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Meiklejohn: FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publisher's literature, and the ordinary library sources.

BRIEF REVIEWS

FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT. By *Alexander Meiklejohn*. New York: Harper & Brothers. 1948. Pp. ix, 107. \$2.

Begun as a series of three lectures given by the author, a former Dean of Brown University, President of Amherst College and Chairman of the School for Social Studies, San Francisco, this analytical discussion of the First Amendment was first presented at the Walgreen Foundation for the Study of American Institutions, University of Chicago, and thereafter at several colleges and law schools. In a postscript entitled "Reflections," the author crystallizes his philosophy and indicates its application to problems of restricted expression facing us in the United States today. He presents the Constitution as a Jeffersonian "social compact," continuously renewed, in which we all join, pledging to each other to govern the nation collectively, and pledging individually to respect our collective decisions. It is in our capacity as "rulers" that we require full and accurate information on public issues in order that we may "rule" intelligently, and a determination by any official that certain speech is dangerous or subversive is in reckless disregard of the terms of the Constitution. The author conceives private speech (advertising, libel, etc.) to be a liberty under the due process clauses of the Fifth and Fourteenth Amendments; he sharply differentiates speech on matters of public concern which, when carried out in any appropriate forum, is protected, in favor of both speaker and hearer, by the absolute language of the First Amendment and by the privileges and immunities clause of the Fourteenth Amendment. The author regards any weakening of this distinction as a violation of the basic compact of the people to be collective rulers. As a consequence of this interpretation, the "clear and present danger" doctrine of Justice Holmes is conceived as an encroachment upon the sovereignty of the ruler-citizens—an inhibition of an indispensable means to the efficient execution of authority. The only time public speech is not entitled to unqualified protection is when the danger to the existence of the government itself is so clear, present, imminent and severe as to leave no opportunity for speech in rebuttal. At this point all speech is prohibited, not merely the dangerous speech, on the theory that to all intents, the compact has ceased and force holds sway. The author is aware of the current tendency of certain public officials and officious private individuals to protect the "rulers" from exposure to unorthodox political thought, and he complains throughout the book of the narrow perspective of the malefactors.