

the
LEGAL
LABYRINTH

*The Kisch case and other reflections
on law and literature*

by

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THE PLAQUE ON THE WALL

Someone must have been telling lies about Joseph K, for one fine morning, without having done anything wrong, he was arrested.

I have always been intrigued by the first line of Kafka's famous novel *The Trial*, a sentence suggesting that the legal system is a mysterious labyrinth, a shadowy realm where half-open doors will occasionally afford a glimpse of jurists at work — black-robed figures on a distant bench — but through a glass darkly. Here is a realm, the author hints, in which the litigant will speak of his encounters with the law as a dreamer speaks of a nightmare: the scenes are graphic, but the crux of the story, the moment when it all went wrong, will be hard to recall.

Someone must have been telling lies about Joseph K ...

The eerie, disembodied tone of voice. So casual. Supposedly neutral, but a voice bringing with it a sense of deep foreboding — like the echo of a cell door clanging shut somewhere at the far end of a corridor. Within the legal maze, the storyteller hints, the straightforward approach will be transformed by sophistry and forensic squabbling. The normal, cheerful, wayward habits of mankind will reappear in frightening guises.

Five years ago, on the way to Franz Kafka's birthplace in the old city of Prague, I came across a plaque on a wall that set me thinking about Australian habits, and the mysteries of our own legal system. The plaque gave a brief account of the career of Egon Erwin Kisch, a writer born nearby on 29 April 1885 in Melantrichova Street. Educated in Prague, he had won renown as a foreign correspondent after the Great War, and pioneered the genre known as reportage.

Egon Erwin Kisch.

Having glanced at the sculpted image of the man in question — a far away look in the eyes; a lavish moustache — I might have passed on. But no. The name brought back memories. The Kisch case! Yes, Katherine Susannah Prichard from the Fellowship of Writers in Perth had played a part in the controversy, I remembered. And the Dean of the Law School at the University of Western Australia was involved: Professor Frank Beasley. He had written articles, signed petitions, denounced the iniquities of the *Immigration Act*. Many years later he had talked about the case to me and my fellow law students in our constitutional law classes. He had aroused my curiosity at the time, and must have left an impression, for the main features of the case came quickly to mind.

Kisch came to Australia by ship in early November 1934, I remembered. Refused permission to land at Fremantle, he bypassed the ban by leaping ashore at Melbourne, a jump that left him on crutches, and facing an array of legal proceedings that took him all the way to the High Court. That was my principal recollection of the case: the variety of legal procedures; the lack of any clear outcome. In the end, Kisch was regarded as an enigmatic figure in Australian history; viewed as a martyr by those on the left of politics; as an *agent provocateur* by those on the right.

It struck me, as I wandered on through the streets of Prague, that Kisch, the unfortunate, antipodean litigant, had all the traits of a character dreamed up by Kafka. To my surprise, it then emerged — in a museum a few streets away — that Kisch and Kafka had both attended the Altstadter Gymnasium in the old city. The black and white photographs told the story. The captions too. Here, in these bleak classrooms, at the turn of the century, the schoolmasters were obliged to sing the praises of the Habsburg monarchy, and to wear the plumed headdress of the ancient empire on ceremonial occasions.

The images began to work their magic. Anyone who has sat at the back of a classroom in schooldays would find it easy to imagine Kisch and Kafka at their wooden desks, two pranksters exchanging mischievous glances while the mathematics teacher droned on. And a few days later, the wrathful teacher turning away from the counterfeit

equation scribbled on the blackboard in order to admonish the unruly class: 'Someone must have been falsifying the figures ...'.

I could see a novel in this. Back in Australia, I began some research as a prelude to writing a work of fiction to be called *Our Man K*. I had in mind from the outset that I would endeavour to give the tale a contemporary twist by looking at those facets of the Kisch affair that are relevant today: not just the vagaries of the legal system (which are much the same from one era to the next) but the way in which controversies force us to take stock of our current situation, and to speculate about the future.

The Kisch case, the Petrov affair, the Whitlam dismissal — the ambiguities at the heart of these great legal and political controversies were accompanied by unforgettable images: a man on crutches, a tearful woman dragged aboard a plane, a deposed Prime Minister on the steps of Parliament House. Certain stories seem destined to pass into popular mythology from the start, and thus, in reinventing the Kischean shenanigans 'down under', in seeking to add another layer to the Australian legend, I was inclined to allow myself a degree of poetic licence.

According to Gore Vidal, sardonic connoisseur of American skulduggery and author of many fictional reworkings of political history, a novelist should try to stay within the framework of 'agreed facts'. Vidal acknowledges, however, that some truths about history can only be expressed in a veiled fashion, by exaggeration, by imagining the answer, for novels, with their power to rearrange time, can provide a perspective, and thus some extra insights, that real life denies. I decided to follow his lead.

It struck me, as the book took shape, that I should give due weight to Kisch's ebullient, even bizarre, personality as a factor in the reconstruction of the story. It was clear from my research that this was consistent with the 'agreed facts'. In addition to mentioning his Marxist leanings, it would be desirable to present Kisch as a journalist with long-standing literary connections, not only to his former classmate, Franz Kafka, but also to a group of writers and poets who meet to argue feverishly with each other at a fictional coffee-house.

Café Arco, perhaps; a name often used in middle-Europe for coffee-houses frequented by writers and artists.

Unwanted immigrants? An Australian republic? These are contemporary themes, but they could also be part of an ongoing debate at the fictional Café Arco. Novelists build on air, and in this case I could build on a credo expressed by Kisch himself when he was interviewed by the press at Fremantle at the beginning of his antipodean adventures.

Asked whether he was the first person of Czech descent to be refused admittance to Australia, the irreverent Kisch drew upon his encyclopaedic memory and referred to an occasion when the Czech singer Emmy Destin was booked for a concert tour. By Kisch's account, this was thwarted by Nellie Melba, the 'Australian Nightingale', who applied pressure to the booking agency to cancel her rival's tour. Melba eventually paid more than a thousand pounds out of her own pocket to cover the Czech singer's broken contract. 'I am second in line, then,' Kisch quipped. 'As Hegel, the radical philosopher, once said: "History repeats itself." And as Karl Marx added to that: "The first time as tragedy; the second as farce."'

And so, the story destined to become *Our Man K* began to assume its final form — a blend of fact and fiction, a mixture of tragedy and farce, a melting pot for ruminations about law, literature and political mythology. This later work *The Legal Labyrinth* contains my account of the travels I undertook and the discoveries I made in the course of reconstructing the Kisch case.