

## Man and Nature

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## BOOK REVIEW

Man and Nature: Selected Essays by Giorgio Del Vecchio

Edited by Ralph A. Newman, translated by A. H. Campbell;  
pp. 197; University of Notre Dame Press, Notre  
Dame, Indiana (1969); \$9.00.

For the law student and the practicing attorney, editor Newman has compiled an interesting and representative group of Giorgio Del Vecchio's essays. However, for the serious student of legal philosophy, the selection is sketchy, and other than for the beauty of the translation, and the occasional poetic ascendency of Del Vecchio, such a diverse, un-coordinated set of essays does a disservice to the legal philosophy of Del Vecchio.

The legal student must recognize that Del Vecchio is a philosopher, and therefore, he places "the law" in context with his other ideas or categories. Within the examples given in this selection, the most pertinent and notable are "The *Homo Juridicus* and the Inadequacy of Law As A Norm of Life"<sup>1</sup> and "Truth In Morality And Law."<sup>2</sup>

Much well focused criticism has been forthcoming on the nature and scope of book reviews, largely because the author must, by the very nature of the composition, choose to recite the contents of the book with appropriate descriptive comments, or insert an abundance of new material as commentary, the opportunity for self-expression overriding the desire to be informative about the publication under discussion. One cannot escape the trap of such a definitional criticism, as it merely admits of the problem of communication: the revelatory and confessional nature of our utterances, which must of necessity be impressed without from the ego within, and the semantic inadequacy of intersubjectivity between persons. Unabashed by the hazards of the task, alerting the reader to the problem involved may in some small measure allow others to rise to a level of independent questioning, which philosophically would be the soundest approach.

In the area of law, stepping ahead of the formulary area from which no philosophy ever seems to adequately rise, Del Vecchio has made a real and substantial contribution to the establishment of rules or standards by which the juridical personality can be measured.<sup>3</sup> The essay, "The *Homo Juridicus* And The Inadequacy Of Law As A Norm of Life,"<sup>4</sup> written in 1935, is a discussion of the legal personality in the same framework as similar hypothetical figures discussed with relation to economics, religion, or any other single motive. The need for a more

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<sup>1</sup> G. DEL VECCHIO, MAN AND NATURE 61 (1969).

<sup>2</sup> *Id.* at 83.

<sup>3</sup> G. DEL VECCHIO, THE COMMON BASES OF LAW (1937).

<sup>4</sup> DEL VECCHIO, *supra* note 2.

realistic and systematized definition of the juridical personality in Anglo-American law has been recognized by others,<sup>5</sup> and the area of torts is such a branch of law. As Professor Prosser has struggled in the Restatement of Torts<sup>6</sup> to define negligence in terms of categorical imperatives, that is, that the duty is imposed upon the subject's will in such a way as to prevent escape, the areas of facultative or permissive duties are confused or omitted, as they are clumsy or embarrassing problems to a system predicated upon sociological idealism. Although the editor would have us believe that Del Vecchio "kindled into flame the flickering embers of natural law,"<sup>7</sup> a close analysis would seem to buttress Professor Friedmann's classification of idealism<sup>8</sup> and it finds a clear reflection in the rather classic, Neo-Hegelian essay, "On The State—Character Of Law" (1928), in which Del Vecchio finds the hope of a valid system of State-Law in this summary sentence:

A State fully lives and prospers only when, besides the formal nexus which unites participants in the same juridical order, there is also an ethical bond, a profound identity of wills, a real communion of spirits, and an equal ardor of faith in the civil religion of the fatherland.<sup>9</sup>

Of course, natural law is subject to many definitions.<sup>10</sup> In relation to natural law as dependent upon the Divine Order as set forth by St. Thomas Aquinas,<sup>11</sup> Del Vecchio is not a natural law philosopher. If we extend the category of natural law to such later philosophies as Rousseau, Locke, Hobbes and Mr. Justice Black's characterization of the majority opinions of the United States Supreme Court, we might

<sup>5</sup> See F. HARPER & F. JAMES, *THE LAW OF TORTS* § 16.1 n.4 and 5 (1956).

<sup>6</sup> "The word 'act' is used throughout the Restatement of this Subject to denote an external manifestation of the actor's will and does not include any of its results, even the most direct, immediate, and intended." *RESTATEMENT (SECOND) OF TORTS* § 2 (1965).

"In the Restatement of this Subject, negligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. It does not include conduct recklessly disregardful of an interest of others." *RESTATEMENT (SECOND) OF TORTS* § 282 (1965).

Del Vecchio has previously made the argument that juridical personality is comprised of both liability for our acts and non-acts, if the latter are defined as the conscious refraining to do which has no external manifestation. Dean Prosser's definitions would cover act and omissions to act, if a legal duty exists. However, his definition contains a predicate that perception (actual or objective) occurs. In order to render an individual liable he must then be actually or socially accountable. But neither Prosser nor Del Vecchio states a moral premise upon which accountability has its source. Ergo, one must have a positive law announcement of liability or duty to perceive and we cannot have individual liability except in those cases in which positive morality has reached the level of State-law, and this by its very nature is contradictory to a valid system of individually posited perception.

<sup>7</sup> DEL VECCHIO, *supra* note 1, at ix.

<sup>8</sup> W. FRIEDMANN, *LEGAL THEORY* 186 (5th ed. 1967).

<sup>9</sup> DEL VECCHIO, *supra* note 1, at 151.

<sup>10</sup> FRIEDMANN, *supra* note 8, at 104-56.

<sup>11</sup> *Id.* at 107.

place Del Vecchio within the modern stream of rational idealism, his system premised upon reason and spirit relied upon as an a priori part of "law" but unarticulated in terms of ontology.<sup>12</sup>

The essay on "Truth and Morality In Law"<sup>13</sup> is an exceptionally valid and timely statement of the interplay of ethics (the absolute good), positive morality (social norms recognized but without any state-enforced sanction) and law (in the general Austinian concept of commands of the sovereign). Although the essay is not exhaustive of the interrelationship of ethics, positive morality and law, because the concept of ethics is without religious foundation and hence subject to the inherent solipsistic error of all idealism, the fact of the socio-economic complexities of legal change within the cultural framework of national states is well conceptualized. Perhaps one could not fully appreciate this essay without also reading "The Crisis of The Science of Law,"<sup>14</sup> both statements being pertinent to the laments of Mr. Justice Black,<sup>15</sup> and the *Freirechtslehre*<sup>16</sup> of modern authors and activists to desert the legislative forum for the judicial forum in order to promulgate new private rights.

Whether one agrees or disagrees, the essays are worth reading, the translation elegant and the editorial selection broadly representative of one of the world's acknowledged philosophers, whose attempts to explain truth have spanned the twentieth century.

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<sup>12</sup> *Id.* at 104-56.

<sup>13</sup> DEL VECCHIO, *supra* note 1, at 83.

<sup>14</sup> *Id.* at 171.

<sup>15</sup> 332 U.S. 46, 69 (1947).

<sup>16</sup> "These are not the only symptoms of the modern tendency to depreciate legislation as a source of law. There is, for instance, that complex of doctrines and ideals which is called 'the school of free law.' This school maintains that the formal reference the judge makes to the text of the law is scarcely more than a fiction, and that in reality he depends for his solution upon a direct examination of the case and a balancing of the conflicting interests involved." G. DEL VECCHIO, *MAN AND NATURE* 175-76 (1969). Professor Friedmann makes a similar comment to the school of *Freirechtslehre*; see FRIEDMANN, *supra* note 8, at 342-44; see also R. KEETON, *VENTURING TO DO JUSTICE* (1969).