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COMMENTARIES

RICHARD POSNER, THE JUDGE

*Elena Kagan**

Volumes have been written, and more volumes will be written, about Richard Posner, the legal scholar and thinker. About his development of the economic analysis of law, surely the most influential school of legal thought to have arisen in the second half of the last century. About his commitment to pragmatism as an approach to law and how that commitment relates to and intersects with his attachment to economic thinking. About his belief in liberalism (in the classical rather than the contemporary political sense) and how this set of convictions informs his jurisprudence. Richard Posner is the most important legal thinker of our time, and for generations to come legal scholars will dissect and analyze, will praise and criticize, his distinctive legal vision.

The volume you are holding in your hands does something different. For Richard Posner, of course, is not only a theorist. He is also a practitioner — a federal appellate judge sitting on the Court of Appeals for the Seventh Circuit. This past year, he celebrated his twenty-fifth anniversary on that bench. And to mark the occasion, two great law schools that like to boast of their affiliation with Judge Posner — Harvard, where he studied (and, indeed, served as President of this *Law Review*), and the University of Chicago, where he has taught — decided to collaborate on a set of essays focusing on this more applied, and somewhat less examined, aspect of his legal career. (The essays by the University of Chicago professors will be published in a forthcoming issue of their school's law review.) The plan, devised by Dean Saul Levmore, was to ask faculty members, of many different perspectives and methodological commitments, each to choose and comment on a single judicial opinion authored by Judge Posner. The hope was that this exercise — a collection of case comments, all with Judge Posner's judicial oeuvre as the focus — would provide a new angle of vision on

* Dean and Charles Hamilton Houston Professor of Law, Harvard Law School.

this iconic figure, giving rise to new insights about his approach to law and, more broadly, about the relationship between theory and practice that he tries to navigate daily.

Case comments, as readers of all law reviews know, can be deadly affairs. But not so here, as you will see. I am sure this has something to do with the comments' authors. But truth be told, I think it has more to do with the comments' subjects. Most case comments are boring because . . . well, because most cases are boring or, more accurately, because the words judges write to resolve those cases are. But Judge Posner does not know how to write dull opinions. In part, this is a matter of style. As many of the comments note, and still more amusingly, demonstrate, Judge Posner's aphorisms, his sardonic humor, his colorful voice, make all his opinions interesting to read. But in larger part, what I am referring to is a matter of substance, and it goes beyond the simple contrarianism that often gives Judge Posner's work bite. Judge Posner is a prober. He is constantly asking why the problems before him have arisen — what features of the world are responsible for the parties' conflicts and their inability to resolve them. He is always exploring why legal doctrines are the way they are — behind the boilerplate statements and string citations provided by the litigants, what purposes and goals the law is seeking to serve. And Judge Posner is an explainer. Oh, he may mention some precedent, invoke some authority here or there. But far more often and much more extensively (*here*, the reader can see, is where his heart is), he discusses policies, details consequences, and offers reasons, whether sounding in (among others) efficiency or morality or rule-of-law values. And so, there is much to say about Judge Posner's opinions — much to say because he says so much in them.

For this reason, I think Judge Posner should understand this issue (and its University of Chicago companion) as a kind of thank you from frequent perusers and, perhaps even more, frequent teachers of judicial decisions. As Judge Posner's opinions lend themselves to commentary, so too do they lend themselves to instruction. Rifle through the pages of whatever casebook you have at hand (nearly any subject, common law or statutory, will do) and you will find a grossly disproportionate number of Posner opinions. Perhaps consciously, perhaps not, Judge Posner writes for the casebooks: for two and a half decades, he has produced simply remarkable teaching materials. Love them, hate them, agree or disagree with them, Judge Posner's opinions make people think — about what the law is doing, about what the law should be doing, about why it all matters. Law professors — actually, anyone who cares about our legal system — should esteem these opinions for this quality; and for the most part, as you will see here, they do. In the pages that follow, there is, appropriately, plenty of criticism. There is also, again appropriately, manifest admiration and appreciation. From your friends at your alma mater, Judge Posner — happy twenty-fifth anniversary and warmest wishes for many more to follow.