

AS GREGOR SAMSA AWOKE ONE MORNING FROM UNEASY DREAMS HE FOUND HIMSELF TRANSFORMED INTO AN ECONOMIC ANALYST OF LAW [FNa], by Anthony D'Amato [FNaa] 83 Northwestern University Law Review 1012 (1989) (A89e)

As Gregor Samsa awoke one morning from uneasy dreams he found himself transformed in his bed into an enormous Economic Analyst of Law. He was lying on his back, and when he began to lift himself up he stopped abruptly and considered whether it would be cost-effective to proceed. Concluding it wasn't, he fell back on the cool sheets.

What has happened to me, he thought? It was no dream. His room, a regular law professor's room, only even smaller, lay quiet between the four familiar walls. On the table lay a pile of writs, torts, and estoppels-- which, as he thought about them, now seemed so inconsequential.

Gregor's eyes turned next to the window, and the overcast sky--one could hear raindrops beating wastefully on the tin of the windowsill outside--made him quite pensive. What about sleeping a little longer and forgetting all this nonsense, he thought, but it could not be done.

He looked at the alarm clock ticking on the chest. Good lord! he thought. It was half-past six o'clock and the hands were quietly moving on, representing the consumption of money--money that Gregor was squandering by remaining in bed.

As the calculation of the opportunity costs ran through his mind-- whether to get up or remain in bed--there came a cautious tap at the door. "Gregor," said a voice--it was his mother's-- "it's a quarter to seven. Hadn't you a train to catch?" Gregor had a shock as he heard his own voice answering hers, unmistakably his own voice, but now incredibly glib. "Yes, Mother," he said, "but the transaction costs seem too high, at least to me--and I'm the only one whose utility function I am familiar with at the moment."

"What's that you're babbling?" and he recognized his father's voice. At the other side door his sister was saying in a low, plaintive tone, "Gregor? Aren't you well? Are you needing anything?"

"Wait a minute, I'll show you what I mean," Gregor replied. He grabbed a sheet of paper and drew several straight lines and added little *1013 letters to the end points and intersection of the lines. He slipped the paper under the door.

"What's this?" asked his mother in a growl-like voice that Gregor had not ever heard before.

"It's a supply-demand curve for my legal services," Gregor answered at the closed door. "It proves what I've been trying to tell you. The whole curve moves to the left if you have transaction costs."

"What curve? What moving to the left?" she demanded.

Exasperated, Gregor opened the door a little. There was his mother examining the sheet of paper, his

father behind her looking angry, and his sister hovering solicitously in the background.

"This curve!" Gregor said pointing to the lines on the sheet of paper.

"But that isn't a curve. It's two straight lines like an X."

"You don't understand, Mother. It's a curve."

"It's not a curve, it's two straight lines, and I'll move you to the left, you dummy!" A broom appeared as if by magic in her hands--she must have hidden it behind her--and now she raised it and began to swat Gregor. He moved backward, and she swept the broom furiously into the doorway after him. Grasping the handle of the door, Gregor managed to close it just as his mother was pulling back her broom to gather momentum for a major thrust forward. And then he heard a key turn in the lock; he was locked in! He didn't care. He fell back upon the bed exhausted, though strangely enough the broom continued to thwack against the solid oak door.

Presently he heard the front doorbell ring. That's someone from the school, he said to himself. He heard the servant girl going to the door as usual with her heavy tread. Gregor needed only to hear the first good morning of the visitor to know immediately who it was--the Dean himself. Didn't they know he has a class of students waiting for him? he heard the Dean ask. Why has he not come?

A knock on his door. "Why are you not coming to class?" It was the Dean, his querulous voice at a higher pitch than Gregor had ever heard. "Aren't you aware that students are waiting there? Students who pay your salary and my salary, although it is your salary that I am worried about!"

Gregor took a deep breath. "It's all so silly, sir," he heard his words tumbling out, "the judges think they're deciding cases according to rules of law, and the students think so and all the professors do too, and for that matter so do all the lawyers in the world and the general public-- but they're all wrong, the cases are being decided according to the inexorable iron laws of economics--most of them, anyway."

"What is this you are telling me?" the Dean demanded, his fists pounding on the oak door. "Have you taken leave of your senses?"

"No sir, it's just that it's all perfectly clear to me now, Instead of ***1014** teaching doctrinal law we should have been teaching them micro- economics, meta-economics, macroeconomics, econometrics, anything with numbers and graphs in it, even."

"Are you refusing to teach the law?"

"Yes. I mean no. The old teaching is suboptimal. Economics is the brave new banner of the bar. It explains most of the cases, most of the variance."

"Then tell me this, Herr Professor: What about the cases it does not explain? Hey? Hey?"

Gregor thought that despite the bluster, the Dean is diabolically clever: he is baiting me. Gregor paused for a moment. How could economic theory explain the cases it failed to explain? Gregor's new analytical brain responded more quickly than he thought possible. "Those cases also fit into theory, sir," he said.

"Oh yes? Precisely how?"

Gregor sat up in bed and fairly shouted: "They were wrongly decided! All the cases that economics fails to explain were wrongly decided. All the others were rightly decided in conformity with sound economic theory."

There was a pause. Aha, thought Gregor, that stumped the old fraud.

"I don't know what to do with him," he heard his mother telling the Dean. "This isn't at all like the Gregor we raised on our softest values."

Gregor heard the front door slam shut. The Dean had obviously left without saying goodbye.

Gregor thought for a moment that undoubtedly he should feel ashamed, then realized that yesterday he would indeed have had such an emotion. Yet somehow today his feelings had abandoned him. True, he had let his parents down. At the same time, they were consenting adults. If they felt down, they should offer to pay Gregor some amount that would compensate him to take steps to lift their spirits. But in the absence of payment, Gregor reasoned that he had no incentive to redress their situation.

And so he whiled away the morning in his room. Despite hunger pangs, he busied himself typing out a totally useless treatise on an economic approach to the law of usufructs. After six hours he had produced a 560 page treatise with 921 footnotes, 17 bar graphs, 33 regular graphs, and 237 mathematical equations not including lemmas.

He heard a knock at the door. "This is your sister Grete," he heard a voice say. "Can I sell you some lunch?"

"For how much?"

The price she quoted was absurdly high, and for the next ten minutes Gregor haggled with her. He grew increasingly exasperated.

***1015** "Grete, you don't seem to understand that the lunch is more valuable if I eat it than if it is left uneaten."

"If it is more valuable to you in your stomach, then you must pay me so that I am left with a sum of money that I would prefer to retaining an uneaten lunch."

"But of what possible benefit is an uneaten lunch to you?"

Grete answered sweetly, "It represents the tangible aspect of my satisfaction in depriving you of it."

"But you know I don't have any cash. Will you take an I.O.U.?"

"Do you have two pieces of identification?"

"They're outside, in the desk drawer in the living room."

"Not acceptable," she said. "They might be phony."

"Dammit, Grete, I'm your older brother!"

"Oh no you don't," she said with animation. "I will not be victimized any longer by your self-serving appeals to altruism within the family."

Gregor thought hard, plumbing the depths of his new capacity for economic rationalization. Finally he saw an opening.

"You don't understand," he shouted at the solid door. "It is not necessary that I pay you at all. As long as I have or can raise the money to pay you, and I am willing to pay you the price you have set, there's no need for me actually to pay you."

"You're right, Gregor, I don't understand."

"Well pay attention," he said impatiently. "My willingness to pay you X amount for Y lunch means that Y lunch is worth more if I consume it than it is worth sitting out there getting rotten and attracting flies. My utilities are greater than any alternative utilities. An impartial court would award the lunch to me, not because I paid for it, but because it is worth more to me."

"What's a utility?"

"A quantified satisfaction unit, you idiot!" Gregor shouted. "Its economic value is determined by the amount I am willing to pay compared to alternate uses of my capital. Since I am willing to pay X amount, the Y lunch has greater utility in my stomach than anywhere else, and hence putting it there will occasion a general rise in the quantity of the wealth of the entire world." He paused momentarily and lowered his voice to a more reasonable level. "Even you must admit, Grete-- raising the quantity of wealth in the world as a totality is a good thing. It benefits you as well as me, though it is you I am concerned about." His words now tumbled out rapidly: "The world's wealth will immediately go up as soon as I eat the damn lunch whether or not I pay you for it!"

The argument was over. Grete was silent; obviously she had no reply. Gregor paused, secure in the

belief that he had won. He moved *1016 toward the door, his hands outstretched to receive his reward. Grete said unexpectedly:

"Well, you can tell that one to your students, but unless you slip X kronmans under the door for Y lunch you can just sit there and eat Z of your utiles."

Case dismissed. Perhaps, Gregor reasoned, his lack of food was of little consequence. He returned to his work. Too hungry to write another treatise, he took his mind off food by writing twelve law review articles, four chapters, three comments, and seventeen book reviews.

But now there was twilight outside in the streets and extreme pangs of hunger made it impossible for Gregor to continue writing. He was alone, hungry, and utterly private. What is privacy? he mused. A paradoxical concept, indeed--if one looked at law through the clarifying lens of economic analysis. Famous athletes and movie stars can sell their likenesses to advertisers at the cost of giving up their personal privacy. The less privacy they retain, the more of it they can sell, and at higher and higher prices! On the other hand, total unknowns like Gregor Samsa--whose inventory of privacy is substantial--cannot sell any of it, even at bargain rates.

Yesterday the paradox would have made Gregor feel depressed. But today he had no emotion. He felt only impoverished. He looked around his bedroom. He suppressed an urge to climb a wall.

Gregor reasoned that there must be a way to convert his privacy into cash. That's it! he thought suddenly. I'll turn my privacy into an Economic Treatise on Privacy. Then all I have to do is sell the treatise, and I will have derived value from my worthless privacy.

Gregor turned to the treatise he had written and erased the word "usufruct" every time it appeared and replaced it with "privacy." He saw instantly that the substitution had no effect in the slightest upon the theoretical validity of his work.

"Grete!" he called.

He heard her shuffling feet pad toward the door.

"I have 560 pages worth of book here. You can be my agent and take it out and sell it for me to a publisher."

"And what if I don't recapture the cost of the carfare, brother o' mine? Will you advance me the carfare?"

"You know I don't have any money here."

"Then your book has no value in its present location."

"All right, you win," he said, "I'll sell the entire book directly to you for one lousy meal."

"Done," Grete said with a suddenness that surprised him.

He heard the key turn in the lock. The door opened marginally. His sister pushed in some mealy mush. Yesterday he would have rejected *1017 it outright, but now it somehow smelled delicious. In return he gave her the bulky manuscript.

For the next three weeks, Gregor was able to survive in this fashion by producing a new law treatise each day and selling it to his sister in the evening for a meal. Despite his importuning, Grete never disclosed to him the price she was receiving for the books. Gregor assumed she was recovering her out-of-pocket costs because of the anger she displayed the day he gave her a stack of law review articles instead of a new treatise. She flung them back in his face and said that they were unsalable. Nevertheless, she produced the usual mush for him to eat. "No use having you starve," she explained, "because then you couldn't write two books tomorrow--the book you owe me for today plus a new one."

This was so unlike her that Gregor was taken aback. When had he ever known his sister to take a risk? Surely the Grete he had known and loved throughout their childhood would have cheerfully let him starve to death rather than advance him any credit. But then the cold though reassuring taste of the mush drove the problem from his mind.

Try as he might that evening, however, Gregor was unable to write a second treatise. He resorted to a desperate stratagem. He took the stack of law review articles that Grete had rejected, changed their titles to "Chapter One," "Chapter Two," and so forth, bound the pile together and labelled it The Economics of Obedience: A Modest Improvement in Human Thought. When the next day came, Grete took the bundle and there was no further word from her--obviously no one had noticed the ruse.

And so it came to pass that day after day Gregor pounded out articles and treatises--each in itself a complete economic analysis of every topic of the law:

RAPE

INCEST

MUTILATION

MASOCHISM

MATRICIDE

FRATRICIDE

CORPORATE MERGERS

SADISM

SODOMY

SLAVERY

BESTIALITY

BATTERY

BARRATRY

BURGLARY
BLACKMAIL
GREENMAIL

***1018** and others too numerous to mention. His family no longer seemed to mind the fact that he was missing all his classes or that he would undoubtedly be fired by the Dean. If he had been fired, Gregor knew nothing of it. No one told him anything. He wondered how the family was doing now that his law professor's salary was cut off from them. He hoped they had managed to save something for a rainy day. Was it not he himself who had urged them--in his wage-earning days--to practice the virtues of frugality and thrift?

Then one day it was Gregor's birthday, and when his dinner was shoved through the door there was a lit candle sticking in the middle of the mush. How could they afford a candle? This must mean that my family is doing fairly well, Gregor thought. And suddenly he was flooded with the emotion of satisfaction. This came as a shock to Gregor, because it was the first emotion he had felt since the day of his metamorphosis. Apparently his new Economic Analyst's body was allowed to have the emotion of satisfaction.

Nearly every day when Grete pushed in the meal, she included the law journals which arrived in the post. Slowly at first, and then with increasing frequency, these journals included articles attacking Gregor's writings. Lacking the emotion of annoyance, Gregor simply noted the existence of these critical pieces. But one evening it occurred to him to write a reply. In fact, the occasion that gave rise to the thought of writing a reply was the realization that he was running out of new things to say. By writing replies, he was perhaps able to avoid some of the mental costs associated with original thinking.

And thus Gregor embarked on a new phase of his scholarly career--the enterprise of writing replies. He found that he needed but one theme: that his critics had failed to understand his previous work. Since Gregor had no copy of his previous work--he produced only original manuscripts, every one of which he turned over to Grete--he had to guess what he previously had written. But even if he had retained copies of his work, Gregor would not have had enough time-- with all the writing he had to do--to go back and read them.

As a result, perhaps, of Gregor's forgetting a few details of his previous work, on several occasions his critics charged that it was not they, but Gregor himself, who had failed to understand Gregor's previous writings. Gregor responded by charging his critics with failing to understand his replies for exactly the same reason that they failed to understand what he had said in the first place, namely, their inability to grasp the economic foundations of the law.

His tactics threw his critics into disarray, and they began to accuse him of inconsistency, irrelevance, incoherence, incompetence, and inhumanity. These charges had the unexpected effect of raising the visibility of Gregor's writings, which now found their way into the most remote journals of the profession.

***1019** At no time in the course of the productive months that followed did Gregor require any information about the outside world. He was writing straight from the mind; even if the world outside his room had ceased to exist--and for all he knew it had--he would not have been obliged to revise a single word. The wonder of his new economic analysis was that it was both descriptive of everything that there was to be descriptive about in the law, and normative of everything that there was to be normative about in the solar system. Gregor especially liked the fact that at any point where the economic analysis of law ceased to be descriptive, it automatically became normative-- and vice versa.

At one point, however, a critic complained in a fashion that seemed to undercut Gregor's constructs. The critic assailed Gregor's essay, *The Effect on Refrigerator Sales in Polar Regions of Shifting from a Negligence Regime to a System of Strict Liability: An Isobaric-Isometric Analysis*, gleefully pointing out that there were no sales of refrigerators anywhere north of the arctic circle and hence Gregor's analysis contained a fatal flaw. But within a minute--57 seconds to be exact--Gregor's fingers had started typing a reply. The important point of his previous article, Gregor wrote, must have been that the change in legal rules from negligence to strict liability had no effect whatsoever upon the sales of the refrigerators. This was exactly what Coase-- who had spent considerable time among the Eskimos--had predicted. The flattening of the sales curve at zero, Gregor wrote, was as valid a proof of his theory as would have been a plateauing of the same curve at any positive integer. Those who failed to appreciate this point were simply displaying their ignorance of the economic underpinnings of the legal system as a whole.

Gregor by now had such a backlog of articles that he decided upon a bold course of action. He informed Grete that henceforth he would deliver to her two books per day instead of just one, but she must in turn give him a second meal, and this time it must not be lousy. To his surprise she assented without haggling. And so, on two meals a day, life began to improve slightly for Gregor.

Without warning, at 8:15 a.m. on Thursday, May 1, 19--, Gregor heard loud noises and animated conversation in the apartment followed by a sharp knock on his bedroom door and the sound of a key turning in the lock. Grete's voice said, "The police are here. I think you are under arrest. They've come to take you to court."

"On what charge?" Gregor started to say, but the door was immediately pushed open and two bearded policemen marched in and took Gregor by each arm, though with surprising gentleness. "You are to come with us," they said.

Gregor was led through the living room of the apartment. The rickety living- room furniture was gone, replaced by antiques with gold trim and jeweled inlays. Several maids were standing stiffly at attention near a ***1020** huge potted plant. Positioned at various strategic places in the room were two butlers, a valet, a chauffeur, a footman, and a nervous salesman from the East Publishing Company. Gregor's mother, bedecked in furs with a pearl necklace, and his father, handsomely outfitted in riding clothes with sleek black boots and holding a whip, hardly looked up at Gregor as he passed by; they were examining large blue sheets of architectural plans as several rows of attorneys standing behind them nodded encouragingly. Gregor noticed as he was led out the front door that his sister Grete, in the anteroom to the left--how had she gotten there so quickly?--was munching on a piece of ripe fruit and

preening herself in front of the biggest mirror Gregor had ever seen. Somehow she had managed to purchase for herself a gown of exquisite finery. Her fingers were festooned with ornate rings, and hanging from each of her wrists were three thin silver bracelets.

As the police led Gregor down the street, other police officials were holding back the crowds lining the sidewalks. The people were shaking their fists and shouting boos, jeers, and insults of all kinds at Gregor. What have I written that has stirred these people so? he thought. Was it my suggestion to the commodities exchange that they list futures in human infants? My advice to the poor to consider, as a reasonable alternative, selling themselves into slavery? Perhaps the public didn't like my idea of summary execution for every tenth parking-ticket scofflaw. What can the public possibly find objectionable with that? Don't they want deterrence?

"All right," Gregor shouted to the crowds as he tried to avoid the melon rinds they were flinging in his direction, "I'll renounce it all and take up something entirely different that will not displease you, like law and literature." But his words went unheard in the general confusion of peels and rinds. Gregor knew then that the people were not worthy of being entrusted with the laws. He huddled closer to the policemen for protection, and began to experience a sense of kinship with them.

The courthouse seemed farther away than Gregor remembered from his childhood. Finally they arrived, and Gregor was shown to the door of the central courtroom. "We are leaving you at this point," said one of the policemen. "You must now approach the bench."

Gregor started down the aisle to the bench. On either side of him were hordes of spectators, journalists, and hawkers dispensing beer and hot nutshells. People were standing at the edges beyond the rows of seats, their heads stooped because of the low ceiling at the sides of the large courtroom. The hubbub of conversation seemed to swell and ebb in funereal accompaniment to each of Gregor's hesitant steps as he made his way forward.

Gregor looked up at the court. There was no judge there! What was he supposed to do now? He turned to explain to the policemen that there was no judge, but the policemen were not in sight. He fidgeted *1021 anxiously where he stood, hoping that a judge would quickly appear and yet wondering whether he might not be better off if no judge came. The animated noise of the crowd nearly drowned out his thoughts.

A small man in a furred robe and long, thin Tartar beard came out of an opening in the wall behind the bench. He bellowed in a voice surprisingly louder than Gregor would have thought could come from so diminutive a figure. "Oh yes! Oh yes! This Honorable Court is now in session!" the small man exclaimed. The noise of the crowd ceased abruptly. All eyes turned to Gregor, but Gregor's eyes were on the man, who continued, "The Honorable Gregor Samsa presiding. God save this Honorable Court!"

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