

TRIBUTE TO JUDGE RICHARD A. POSNER

I met Judge Posner when I joined the University of Chicago Law School as a green assistant professor in the early 1980s.

Soon after I arrived at that extraordinary institution, I discovered that I was expected to attend the four-day-a-week lunches at the university club. People of gigantic talent and accomplishment gathered there. The conversation sparked like heat lightning on a summer night in Georgia. Then Judge Posner's voice would ring out, silencing the table with an incisive clarity that transcended even the brilliance of all the others.

In the years that followed, Judge Posner became my teacher and guide, a constant example worthy to be imitated if never matched. I have followed his writings and judicial opinions with admiration, even though their sheer volume made it impossible to read them all.

But Judge Posner's excellence goes beyond his professional accomplishments. He's a wonderful person. He's never too busy to pay attention to younger people who have something to say—even when their views are critical of his own. His evening strolls around Hyde Park with his wife Charlene are legendary. An advocate of wealth maximization, he has devoted most of his career to public service. He has refuted more conceptual errors than St. Augustine, yet remains endearingly vulnerable to the indifference of cats.

Judge Posner is viewed, and rightly so, as one of the founders of Law and Economics—arguably, the most important development in legal scholarship of the last hundred years.

Yet I think law and economics is not quite at the center of Judge Posner's imagination. Economics, for Judge Posner, is a language, a powerful and flexible way to understand and describe the world. But ultimately, it is a means to an end and not an end in itself.

Judge Posner's thinking finds roots in Smith, Marshall and Ricardo, to be sure. But in its deepest inspiration, it may owe more to Nietzsche and Marx. Judge Posner is fundamentally concerned with a problem that also occupied these thinkers: how to provide a redemptive account of the human condition in a purely material world.

This is, in a sense, the central question of modernism. It is an urgent question. And it is, I believe, a question that Judge Posner addresses in virtually all his work, whether in economics, philosophy, social theory, or even practical jurisprudence.

Each of these fields, for Judge Posner, can be approached with a small number of straightforward but fundamental premises.

First, Judge Posner believes that reality is intelligible, at least in theory and in the main. For all its complexity, the world can be unfolded and understood with the intellect. Thus, to provide an account of the human condition in a purely material world, our principal resource is the mind.

Second, to understand this world, it is necessary to overcome confusions created by romance, sentiment, pretense or self-interest. We need pragmatism rather than metaphysics. We need an honest acknowledgement of the interests that motivate human behavior. And we need to apply these principles rigorously, to ourselves as well as others. Judges are human beings in robes: they maximize the same things everyone else does.

Finally, the challenge for Judge Posner is to seek value in a world thus stripped of nostalgia, indulgence and self-delusion. For Judge Posner, I believe, value can be found in the constructive, reasonable and straightforward life that is possible even when—or perhaps only when—we abandon reliance on comforting but ultimately pathological beliefs about the universe and our place in it.

Judge Posner's own life, with all its excellence, may be the strongest argument for this philosophy. For that, and for his many contributions to our collective experience, we have reason to be grateful.

GEOFFREY MILLER

William T. and Stuyvesant P. Comfort

Professor of Law

New York University School of Law