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Studies in Legal Philosophy: Vol. 1: Pogo; Vol. 2: I Go Pogo

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made Washington, at least for the time being, a world capital. For those who, in addition to enjoying the practice of their profession, would thrive upon living and working in the center of activity which is shaping the course of world events, practice in Washington presents an exciting challenge.

There are many important and interesting aspects of the Washington practice covered by Mr. Horsky's book which this reviewer has not undertaken to discuss, and even as to those points which have been mentioned, your reviewer has necessarily had to telescope a great deal of informative material which warrants a fuller discussion. So far as is known, no previous author has undertaken to write a book on the subject of Washington law practice; thus, Mr. Horsky has performed a pioneering job. *The Washington Lawyer* is well worth reading by lawyers and laymen who have a curiosity about this new development in the handling of relations between our government and its citizens.

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Studies in Legal Philosophy. Vol. I, Pogo, 1951. Pp. 182. Vol. II, I Go Pogo, 1952. Pp. 190. By Walt Kelly. New York: Simon and Schuster. \$1.00 per volume.

This is a day in which there has been desperate need for Professor Kelly's study. For over a hundred years, among many of the peoples of the world, the theory has been gaining ground that the work of law was a Marxian consequence merely of economic struggle and of consequent economic and political exploitation. The Soviet revolution did indeed fail to disestablish law and the work of law, but the Edenists¹ then promptly insisted that that was only because of the perversion of that revolution into the channels of a power-hungry dictatorship.

Professor Kelly utterly refutes both the original Marxian and the later Edenist views. In an environment *in which there is no economic struggle*, and in which (as measured against *need*) there is no economic scarcity, and which is in addition utterly devoid of any machine of political or economic dictatorship or exploitation, Kelly records observation after observation of the relentless production of friction, disruption, injustice, even devastation, by what in the lay tongue would be known as nosy brashness,² the irresponsible dandelion

¹ Garden of, not Anthony. In the finer tradition of jurisprudential controversy, I refrain from citing any particular Edenist, or any specific passage. Why should I, when I can by mere anonymous attribution to a school both make my issue *my* way and magnify my victory? See Teufelsdröckh, *Jurisprudence, The Crown of Civilization*, 5 *Univ. Chi. L. Rev.* 171 (1938).

² E.g., *In re P. T. Bridgeport*, vol. II, p. 50; *Bridgeport v. Pogo*, vol. II, p. 157 et seq. In a subsequent communication, Professor Kelly has informed me that the Bridgeport persecution has driven Pogo into flight and concealment, without any legal remedy having been as yet discovered by any counsel in these United States.

brain,³ plain assorted meanness and doctrine in defense thereof,⁴ and gossip either silly or malicious.⁵ No lawyer who gives the Kelly material as much as three hours of study can ever again doubt that our profession has on this earth a permanent set of jobs to do.

A second vital thing—or, better, triplet of things—is driven home by the Kelly studies. First, experts (however expert and however valuable) have a tendency to go haywire and to need a final check-up by—or even to need bopping on the head by—some rounded representative of balanced horse sense. This, Kelly stresses again and again, making his point each time by concrete record. My guess would be that Pogo appears in the title of each volume precisely because it is Pogo himself who in the recorded cases has been so often the embodiment of this restrained but powered balance.

Yet, second, the cases show no less clearly the need for some effectively institutionalized machinery for bringing this kind of balanced and overall judgment to bear—for bringing it to bear not only on the sometimes wild announcements and actions of experts but also on the even wilder gossip-type of announcements and actions of the general.⁶ The cases collected here show the values of a balanced and high-hearted tribunal; but they also show the necessity for a procedure or set of procedures which can move such a tribunal into action within a reasonable time and before too much damage has been done.

I do not think that Professor Kelly makes his insights and conclusions quite as clear as he could have done in regard to these aspects of his investigations. Neither do I feel that his observations and experiments have been adequately organized to test them out completely. But one must allow to any gifted field worker a full range of operation: if he is truly gifted, he will uncover possibility

³ Any case in the index reading "Owl v. . . ." or ". . . v. Owl" will illustrate the point. The net scatter makes an ordinary dandelion go yellow with envy.

⁴ The First Cowbirds Case, vol. II, p. 149 et seq. (referred to in the volumes under consideration as The Cowbirds Case) is a hugely varied and richly informative recording. Compare the Second Cowbirds Case, vol. II, p. 171 et seq. Professor Kelly's continuing studies have more recently uncovered a Third Cowbirds Case which opens up even deeper problems in regard to how far legal measures can be devised to give protection against irresponsible meanness. Another assortment of meanness is presented in the Deacon and Mushrat Cases (Old English Rep.), vols. I and II passim.

⁵ Murder in the Swamp, vol. I, p. 107 et seq. Compare the Right To Be Lynched, vol. II, p. 85, and the other Uncivil Liberties Cases, e.g., vol. II, p. 95 et seq., p. 100 et seq., p. 110 et seq. With this body of documentation, it becomes unnecessary to buttress the thesis still further by instances of self-willed violence, or of lust, or of such real though distorted phenomena as those of sadistic cruelty. These become simple, self-suggestive, so obviously a fortiori matter that they need no documentation or even statement. In this Kelly shows a restraint, an almost terrifying skill in the argumentative arrangement of his material, which is unmatched among jurists.

There is no space here to develop the treatment of a deep and related theme: the almost magic power of words (e.g., vol. I, p. 41 et seq., p. 153 et seq., vol. II, p. 110 et seq.), and the responsibilities of persons who, like lawyers, are professional in the use of words.

⁶ Not a man with a star, but the people to whom caviar is. Shakespeare, Hamlet, Act II, sc. 2, l. 145.

after possibility, lead after lead, which has theretofore lain unsuspected or inadequately examined. He cannot both at the same time do that vital service and explore to the end each of the many vital leads which he turns up in the process. So here.

Take as a contrast the third piece of this triplet line of inquiry, which Kelly's material (building mainly on Herriman's epochal contribution⁷) explores very fully, and in new contexts: the need, in any official or unofficial representative of the whole, for sweetness of spirit. This is a question not of mercy, but of full understanding—a question of that biblical "charity" which makes "justice" work out into living action. Cardozo exemplified it, entirely within the control of an established explicit scheme of legal procedure and of legal rules. Pogo now displays its essence within an implicit scheme which lets the general point come forth to observation even more clearly. How any legal philosopher can escape illumination of these problems after Kelly's sustained follow-up of Herriman's demonstration of this so much neglected but so vital value in law and in its officials is more than one can see.

Turning from the substance to the form: I have had occasion before to comment on the increasing life and attractiveness of style in legal philosophy over the last two decades.⁸ In this aspect Professor Kelly represents the most significant forward step in the whole period. He has not only managed a most effective introduction of visual presentation, but he has merged words and visual material with an inspired use of varied typography into an esthetic harmony hitherto unknown in our discipline. Along with this goes a range of effective allusion to literature, history, folk wisdom and even current events which makes perusal a source of continuing pleasure, and which truly integrates law's meaning and work into the humanities. A strikingly novel feature is the use, at critical points in investigation and also in presentation, of significant *groups*, dealt with not merely as single individuals (A, B, "a legal person") nor merely as vague groupings ("They," "Wall Street," "Labor") but in sharply seen, organized, effective plural operation. No literature of either law or sociology or government has equalled Kelly's work on this.⁹

Kelly has thus in all aspects picked up the work of Marquis¹⁰ and of Herri-

⁷ Herriman, *Krazy Kat* (1946), a reprint of various much earlier periodical publications. See Llewellyn, *Review of Herriman, Krazy Kat*, 47 *Col. L. Rev.* 337 (1947).

⁸ Llewellyn, *On Reading and Using the Newer Jurisprudence*, 40 *Col. L. Rev.* 581, esp. at 612 (1940).

⁹ See, e.g., vol. I, p. 143 et seq., vol. II, p. 39 et seq., p. 107 et seq., p. 130 et seq.

¹⁰ Archie; and Archie and Mehitabel. These valuable contributions of the early century were, and are, so neglected that I cannot find them in the law libraries of the Universities of Chicago, Columbia, Harvard, or Yale, nor—despite a relatively recent reissue of the later work—even in that of the Association of the Bar of the City of New York. Nor can I find mention of them in the legal periodicals.

man,¹¹ and carried it to full and rounded fruition. In a word, this is no light reading. The counterpoint of nuance and the depth of implication call for highly sustained attention. But the return rewards the effort. And the contribution is unique.

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¹¹ Herriman, *op. cit.* supra note 7.

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State and Local Taxation: Cases and Materials. By Jerome R. Hellerstein. New York: Prentice-Hall, Inc., 1952. Pp. xxiii, 871. \$9.75.

For too many years the subject of state and local taxation has been sorely neglected in law school curricula. While many problems of state and local taxation involve questions of constitutionality which have been more or less adequately covered in constitutional law case books, vast problems of interpretation and administration of state and local taxes have been ignored too long. With considerable temerity, Professor Hellerstein has undertaken the difficult task of bringing within two covers, for the first time, selective material that removes much of the mystery about state and local taxes. If, by his example, Professor Hellerstein merely inspires others to publish similar case books, he will have accomplished much. He has, however, achieved much more, for it will be a long time before another case book on state and local taxation will excel his work.

The book contains copious material on such taxes as corporate franchise, capital stock, business and personal income, sales and use, gross receipts, documentary stamp and mortgage recording, death and gift, and real and personal property. It also covers problems of allocations, tax exemptions, assessment and collection procedure, and taxpayers' administrative and judicial remedies. In addition, Mr. Hellerstein has allotted a liberal amount of material to constitutional limitations and restrictions flowing from state and federal constitutional requirements. Also, he has included a generous amount of historical, economic, and fiscal data. The sum total of the cases and material is much greater than that which can be covered in the ordinary law school course, even if devoted exclusively to state and local taxation. Nevertheless, the book offers rich opportunities for considerable variations of selection by the individual teacher. That selection is materially made more meaningful by the numerous provocative suggestions for further inquiry offered by Mr. Hellerstein at the end of practically every section.

The present work is in all respects a modern pedagogical tool. Hence, it is not surprising that the cases reprinted or cited have in the main been recently decided. Furthermore, questions posed by the author in notes and problems are