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Studies in Jurisprudence: V, Free Man Versus His Government, edited by Arthur L. Harding

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STUDIES IN JURISPRUDENCE: V, FREE MAN VERSUS HIS GOVERNMENT. Edited by Arthur L. Harding. Dallas: Southern Methodist University Press. 1958. Pp. xi, 117. \$3.00.

"Free Man Versus His Government" resounds with echoes of a call to revolution, but a brief reflection on the Latin divider variously abbreviated v. and vs. brings apprehension of the frequently dull form of debate called litigation. This title identifies four essays from the 1957 Conference on Law in Society presented by the Southwestern Legal Foundation and the Southern Methodist University School of Law.¹ No revolutionary tocsins sound among them or in any of them. Motions for continuance and settlement negotiations, with even a few expressions of expectation that settlement will be on mutually advantageous terms, are more frequent than requests for peremptory instructions or notices of appeal.

Professor Beutel² on "Freedom of Political Association" does appeal from decisions supporting exculpatory oaths and decisions holding that the federal government cannot protect freedom of political assembly for a non-federal purpose from private interference. Professor Harding³ on "Freedom to Use Property" is content to assert that private property is here to stay. He indicates that the "bundle of rights" has been re-sorted and new sticks have been added in such a way as to recognize more economic values and make them more valuable by achieving a balance of social interests that works to enhance freedom. The manner here is less of the indictment or brief and more of the historical survey.

Professor Stumpf⁴ on "Freedom to Learn" comes to three opinions of truth in the realm of values. He chooses continual rational examination and restatement, based on faith in absolute truth and skepticism of

† Irving Dilliard is an editorial writer for the St. Louis Post-Dispatch and from 1949 to 1957 was editor of its editorial page. Among his publications are *Mr. Justice Brandeis: Great American* and *The Spirit of Liberty: The Addresses and Papers of Learned Hand*.

1. The present volume is the fifth of a series which was begun in 1954.
2. Frederick K. Beutel, Professor of Law, University of Nebraska.
3. Arthur L. Harding, Professor of Law, Southern Methodist University.
4. Samuel Enoch Stumpf, Professor of Philosophy, Vanderbilt University.

the degree to which its discovery has been approximated. This is a synthesis of the other two views, absolute skepticism and absolute certainty. Dean Cuninggim⁵ on "Freedom to Believe" is also a moderate: the law (in the United States) does not grant a boundless freedom to believe, nor does it coerce conformity to the Christian code; this freedom, defined as freedom to take religious belief into account in words and actions, is limited for any person by "the point at which he seriously offends Christian sensibilities or breaks some major precept of the Christian code."⁶ Both contributors are concerned with human action in connection with learning and believing, Stumpf with the effect of beliefs upon legal restriction, and Cuninggim with the effect of legal restrictions of actions upon belief. Neither is concerned to debate the possibility of individual moral responsibility, but rather both undertake to state the legal conditions for its development, in the tradition of John Stuart Mill.

Freedom in the United States is the subject of these essays, although there is reference to Rome and Moscow and to the history of thought in Judea and Western Europe. The general picture that is drawn depicts a process of revision, if not devitalization, of the substantive values expressed in legal institutions, in favor of procedural values. To illustrate: Cuninggim suggests, at least by implication, that only in marginal situations (blasphemy, polygamy, but not now even in refusal to bear arms) does truth have rights superior to error. Stumpf shows how the values embodied in legal commands are subject to denial, so that legal processes are subordinate to learning processes. And Beutel and Harding provide an interesting contrast between the increasingly malleable substantive rights of property and the absolute quality of the procedural right of peaceable political assembly. Beutel and Stumpf together advocate processes of exchange of opinion and obtaining consensus, which Stumpf attributes to absolute ethical values of individual dignity, freedom, and equality, and Beutel to the absolute constitutional value of free assembly. Cuninggim and Harding tend to describe particulars of religious codes and the institution of property in terms of instrumental values subject to revision by democratic procedures.

Democratic procedures, in turn, are characterized by constitutional values that inhibit governmental or private interferences with the discussion process. The broader Stumpf formulation in terms of learning, however, leads him to absolute non-instrumental values, substantive goals.

5. Merrimon Cuninggim, Dean and Professor, Perkins School of Theology, Southern Methodist University.

6. HARDING, *STUDIES IN JURISPRUDENCE: V, FREE MAN VERSUS HIS GOVERNMENT* 19 (1958).

His recognition of the claims of order with respect to human action that is not merely communicative, and their impact in turn upon freedom of communication itself, seems to touch upon the slogan of fraternity, although he does not use the word. He does in terms designate as democratic ideals the notions of individual dignity, freedom, and equality. Surely the tensions between freedom and equality and between fraternity and freedom provide space for wide choice of instrumental values, and even embodiment of contradictory ones in law.

Your reviewer would propose that the claims of privacy not be ignored, in terms of individual dignity, in estimating the claims of learning. He would also register skepticism, although regretfully, that the powers of reason can achieve a recurrent consensus in the application of these ideals to experience, in the process of discovering limits to choice of values in law. This is not to gainsay the priority assigned to discussion-and-vote over industrial or military might. This priority is a worthy choice among human values, and may contain more for survival than cold wars of goods or of arms.

Not a call for revolution, not a debate, but a workmanlike effort to apply reason, in the twentieth century, to Western experience.

IVAN C. RUTLEDGE†

URBAN PLANNING AND MUNICIPAL PUBLIC POLICY. By Donald H. Webster.¹ New York: Harper & Brothers. 1958. Pp. xii, 572. \$8.00.

That America has become an urban society is an accomplished twentieth century fact. With the completion of the new interstate highway network, not only will the smallest county seat be brought closer to its city brother but suburban development at the interchanges is expected to project the urban sprawl even farther into the rural countryside. Accordingly, it is high time for the lawyer, if he has not already done so, to pay attention to the ever-multiplying regulation of land use by towns, cities, and counties. As an introduction to the background and content of urban land use controls, this book can be most helpful.

Professor Webster's book is divided into four parts. Part I deals with the governmental framework of planning. To the reader who is at all versed in the organization of local government this section is an

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