); and Greenberg’s afterword is convincing that the quarry scene that ends *The Trial* borrows details from Kafka’s report on quarry accidents (pp. 357–58). Renelt’s effrontery in denying that any of his workers worked in his quarry, and the claim of other employers that they were not “using” electricity (so far as might pertain to their risk classification) if the electrical generator was in a different room from the electric motor that the workers were operating (pp. 194–207) are bizarre, “Kafkaesque” experiences in Kafka’s day job that may well have stimulated his writer’s imagination.

But many of the links that the editors (I assume mainly Corngold) discern between his official writings and his fiction are implausible. As Greenberg notes, remarking upon a link that he describes as “tenuous,” “once we assume that Kafka’s real-world experience insinuates itself into his fiction, imagination readily constructs a relationship” (p. 359). That is indeed a risk. Thus a memo in which Kafka complains that the trade inspectors are using the term “standard firm” (for purposes of risk classification) in a vague and indiscriminate manner is said to illuminate the passage in Kafka’s story “The Burrow” in which the animal narrator, wanting to determine how safe he is when he’s in his burrow, looks at the entrance and “asks himself”—I am quoting now from *The Office Writings*—

whether “the existence of the full scent,” which establishes presence in the burrow, is not “the precondition of normal danger.” Here, Kafka the poet borrows the key concept of “standard danger” from Kafka the insurance expert to reflect on his house of writing as if it were a firm that is subject to accident insurance (pp. 143–44).

The link is tenuous and the reference to “house of writing” makes the discussion of the link unintelligible.

A further example is the link the editors try to make between the first office document published in the book and “In the Penal Colony.”

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Brod, *supra* note 3, at 80; see also Gross, *supra* note 2, at 83; Litowitz, *supra* note 3, at 110–11.



The first document is a brief, graceful, but unremarkable speech welcoming a new director of the Institute, Dr. Robert Marschner (p. 51), and we can be certain that Kafka wrote the speech because a handwritten draft was found in his posthumous papers (p. 53). The editors' commentary compares Marschner to the New Commandant in Kafka's story, his predecessor to the Old Commandant, and Kafka's immediate superior (Egon Pfohl) in the Institute to the lunatic officer in the story (*id.*). But Kafka's speech makes no reference, direct or indirect, either to Marschner's predecessor or to Pfohl, or indeed to anyone other than Marschner.

Another flight of fancy takes off from a petition of toy manufacturers to be placed in a lower risk category than the Institute had placed them (p. 170–85). The petition (written to, not by, the Institute or Kafka) is described by the editors as “an urtext of Kafka's literary universe” (p. 187). This extravagant characterization is based on the petition's misspelling the word for law: The word is *Gesetz*, but the author wrote it *Gesetzt*, which means put or placed. The editors think the author meant that “law is the product of an inaugural act of proclamation (a *Setzung*), and it is at the same time something set in print (*gesetzt*) and distributed as a text or *Schriftsatz*, to use the German collective term for administrative documents,” and so in reading the petition Kafka “held in his hands . . . a vivid, real-life symptom of the distress of modern culture, expressed in the desire for an archaic reunion of positive law and transcendental truth” (p. 188).

This is a lot of weight to place on a misspelling; and that Kafka saw in it an effort to fuse positive and natural law is a wild conjecture. But one of the ironies of *The Trial* is that the protagonist, Joseph K, though caught in the web of a corrupt, indifferent, and sadistic legal system, retains a naïve faith in justice. And suppose it were true that Kafka got the idea for this contrast from the toy manufacturers' petition. That would be an interesting bit of trivia, but would it give us any insight into Kafka's fiction?

And that is a question to be asked about the entire book. Will we read his fiction differently having read his office writings? I think not. We knew in a general way that Kafka had been a lawyer for an Austro-Hungarian agency that insured industrial accidents, and it prepared us for his fictional treatments of law, bureaucracy, and death and mutilation. We now see with greater clarity than brought out in the previous commentary on Kafka that some of these treatments borrowed actual incidents from his office work—that his career in a government bureaucracy, his experience with machines and technology, and his exposure to the lives and working conditions of industrial workers and the injuries to which their work exposed them did indeed provide material for his fiction.

But what is more striking than the overlap between his job as an insurance lawyer and his vocation as a writer is the difference between Kafka's bureaucratic memos and briefs, which are straightforward and businesslike, and his fantastic fiction. Not that the style of his fiction is

fantastic. Quite the contrary; it is deadpan, rather like that of the office writings, though Douglas Litowitz is merely speculating that the style of Kafka's bureaucratic writings, which may have been an official style imposed by the Institute's culture, influenced the style of his fiction.<sup>10</sup> One should not be surprised that a creative writer can write businesslike prose; people have remarkable abilities to compartmentalize. The decision to write about hunger artists, torturers, talking animals, a horse that studies law, a salesman turned into a giant insect, and the other strange denizens of Kafka's fiction in a style similar to that of a legal memo is part of the strange magic of that fiction, but the decision cannot be confidently ascribed to his career in accident insurance. Yet the subject matter of Kafka's fiction is so strange that one is indeed surprised to discover him to have been such an accomplished and "normal" civil servant. That is one reward of reading this book, and another is to learn that a century ago in a vanished Central European empire, lawyers, businessmen, and civil servants were addressing the problems of industrial accidents in a recognizably modern idiom.

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10. Litowitz, *supra* note 3, at 109.

