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Book Review. Sutherland, A. E., The Law and One Man Among Many

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worthwhile book, but it will not be the last material which a lawyer will buy to assist him in the drafting of leases.

ROBERT N. COOK


The central problem with which The Law and One Man Among Many is concerned is the relation of individual man to collective man in our highly organized twentieth century society. This calls for a re-examination of the fundamentals of human freedom under law in our own time. Particular attention is devoted to the complex interplay of competing and conflicting freedoms and restraints which are fixed by a wide variety of controlling pressures upon the individual. Professor Sutherland concludes that man's freedom is the mathematical sum of all the multiple helps and hindrances supplied or imposed by his natural, his private, and his civic surroundings. The extent to which our courts take cognizance of these respective helps and hindrances in the settlement of controversies between individuals, or between individual man and the group, and the perception of justice in the treatment thus afforded, is the subject of detailed inquiry.

This slender volume of one hundred pages derives from Professor Sutherland's preparation and delivery of the Rundell Lectures at the University of Wisconsin Law School. As the author so readily concedes, on this subject there has been no end of the making of many books by many philosophers. But any lack of novelty which may attach to the subject matter is outgained by the insights he brings to bear upon the problem, which is of such persistent interest to all students of the administration of justice. The author combines clarity of style with an interesting array of legal and non-legal source materials, and avoids the ponderousness and pomposity which mark so many inquiries in this complex and difficult field.

In format, the book falls into the three-part pattern which a series of three separate but related lectures would naturally impose. Despite this forced episodic quality, the author achieves continuity and a high degree of integration through the medium of periodic restatements of position and purpose, and the use of a brief epilogue.

Under the sub-title "Fashions in Individualism," the first part of the book is given over to consideration of the meaning of freedom as applied to the individual in his relation to the many. The several political, economic and cultural connotations of "individualism" are developed by liberal quotation from a sampling of savants and special

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pleaders, past and present. Periodically changing styles which affect the use of words like individualism and collectivism in describing opposite social philosophies are graphically illustrated. The alternate triumph or rejection of these terms in the legal order, when freedom of the individual is at stake, calls for something more precise in the way of helpful definition. Accordingly, Professor Sutherland chooses to define "individualism" as a belief in the desirability of man's being left to do as he pleases, so long as he does not too shockingly interfere with somebody else's doing the same. This definition subsumes that the most desirable objective for a society to achieve is the greatest possible average individual freedom for the members of that society. It follows, then, that the great problem of our society is to decide what limits collective man will put on the individual's acting to please himself.

Under the sub-title "Freedom Added and Subtracted" the second part of the book is devoted to examination of a variety of decided cases wherein our courts have appeared to add and subtract the elements of freedom to which individuals have laid competing claim, either against the crowd, or against other individuals with inconsistent freedoms of their own to maintain. The difficulty of the judge, who must find merit in the conflicting desires of individuals or of groups, is readily apparent in cases involving competing evangelical factions, racial groups, occupiers of land, and government security risks.

Under the sub-title "Perception of Justice," the final section of the book deals with man's aspiration for justice, of his past and current attempts to find standards of guidance for the administration of justice in an increasingly complex and crowded world. Many of our familiar conceptions of justice are tested, and rejected as furnishing any singly acceptable criteria. The majority will is hard to ascertain and productive of error. Justice as defined in the ancient word is entitled to respect, but often confronts us with an orthodoxy outworn, while divine law presents its own peculiar problems of discernment. Justice as that which brings happiness to the greatest number is of small aid in the generality of cases, where the problem is not to decide which of several benefits people ought to want, but to allocate between rival aspirants the very thing they do want. Natural law with its claimed universality of application, unchanging and everlasting, has its own difficulties of definition but, as the author notes has had something of a revival in our times. In fact, he performs the rather improbable feat of lining up Blackstone the religionist and Holmes the skeptic under the aegis of the law of nature. This is possible, of course, only by the most expanded definition of the doctrine.

In summary, the author concludes that governing indeed represents a series of choices, and that all men are not governed alike. In this
exercise of discriminatory choice we are able to perceive something of the nature of Justice. But as to what justice is, we are forced to join with Plato in his ancient confession of failure: "for I know not what Justice is." However, the business of governing goes on, as it must if we are to survive, and the choices made will be found to rest upon application of multiple criteria, a blend of motives, and a mixture of political theory.

It seems to me that the difficulties which beset the reviewer of a book are often in inverse ratio to the size of the book, itself. Particularly, where the book is concerned with a theme which has confounded thoughtful men of all the Ages. Professor Sutherland does not appear in the least hampered by the page limitation of The Law and One Man Among Many. From the outset, he manages the impression that he has something important to say, and proceeds to say it with a refreshing display of modesty and sincerity. With so much in the book to appreciate and applaud, it is difficult to come to grips with evaluation of its central theme, and the extent to which the author has accomplished what he set out to do. It is obviously unfair to criticize a writer because he wrote the book he did, in place of one he did not. But at least a partial objection along these lines seems valid. After its impressive statement of position, and brilliant exposition of man's unswerving attempts to find standards which will parallel his aspirations for justice, the conclusions finally drawn are indeed anti-climactic. Perhaps it is just a case of the author's having raised our hopes too high, but it comes as neither news nor comfort that "we know not what Justice is," and that the choices which affect man's freedom always rest upon multiple criteria, each having some value, and a blend of motives, and a mixture of political theory.

Some readers may be less troubled by the relative inconclusiveness of the author's summation, than by certain of his primary assumptions upon which the entire structure depends. His definition of freedom as the mathematical sum of all the multiple helps and hindrances supplied or imposed by man's natural, private, and civic surroundings seems to be no more than a restatement of pluralism, broadened perhaps to include environmental "sovereignties," along with those of private or occupational groups in the modern community, intermediate between the individual and the state. The validity or invalidity of the doctrine of pluralism is unaffected by its being recast into the form of an algebraic equation. A more pertinent objection to the definition of freedom herein is that it contemplates freedom as a goal, rather than a method. As a method, freedom may be related to the value of human life in much the same sense that the army is related to national security, or commerce to wealth, or due process to the decided case. When viewed as a datum which may be extracted by simple arithmetic, free-
dom loses its deeper meaning and is effectively split off from its function.

Professor Sutherland also defines "individualism" as a belief in the desirability of a man's being left to do as he pleases, so long as he does not too shockingly interfere with somebody else's doing the same. This definition he ties in with the stated assumption that the most desirable objective of society to achieve is the greatest possible average of individual freedom for the members of that society. It is not clear, nor perhaps important to this discussion, whether these are statements of preferred position, or whether the author is merely reading the minutes of the last meeting and noting current acceptance of these points of view.

The troubling effect of these definitions is not limited to such obvious unanswered questions, as what do you mean by "as he pleases"? Is the action or inaction thus enabled that which does please him, or that which he believes pleasing, or will it be limited to that which would and should please him, if he were reasonably average in his desires and capacity for appreciation? The difficulty runs deeper. If taken at face value, this elevation of the individual conscience to the role of court of last resort (limited only by the competition of the conscience or desire mechanism of other men or groups) sounds like a jurisprudential accommodation worked out between Austin and Thoreau. It must be conceded that modern man is the inheritor of an orthodoxy which consists in holding that the universe only exists and is governed for the sake of mankind, or, as it is sometimes more palatably put, for the spirit of man. But from this persuasion, it would seem a fateful, though beguiling, step to cast man in a new juristic image: a man without moral commitment to others, or to life; to each, himself.

Summing up: a tremendously provocative book which merits careful reading by all those who claim an interest in the law.

KENNETH B. HUGHES*


Anyone engaged in or contemplating participation in a proxy contest should have this volume under his arm, not on his desk. It is a practical handbook describing the step by step battle of a contest for corporate control. It is documented by illustrations from well known proxy contests of recent years and a full citation of authorities.

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