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Book Review [Alexander Meiklejohn, *Teacher of Freedom*]

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BOOK REVIEW

ALEXANDER MEIKLEJOHN, TEACHER OF FREEDOM. Ed. Cynthia Stokes Brown. Berkeley, CA: Meiklejohn Institute. 198. Pp. ix + 281. Hardcover. \$13.95.

*Reviewed by Paul N. Halvonik**

In 1948, at the age of 76, Alexander Meiklejohn published a 107 page book of political philosophy, *Free Speech and its Relation to Self-Government*;¹ the first amendment has not looked the same since. *Free Speech* has an enormous impact on the constitutional law of the United States, an impact which has not been universally welcomed. Felix Frankfurter, for example, suggested that Meiklejohn would be better equipped to handle these weighty questions were he to spend three years in law school. Meiklejohn was game, provided Frankfurter spend three years in a school of philosophy.²

Cynthia Stokes Brown's book contains a short biography of Alexander Meiklejohn followed by a collection of Meiklejohn's writings not currently available elsewhere. Neither the biography nor the short notes that precede the Meiklejohn selections are evaluative. Ms. Brown gives us the context of Meiklejohn's work, edits some of it, and leaves us to draw our own conclusions. It is an excellent piece of editing.

Alexander Meiklejohn was born on February 3, 1872, in Rochdale, England, of a Scottish family. His father, James, was a textile worker; Rochdale is where the consumer cooperative movement began in 1844.³ Meiklejohn was, throughout his life, concerned with the cause of labor and skeptical about the virtue of capitalism. His concerns about capitalism were ethical not Marxist: "The essential defeat of the capitalist or-

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1. A. MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (1948).

2. C. BROWN, *ALEXANDER MEIKLEJOHN: TEACHER OF FREEDOM* 46-47 (1981).

3. *Id.* at 1.

der is, in my opinion, that it is revolting as a form of human behavior. It makes the men who engage in it ashamed of themselves."⁴

In 1880, James Meiklejohn was transferred to Pawtucket, Rhode Island. Nine years later, he became an American citizen and so, consequently, did his son. This shift of allegiance from the Queen of England to the government of the people had a profound effect on the younger Meiklejohn, as a similar shift has profoundly influenced the framers of the Constitution.⁵ College would have been foreclosed to the son of a working class family, except for the happy accident that Meiklejohn had seven older brothers who pooled their resources to send the promising scholar to Brown University. Brown was only four miles away and Meiklejohn was able to live at home while he attended.

At Brown, Meiklejohn was an outstanding student and an outstanding athlete. A member of the first collegiate ice polo team in the United States, he brought back from Canada a rubber puck to replace the ball, turning the game from ice polo into ice hockey.⁶ After obtaining a master's degree in philosophy at Brown, Meiklejohn obtained his Ph.D. at Cornell, supporting himself with a hockey scholarship while writing his dissertation on Kant's theory of substance. Meiklejohn returned to Brown as a member of the faculty in 1897.⁷ In 1901, Meiklejohn was appointed Dean of Brown⁸ and in 1912, at the age of 40, he became President of Amherst.⁹ As President of Amherst, Meiklejohn emphasized the importance of the open and inquisitive mind. After a decade of Meiklejohn's administration, Amherst's Board of Trustees decided that a good many minds had become too open and inquisitive, and in 1923, he resigned under pressure. At an alumni lunch on the following day, Meiklejohn concluded his remarks with this observation: "I differ from you on most of the issues of life, and I shall keep it up."¹⁰

4. *Id.* at 41-42 (quoting A. MEIKLEJOHN, WHAT DOES AMERICA MEAN? 242 (1935)).

5. C. BROWN, *supra* note 2, at 2.

6. *Id.* at 4.

7. *Id.* at 5.

8. *Id.* at 8.

9. *Id.* at 10.

10. *Id.* at 19.

In 1927, Meiklejohn became director of an experimental college at the University of Wisconsin. It was a college in which the students lived as well as studied together. Their first year was devoted to the study of Athenian civilization in the 5th century B.C., and their second year, by contrast, to the civilization of the United States of the 19th and 20th centuries.¹¹ By any conventional standards, the experimental college was a complete success. For example, the Scholastic Aptitude Test scores of regular Wisconsin freshmen was 57.6, while the average score of freshman at the experimental college was 80.3.¹² The experimental college ended in 1932, a victim of the Depression and the customary uneasiness generated by Meiklejohn's cultivation of the open and inquisitive mind.

In the summer of 1932, Meiklejohn moved to Berkeley, California, where he was to live until his death in 1964.¹³ While in Berkeley, Meiklejohn started the San Francisco School for Social Studies,¹⁴ co-founded the American Civil Liberties Union of Northern California,¹⁵ served as consultant to St. John's College in Annapolis, Maryland,¹⁶ lectured at the University of California,¹⁷ and in 1962 at the age of ninety, became Chairman of the National Committee to Abolish the House Un-American Activities Committee.¹⁸ In Berkeley, Meiklejohn also committed to paper his conception of an American political philosophy.¹⁹ In *What Does America Mean?*²⁰ Meiklejohn proposed that America is about people and not about property. Property may be regulated for the common good, but the conscience, thoughts, and beliefs of people cannot be regulated for the common good or for any other reason. It was the latter point that he refined in *Free Speech*.²¹

The first amendment, Meiklejohn noted, does not protect speech, it protects freedom of speech. It is permissible, and

11. *Id.* at 23.

12. *Id.* at 30.

13. *Id.* at 35, 54.

14. *Id.* at 36.

15. *Id.* at 47.

16. *Id.* at 49.

17. *Id.* at 48.

18. *Id.* at 47.

19. *Id.* at 40.

20. A. MEIKLEJOHN, *supra* note 4, at 127-37.

21. A. MEIKLEJOHN, *supra* note 1.

probably essential, to regulate many forms of speech. There are crimes, such as fraud and solicitation for murder, that are accomplished exclusively by speech and yet no rational person supposes that punishing those crimes offends the first amendment. Freedom of speech, on the other hand, is quite another matter.

When discussion turns to public matters, the first amendment takes hold. Whether the Constitution should be abandoned, whether a socialist economy is a fruitful political device, whether people should be segregated racially, speech concerning all of these messages is protected, and protected absolutely, by the first amendment. These are ideas; the sovereign cannot have ideas interdicted if the sovereign function is to be performed, and in this country, the people are sovereign. Meiklejohn shifted the emphasis of the first amendment from the speaker to the audience: "The point of ultimate interest is not the words of the speakers, but the minds of the hearers."²² That is because the hearers *are* the government.

Just so far as, at any point, the citizens who are to decide an issue are denied acquaintance with information or opinion or doubt or disbelief or criticism which is relevant to that issue, just so far the result must be ill-considered, ill-balanced planning for the general good. *It is that mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed.* The principle of the freedom of speech springs from the necessities of the program of self-government. It is not a Law of Nature or of Reason in the abstract. It is a deduction from the basic American agreement that public issues shall be decided by universal suffrage.²³

Meiklejohn's theory of free speech was imbedded in our constitutional law when, in *New York Times Co. v. Sullivan*,²⁴ the Supreme Court proscribed libel suits by public officials absent a demonstration of malice, thus removing the underpinnings from the law of seditious libel. Harry Kalven, first

22. A. MEIKLEJOHN, *supra* note 1, at 25.

23. *Id.* at 26-27. The first amendment's author, James Madison, made a similar point: "If we advert to the nature of Republican Government, we shall find that the censorial power is in the people over the Government, and not in the Government over the people." *Annals of Congress*, 3C, 2S, 934 (Nov. 27, 1794) (*cited in New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964)).

24. 376 U.S. 254 (1964).

amendment scholar and Professor of Law at the University of Chicago, discussed the decision with Meiklejohn and reports that Meiklejohn called it "an occasion for dancing in the streets." Kalven added, "As always, I am inclined to think he is right."²⁵

Kalven may have been inclined to think Meiklejohn right, but he was willing to suspend his inclination when he spotted a troublesome aspect of the Meiklejohn doctrine. There are, Kalven noted, a number of aspects to what we think of as free expression that do not seem terribly pertinent to political questions. "Not all communications are relevant to the political process. The people do not need novels or dramas or paintings or poems because they will be called upon to vote."²⁶ Meiklejohn replied that self-government, if it is not to be an illusion, must be conducted by people used to making judgments, people who are "self-educated in the ways of freedom."²⁷

Meiklejohn's reply is certainly consistent with the Jeffersonian ideal of a thoughtful and educated people going about the task of self-government, but it does not, I think, answer Kalven's objection. When the link between the political process and the expression at hand is attenuated, Meiklejohn's distinction between speech and freedom of speech becomes very fuzzy. All this means is that Meiklejohn has not given us a key to all the mysteries of the first amendment. What he has given us is a powerful analytical tool for isolating some of government's intrusions on free expression, the sort of intrusions that most immediately affront our capacities to act as citizens. That is no small accomplishment.

25. Kalven, *The New York Times Case: A Note on the "Central Meaning of the First Amendment,"* 1964 SUP. CT. REV. 191, 221, n.125 (1964).

26. Kalven, *Metaphysics of the Law of Obscenity,* 1960 SUP. CT. REV. 1, 16 (1960).

27. C. BROWN, *supra* note 2, at 256 (quoting Meiklejohn *The First Amendment is an Absolute,* 1961 SUP. CT. REV. 245 (1961)).

