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Book Review

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RECENT BOOKS

Book Reviews

LAW, INTELLECT, AND EDUCATION. By *Francis A. Allen*. Ann Arbor: The University of Michigan Press. 1979. Pp. viii, 123. \$12.

Frank Allen has a clerical background. In this slender volume, he collects his sermons, delivered as a high priest of a secular religion. For true believers such as this reviewer, reading the book is a reassuring and spiritually uplifting experience. Like most collections of sermons, it will, unfortunately, be too little read by the doubters to whom much of it is addressed.

Allen was Dean of the University of Michigan Law School from 1966 to 1970. During the mid-seventies, he served as President of the Association of American Law Schools. Many of the papers presented in this book were originally presented by him acting in one or the other of these roles. The unifying function of the chapters is to explain and justify the study of law as an academic discipline. The usual audiences are lawyers and law students who may doubt the worth of the enterprise.

The reader should know that Allen has been spectacularly successful as a student, scholar, and teacher over the course of his career. He has had signal success as a law reformer, but has engaged sparingly in activities that might be described as law practice. He has devoted himself as much as any man of his generation to the life of the mind, in law. It is not surprising, therefore, that he often writes with feeling about the central issues of his own commitment.

Allen's faith is that the law can and will be improved by thinking about it. He holds that the intellectual enterprise "possesses an ethic." Those who have been inducted properly into the processes of reason will share this ethic, which "involves a discipline and a set of restraints which must be given priority over personal interests and inclinations" (p. 85). Evidence must be respected, but rigorously questioned. Action may be necessary before knowledge is perfect, but the tentative conclusions upon which action is based remain open to question, for the inquiry is never laid to final rest (p. 85).¹

1. Cf. Fuller, *Positivism and Fidelity to Law — A Reply to Professor Hart*, 71 HARV. L. REV. 630, 636 (1958).

As we strive for coherence in law, Allen asserts, we advance our ethical values (p. 85).

Through the pages of these brief chapters, one sees this idea defended against a series of assaults. Allen confronts the students in the mid-sixties who wish to divert the energies of the university to war resistance, and, conceding that the university has not always preserved its purity of purpose, he urges students to support greater intellectual rigor, not the further digressions from purpose that their movement sought to achieve (p. 37). Allen confronts the egalitarians, and urges that equality is not so simple an idea that it can be achieved without a lot of rigorous thought about its many complexities (p. 7). He confronts the latter-day hedonists who resist learning under pressure and who choose to believe that learning must be made amusing, and urges that rigorous learning is more painful than joyful, and can be achieved only by those willing to postpone rewards (p. 25). Finally, Allen confronts the more recent "competence movement," which he sees as an effort to substitute for intellectual rigor a "pallid vocationalism" (pp. 49-50). He decries that "narcissistic fixation on the techniques of the law office and the courts," which "views askance the role of the law schools as critics of the law and as sources of new law" (p. 62).

Allen allies himself with Holmes the disciplinarian (pp. 8-9), although like Holmes, he manifests ambivalence at times. It is this dedication to discipline that sets him apart from the various adversaries, all of whom share at least in modest degree what might pass for the trait of self-indulgence. Whatever Allen may tolerate, and he is a very tolerant man, intellectual self-indulgence is to be resisted in all of its manifestations. He recognizes, perhaps wistfully, that in our "Culture of Narcissism,"² such self-indulgence is ubiquitous:

Yet there are periods — and the present appears to be one — in which the cultural climate is not propitious for the cultivation of intellectual and humanistic values. At such a time, teachers (if they are to serve their important function) have the uncomfortable obligation of resisting, in some measure, the main tendencies of the age. [P. 74.]

Thus, he sets for himself and others a most demanding task. It is not clear that the task is one that can be performed — particularly by persons who by Allen's urging are bound to suspend final judgment about the worthiness of their own objective. But Allen is at his best in dealing with self doubt. The most elegant of these short essays is an Honors Convocation address entitled "On Winning and Losing" (pp. 11-16). In a moving comment on *The Song of Roland*, he urges

2. The term may now belong to Christopher Lasch, whose recent book bears that title.

the honorees not to mistake their external indicia and ornaments of success for the real thing: “The person who is denied prizes and awards but who maintains the ethical ideal has triumphed because his life constitutes a vindication and validation of the ideal” (p. 14). This is a hard teaching, but one that Allen is himself abiding. There is no truer apostle of a true faith.

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