



1966

Book Reviews

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Recommended Citation

Jestrab, Frank F. and Knox, Frank T. (1966) "Book Reviews," *North Dakota Law Review*. Vol. 42: No. 3, Article 11.

Available at: <https://commons.und.edu/ndlr/vol42/iss3/11>

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BOOK REVIEWS

FREEDOM AND THE PUBLIC—PUBLIC AND PRIVATE MORALITY IN AMERICA, by Donald Meiklejohn. Syracuse: Syracuse University Press, 1965. Pp. ix, 163, \$4.95.

The subject of his essay, *On Liberty*, John Stuart Mill tells us, is the nature and limits of the power which can be legitimately exercised by society over an individual.¹ But, of course, man is a social animal. He is born, lives, work, and dies to a greater or lesser degree in the company of others. In the words of the song of enduring popularity, "No man is an island, entire of itself. . . ." Every man is "involved in mankind".²

This involvement claims the attention of Professor Meiklejohn in this series of lectures. What he espouses is some sort of corporate freedom. He discusses man's "freedom" insofar as it relates to his involvement in his government and his government's involvement in the business and education of the citizen generally. In this sense he sees the goal of freedom, as does Father Joseph Snee, to assist individuals to "realize themselves", to create a "society rationally organized for the purpose of establishing, maintaining and perfecting the conditions necessary and appropriate for community life, to perform its role in the complete development of man."³ Actually, of course, these people speak of morals and conduct. When we enter into a discussion of these things we have left off consideration of freedom.

Professor Meiklejohn asserts that "present American thinking about the public has been confused and sometimes blocked by a lack of clarity about our public and private interests and the moralities into which we try to organize those interests." He states that "freedom is too important to be left to private individuals." He makes the superfluous concession that this thesis might be suspect, might be thought liable to assimilation to those "real intentions" to which totalitarians appeal when they tell us that constraint is "true freedom."

The first chapter of the book is devoted to a delineation of the problem between the government, which the author describes as "the American public," and individuals, which are referred to as "private interests." In general the writer asserts that freedom

1. BURTT, *THE ENGLISH PHILOSOPHERS FROM BACON TO MILL* 949 (Modern Library Ed.).
2. *DEVOTIONS OF JOHN DONNE*.
3. *GOVERNMENT UNDER LAW* 96, 142 (Sutherland Ed. 1955).

issues from "properly ordered relations" between the public and its constituent individuals.

Chapter two is an examination of popular government in America and of some of the forces and groups competing for power and attention. Among these are liberals and conservatives, whatever they are, special interest groups, that is, associations, families, companies, labor unions, clubs and other private associations, and religious organizations. The views of all of these should be synthesized, he says, to achieve true popular government. "Popularity means conformity with enduring interests and purposes; government must include the most adroit exploitation of non-governmental momenta and interests to get the work done." Forsooth, this is a strange sort of freedom. Such talk may be good civics, but it doesn't have any relationship to the ideal of liberty.

Chapter three outlines the role of active government in the people's business and the people's schools. The thrust of the argument is that it is the function of government to provide the conditions in which education and business can fulfill their respective public function. As a lesson in civics this may be entirely in order.

Chapter four is devoted to the freedom of public discussion, and whatever may be the irrelevance of the title to the rest of the book, the author comes out all right here. Professor Meiklejohn notes with approval the position of Mr. Justice Black when the Justice said in his James Madison lectures that the first amendment is intended to withdraw from the government all power to act in the area of public speech. To the critic who says "this freedom may be the end of us," he answers, "like Socrates, that if to remain our best selves we must die, then die we will; but in fact we believe that fidelity to our best principles makes us most likely to live." Speaking of this interpretation of the first amendment, Meiklejohn says that absolutes are compatible with change. "They make change intelligible. Truly only the permanent changes."

In the last chapter there is another lecture on civics, this time on an international scale. The author asserts that we have failed to fulfill our possibilities in the international field because of a basic parochialism and provincialism in our outlook and our thinking.

Wisely, he encourages our continued participation in what he calls the "great discussion" and urges that the theme of these discussions with other countries must be the career and fate of self-government. Furthermore, the great discussion should be universal and include all peoples. Here again I believe that the author is talking about liberty. He says that we should be suave in manner, relaxed and humorous, urbane, never rude or impetuous, and that our stance should be utterly firm. It is, he tells us, "the essence of the dialectic of that discussion that from the diversities of dif-

fering national views comes the most profound common clarification." In other words he believes, to paraphrase Holmes, that our concepts of self government have the power to compete in the market place of truth.

This is not an easy book to read. Certainly with many of its conclusions one could have no quarrel, but there is, in some portions of the book at least, a tone of dangerous paternalism, and like the discredited doctrine of natural law, such paternalism is a continuing threat to freedom. If this criticism of the book seems captious, we recur to an editorial from the London Times of August 11, 1846 and the accompanying commentary by James A. Pike, Bishop of the Episcopal Diocese of California:⁴

The greatest tyranny has the smallest beginnings. From precedents overlooked, from remonstrances despised, from grievances treated with ridicule, from powerless men oppressed with impunity, and over-bearing men tolerated with complaisance, springs the tyrannical usage which generations of wise and good men may hereafter preserve and lament and resist in vain. . . . Hence the necessity of denouncing with unwearied and even troublesome perseverance a single act of oppression. Let it alone, and it stands on record. The country has allowed it, and when it is at last provoked to a late indignation it finds itself gagged with the record of its own compulsion.

Bishop Pike properly asserts that "watchfulness as to the eroding away of this concern for freedom is the special task of lawyers, . . ."

Freedom is individual, not corporate. We—each of us—must remain free and spiritually unencumbered to search within ourselves for the solution to the riddle of the reason for our being and to make, if we choose, our contribution to the experience of the race in its continuing quest for the same answer. This is what we mean by freedom. This is liberty.

FRANK F. JESTRAB*

HANDLING FEDERAL TORT CLAIMS: ADMINISTRATIVE AND JUDICIAL REMEDIES, by Lester H. Jason. Albany, New York: Matthew Bender & Co. 1964. \$35.00.

This work is an exhaustive study in depth of the various procedures available against the federal government with primary

4. Pike, *The Lawyer as a Citizen*, BEYOND THE LAW 83 (1963).

*Bjella, Jestrab, Neff & Pippin, Williston, North Dakota. B.A., 1936, Montana State University, L.L.B., 1938, Montana State University.

emphasis on the Federal Tort Claims Act. The author has extensive practical work in this field and the book aptly demonstrates this experience. An immediate value can be derived from using this book to assess the merits of a case against the federal government, in pointing out alternative choices of remedies available, and in handling practical problems which may arise because of the unique situation presented when one opposes the federal government.

The initial chapter deals with various administrative claims and the remedies described are precisely defined and easily understandable. This chapter also considers various claims against the Armed Forces, the Coast Guard, the National Guard, particular civilian government agencies such as the Atomic Energy Commission, Federal Bureau of Investigation, and others. This chapter is of particular significance to an attorney in states where the National Guard is active, where military bases abound, or where a large number of federal agencies exist. Various sections of the book point out practical differences between procedures under the Federal Tort Claims Act and under varying administrative provisions, such as under the National Guard Claims Act. This work fills a gap giving the practicing lawyer speedy access to the necessary material which will enable him to decide which route to take when dealing with federal agencies. If the book had no other merit it would be valuable to a practitioner for this purpose alone.

The majority of the subsequent chapters are concerned with problems under the Federal Tort Claims Act. The work divides the act into categories which will lead a practicing lawyer directly to the point he desires, whether it be background information of the act, proper party plaintiff or party defendant. Chapter five, dealing with party plaintiff, has particular significance because it classifies the people who can sue. It points up the distinction of civilian employees claims under the Federal Employees Compensation Act and under the Federal Tort Claims Act. This section is basic to one in the active field of those representing plaintiffs. Prior to publication of this book, there was no place in which one could easily obtain this information without encountering the laborious task of examining a morass of decisions.

One other section deserving special commendation is the section describing government settlement policies. These policies have been hitherto entirely unknown to attorneys handling federal tort claims except as that information is gained from years of experience.

If any fault is to be found with this publication, it would be for some redundancy and repetition which can be both a help and a hindrance depending upon the reason for which one uses

the book. The topical breakdown enables a practitioner to examine the problems in a condensed version; but it also causes those attorneys with experience in these type cases to review much repetitious material pertaining to statutes of limitations, attorneys fees, limits on administrative claims and the like.

An unusual appendix to this book is that portion devoted to the many statutes under which claims may exist. This is a valuable adjunct to an excellent book.

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