

Rights

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**HOMAGE TO
ALEXANDER
MEIKLEJOHN,**

*Champion of the
First Amendment*

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I think continually of those who were truly great,
Who, from the womb, remembered the soul's history
Through corridors of light where the hours are suns
Endless and singing. Whose lovely ambition
Was that their lips, still touched with fire,
Should tell of the Spirit clothed from head to foot in song.
And who hoarded from the Spring branches
The desires falling across their bodies like blossoms.

* * *

Near the snow, near the sun, in the highest fields
See how these names are feted by the waving grass
And by the streamers of white cloud
And whispers of wind in the listening sky.
The names of those who in their lives fought for life
Who wore at their hearts the fire's centre.
Born of the sun they travelled a short while towards the sun.
And left the vivid air signed with their honor.

The above stanzas from "I Think Continually of Those Who Were Truly Great" by Stephen Spender were read at the funeral of a dear friend by Dr. Alexander Meiklejohn just ten days before he himself died. They are reprinted here by permission of Random House, Inc. (Copyright 1934 and renewed 1961.)

FOREWORD

This issue of *Rights* is devoted to honoring the life and work of Dr. Alexander Meiklejohn, outstanding educator, philosopher and civil libertarian; warm, radiant, inspiring friend; superb exemplar of the humanity of man.

Except for the illuminating article by Laurent B. Frantz, the tributes published here originated as speeches given at memorial meetings for Dr. Meiklejohn in Berkeley, Calif., New York City or Washington, D.C.

Those of us who have concentrated on civil liberties naturally stress the fact that Alec Meiklejohn was one of the most uncompromising and determined fighters for the Bill of Rights in the history of the United States. Throughout most of his adult life he played an active role in the struggle to maintain American constitutional freedoms. He often cooperated with the Emergency Civil Liberties Committee, and was one of the most militant officers of the American Civil Liberties Union. At the time of his death he was leading the campaign to abolish the House Un-American Activities Committee.

Here was a man ninety-two years old who never really retired. His horizons never diminished. He was an example of a psychological fact recognized too infrequently—that for those who live with zest and commitment, the ordinary joys of life never grow stale. He played tennis on his ninety-first birthday in 1963 and continued his daily walks in the Berkeley hills until he became ill in December, 1964. To his last day, Alec Meiklejohn gave himself to the good causes that meant most to him.

I find relevant to this Foreword a line in Goethe's *Faust*: "The deed is everything, the glory nothing." That was Alec Meiklejohn in all his modesty.

Yes, the deed is everything: the brave deed of outspoken dissent; the deed for civil liberties and civil rights; the deed for social justice; the great deed to uphold the ideals and carry on the spirit of Alexander Meiklejohn.

CORLISS LAMONT

Chairman, Emergency Civil Liberties Committee

Meiklejohn's Theory on Freedom of Speech

by LAURENT B. FRANTZ

In 1948, Dr. Alexander Meiklejohn published a brief book, under the title "Free Speech and its Relation to Self-Government," embodying three lectures he had delivered at the University of Chicago on the meaning of the First Amendment.

This was a remarkable performance in a number of ways. Here was a man without training in the law who was undertaking to prove that the Supreme Court of the United States had grievously and abysmally misunderstood one of the most important legal questions ever brought before it. As if this were not enough, he was choosing as his principal antagonist none other than Justice Holmes, who was not only a great legal theorist, but one whose courageous and eloquent dissenting opinions had made him something of a patron saint to many civil libertarians. And the author of this hardy, if not foolhardy, effort was a man already in his middle 70s, who was officially "retired" (though far from inactive) after a distinguished career as a teacher of philosophy, educational administrator and reformer, and author of a number of provocative and influential books on the philosophy of education. Only Meiklejohn's unique combination of the utmost gentleness, humor and tact with the utmost firmness of principle could have successfully brought off such an undertaking.

Meiklejohn could scarcely have chosen a more important or significant moment for his task. The prosecutions of Communists under the Smith Act for "conspiring to advocate" violent revolution (that is, for agreeing to teach that violent revolution would be both necessary and justifiable under remote hypothetical conditions which the Communists predicted would some day occur) had just begun. The President's Loyalty Order, forerunner of a national wave of "loyalty oaths" and "loyalty" and "security" investigations, had recently been issued. The Attorney General had begun to compile (without notice or hearing to those affected) a list of organizations officially deemed "subversive." The F.B.I. had undertaken a surveillance and recording of the beliefs and associations of private citizens, as well as public employees, unlike anything previously dreamt of in this country. The device of punishing beliefs and associations by means of the public pillory, under the pretext of legislative investigation, was being vigorously revived, after its near extinction during the war years, and would shortly rise to new heights. The nation was entering on that crisis in civil liberties (which necessitated and gave birth to the Emergency Civil Liberties Committee) that later would be christened McCarthyism. Americans would need a profound understanding of their own commitment to freedom of speech if that commitment was not to be gravely weakened and endangered. Unfortunately, that understanding was just what was lacking. Most Americans still believed in freedom of speech, or thought they did, but few had given much thought either to what this meant or to why such a freedom was desirable. A faith so shallow, super-

ficial, and unexamined caved in readily before any demand made in the name of "internal security."

Perhaps that deeper understanding can be attained without accepting the essence of Meiklejohn's analysis—though I for one do not think so. In any case, it cannot be attained without putting aside such question-begging slogans as "the freedom of speech is not absolute" and approaching the matter at the more searching and fundamental level at which Meiklejohn approached it.

The argument Meiklejohn presented in his book, and elaborated in later writings, especially his Hennings Committee testimony in 1955, is tight and masterly, filled with a philosopher's awareness that the problems are not so simple as an emotional commitment to either side can make them seem. No brief summary can do it justice, nor even entirely avoid the danger of distorting his meaning. Yet, for purposes of this article, such a summary must nevertheless be attempted. I hope my account may whet the reader's appetite sufficiently to make him wish to read the original.

In brief, then, Meiklejohn derived his concept of the meaning of the First Amendment, not from the natural or legal or constitutional rights of the individual, but from the necessities of self-government. Our forefathers, when they established the Constitution and Bill of Rights, attempted something which was as revolutionary in its concept as in its execution. They did not establish representative government as the most desirable kind of external authority by which the people might be governed; they established it as an instrument by which the people might govern themselves. The conventional view of governing as a function which belongs only to officials, and as a force which runs only in one direction, from the top down, is therefore inadequate. In self-government, the governing is reciprocal; it runs both ways. The people as a body politic are to govern the delegated authority, which in turn will govern them as individuals. The American "government" therefore has, not three branches, but four: the Electoral, the Legislative, the Executive, and the Judicial. But the greatest among these is the Electoral, since it governs the other three.

Each citizen, therefore, functions in two capacities: he is one of the governed, but he is also one of the governors. His rights in the former capacity are a fundamentally different matter from his powers in the latter. As one of the governed, he has liberties (such as the rights of property) which, subject to due process requirements, may be abridged for the public good. But it does not follow that the constitutional powers of the people can ever be abridged—much less that they can be abridged by the very bodies they were designed to control. The discussion of political theory and policy, and of the moral, philosophical and other questions which underlie such judgments, is not an exercise of private right, however important; it is a governing activity. It is, in fact, together with voting, one of those activities by which the highest branch of government keeps the other three in subordination, so that they may remain instruments of self-government. For one of these subordinate branches to undertake to tell the citizen what he may think or advocate, or what he may hear or read before making up his mind, or what political group-

ings or parties he may join, frustrates the very essence and purpose of the whole scheme—just as it would if the elected officials should undertake to control how the voters shall vote.

This, because it approaches the problem in a manner which is both principled and functional, clears up the dilemma which is supposed to confound the free speech "absolutist." All of us believe that there are occasions on which a person may properly be forbidden to speak (e.g., one has no right to interrupt a church service or to use a sound truck under the hospital window at midnight). And all of us believe that there are kinds of speech (e.g., solicitation to crime, false advertising) which may properly be punished. It has often been urged that such examples demonstrate that "the freedom of speech" is not "absolute." The statement of the First Amendment that "Congress shall make no law . . . abridging the freedom of speech . . ." is thus shown to be, in principle, open to exceptions, despite its unqualified and uncompromising language. Accordingly, those in authority are free to introduce such further exceptions as they may find justifiable. But, from the standpoint of the Meiklejohnian analysis, the fact that the act of speaking is open to reasonable regulation (provided such regulations are applied fairly and impartially to all points of view) has no tendency to show that the political content of speech may also be regulated. And the instances in which speech is properly punishable because of its content are cases in which the speech involved was not addressed to any public issue and thus was not part of the process by which the electoral branch of government supervises the subordinate branches. Thus the First Amendment, properly understood, is not open to exceptions. Abridging speech is sometimes permissible, but not abridging the *freedom* of speech.

Meiklejohn did not agree that freedom of speech loses its First Amendment protection when it gives rise to a "clear and present danger" of "substantive evils that Congress has a right to prevent." Instead, he wrote:

If that amendment means anything, it means that certain substantive evils which, in principle, Congress has a right to prevent, must be endured if the only way of avoiding them is by the abridging of that freedom of speech upon which the entire structure of our free institutions rests.

And he did not agree that freedom and security are "competing values," so that the problem becomes one of deciding how much freedom we must give up for the sake of security. Instead he wrote that the First Amendment

does not balance intellectual freedom against public safety. On the contrary, its great declaration is that intellectual freedom is the necessary bulwark of the public safety.

And again:

The First Amendment . . . gives voice to the conviction that, for the defending of free governments, the methods of suppression are always self-defeating and ineffectual . . . They sometimes "prevent evils" but, in doing so, they create far greater evils to take their place.

Meiklejohn was not content to rest on his academic defense of these principles, but was constantly and actively involved in whatever civil liber-

ties cases and issues were then current. His last public act, only days before his death, was to come to the defense of the three most recent House Un-American Activities Committee victims: Mrs. Donna Allen, of the Women's International League for Peace and Freedom, Mrs. Dagmar Wilson, of Women Strike for Peace, and Russell Nixon, General Manager of the *National Guardian*.

The fact that Meiklejohn was a lifelong leader in the fight against HUAC, and devoted much of his time and effort to this cause, flowed naturally from his whole point of view. Indeed there could be no more ironic inversion of the American plan of government, as Meiklejohn understood it, than for the representatives to summon a citizen before them and demand an accounting as to how he has exercised his reserved powers; in such matters the representative is accountable to the citizen, not vice versa. And so in 1955 Meiklejohn told the Hennings Committee:

A legislative committee which asks the question, "Are you a Republican?" or "Are you a Communist?"—accompanying the question with the threat of harm or disrepute if the answer is this rather than that—stands in contempt of the sovereign people to whom it owes submission.

The Meiklejohn theory won few adherents on its first appearance, but its influence has been constantly growing. One happy sign of this was the fact that President Kennedy, a few months before his assassination, chose Meiklejohn to be one of the recipients of the Freedom Award.

Other signs are to be found in the opinions delivered in the Supreme Court in the *New York Times* libel case (376 U.S. 254) in March, 1964. The majority quoted from a great concurring opinion of Justice Brandeis that

Those who won our independence believed . . . that public discussion is a political duty . . . They knew . . . that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.

The Court's opinion added:

Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. . . .

Meiklejohn concentrated his fire again and again on the Supreme Court's 1897 statement that the provisions of the Bill of Rights "were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors . . ." and on Justice Frankfurter's insistence (341 U.S. 494,524) that "this represents the authentic view of the Bill of Rights and the spirit in which it must be construed . . ." This argument, Meiklejohn wrote, "seems to me to sap the very foundation of our political freedom."

In the *New York Times* case, the majority opinion quotes Madison's protest against the Sedition Act of 1798 and states:

His premise was that the Constitution created a form of government under which "The people, not the government, possess the absolute sovereignty." . . . This form of government was "altogether different"

from the British form, under which the Crown was sovereign and the people were subjects . . . Earlier, . . . Madison had said: "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."

This is not only Meiklejohnian thinking, but an implicit repudiation of Justice Frankfurter's "authentic view."

The Meiklejohn influence is even more apparent in Justice Goldberg's concurring opinion:

In my view, the First and Fourteenth Amendments to the Constitution afford to the citizen and to the press an absolute, unconditional privilege to criticize official conduct despite the harm which may flow from excesses and abuses.

* * *

This is not to say that the Constitution protects defamatory statements directed against . . . private conduct . . . Purely private defamation has little to do with the political ends of a self-governing society. The imposition of liability for private defamation does not abridge the freedom of public speech or any other freedom protected by the First Amendment. This, of course, cannot be said "where public officials are concerned or where public matters are involved. . . ."

* * *

For these reasons, I strongly believe that the Constitution accords citizens and press an unconditional freedom to criticize official conduct.

And in the *Garrison* case (379 U.S. 64), decided in November 1964, the Court remarked that "speech concerning public affairs is more than self-expression; it is the essence of self-government."

Whether the Court will press these premises to their logical conclusions remains to be seen.* However, once the focus has been shifted from the rights of the speaker to what Meiklejohn calls "the constitutional powers of the people," and once it has been recognized that "the essence of self-government" is at stake, it will be difficult to go back to the old Frankfurter view that the problem is one of "balancing" the "private" interests of the speaker against the "public" interests which it is assumed that repression will serve.

If the nation had listened to Meiklejohn in 1948, the tragedies of McCarthyism might have been averted. If we now succeed in undoing the harm done to our national ideals and to the fabric of our institutions, and in guarding against a repetition, much of the credit will be due to this wise, genial, and clear-headed teacher and philosopher who spent his autumn years trying to help us understand the meaning of our constitutional heritage.

(*Mr. Frantz is a writer, a legal editor, and a member of the National Council of the Emergency Civil Liberties Committee.*)

* In the Feb. 8 issue of *The Nation* Prof. Charles A. Reich of the Yale Law School points out that in the recent cases of *NAACP vs Alabama*, *Edwards vs South Carolina*, and *NAACP vs Button*, the Supreme Court has held that organization, demonstration, and litigation may be forms of political expression protected by the First Amendment (Ed.).



Portrait of Alexander Meikeljohn drawn for the Emergency Civil Liberties Committee
in 1958.

MEANING OF THE FIRST AMENDMENT

by *Hugo L. Black*

Several books containing writings and lectures by Dr. Meiklejohn were sent out to my home day before yesterday. . . . Once again I discovered that the great ideals of liberty that I find in the First Amendment were also cherished by him. While he and I did not see eye to eye as to the exact scope of the absolute terms used in that amendment, we did fully agree that a country dedicated to freedom as ours is must leave political thoughts, expressions, and discussions open to the people if it hopes to maintain that freedom. Dr. Meiklejohn and I joined in another belief—and I cannot say much more in my 3 minutes. Neither he nor I opposed full freedom to fully discuss both sides of any public question, no matter how unpopular one side may be. We agreed that where a belief can be argued against, there likewise must be freedom to argue for it.

I am here today to express my appreciation, my admiration, and indeed my affection for a man who fought so valiantly—so gently in language but so firmly in conviction for his belief that if this country is to remain free, the minds, the tongues, and the pens of people must not be shackled.

I was impressed in reading one of the biographical sketches of Dr. Meiklejohn that wherever he went from his youth on, his challenge of the orthodox and the conventional frequently brought about heated arguments and passionate criticism of his ideas. Always he met these criticisms with calm reasoning and steadfast loyalty to principles of freedom in which he believed. His books, his writings, his discussions have done much through the years to bring about a better understanding of him and of his ideals. His work and his words have inspired countless people to love their country more and have done much to abate the fears of some that it is dangerous to preserve and to protect freedoms of speech and press guaranteed by the First Amendment.

Dr. Meiklejohn, I think, agreed with the idea that I certainly have, that those who love this country should not be afraid of what people may hear or of what they may say about public affairs. Fear is bad enough in any field but in none is it more dangerous than in the area of freedom of expression.

(From speech at the memorial meeting in Washington on January 15 by Hon. Hugo L. Black, Justice of the United States Supreme Court.)

In Action and In Writing

by *Thomas I. Emerson*

I first *heard* of Meiklejohn in 1929. I was just coming to. I had passed through college in all innocence, with most of my Republican middle-class virtues still intact. But in the Law School things were different. There was ferment, probing, the stirring of forces about to emerge in the New Deal. And as this new world opened to me, as I and my fellow students began to seek the meaning of America, the name of Meiklejohn was frequently mentioned. We used to call him *Michael*john then. Not that Meiklejohn was a typical New Dealer—any more than he had been a typical Square Dealer or an orthodox exponent of the New Freedom. His message was more permanent and more universal. And it reached us in those student days with a vibrancy and an eloquence that revealed to us the true possibilities of the future.

I first *met* Alexander Meiklejohn in 1948. He came to the Law School to give a series of lectures on the First Amendment. By some strange stroke of fortune he came out to our house for dinner before his first lecture. Although the manuscript was all prepared, and his only remaining job was to read it, he was incredibly nervous. He hardly ate; he looked as though he never ate. I wondered how he could get through the evening. But when he delivered the lecture it came out boldly, firmly, magnificently. The time was just pre-McCarthy. The Truman loyalty order had been promulgated, and doubts, fears and compromises were shaking us. As the students and faculty crowded the hall, and sat in the aisles, one could feel the compelling force of the man and his ideas taking over. It was an unparalleled lesson in courage, reason and faith in the fundamental workings of democracy. . . .

I began to really *appreciate* Dr. Alexander Meiklejohn a few years later, when I undertook a more serious study of the First Amendment. Let me take a brief moment to explore this one aspect of his work.

Much of the basic theory of freedom of expression had been developed as early as John Milton; John Locke and the American revolutionists expanded and shaped it in their struggles against oppression of the state. In the nineteenth century John Stuart Mill elaborated it further, expounding it with his superb logic. Holmes, Brandeis and Chafee restated it with eloquence. But one of the few major additions to the theory was made by Alexander Meiklejohn. It was he who fitted it into the political fabric of modern democracy. He demonstrated how a system of freedom of expression was essential to the political functioning of a self-governing people, and how it was the key to achieving that constant social change without which a modern nation cannot survive.

The Meiklejohn influence extended not only to political theory but, perhaps even of greater significance, to legal doctrine. This is all the more remarkable because he was not a lawyer.

The framers of our Constitution undertook to translate the political theory into legal form. The great concepts of freedom of expression were embodied in the First Amendment. For a long time the Supreme Court had no occasion to apply the First Amendment in cases that came before it. But when, after the First World War, the Court began this task, it became immediately apparent there was danger the essence of the constitutional guarantee would be whittled away and lost. In the *Gilow* case a majority of the Supreme Court held that the First Amendment did not protect speech that had a tendency to cause unrest or disorder. The liberals on the Court, Justices Holmes and Brandeis, countered with the clear and present danger test. Under their interpretation, speech could be restricted by the state only if it created a clear and present danger of an evil the government had the right to prevent. The clear and present danger test was hailed by many, including such ardent champions of free speech as Zechariah Chafee, as an important victory.

Almost alone among observers of the Court's work, Alexander Meiklejohn perceived the danger. He understood that even the clear and present danger test would not do. He urged and preached and fought to get acceptance of his view, that in all matters of public discussion, the guarantee of the First Amendment afforded complete protection to all forms of expression.

The Meiklejohn ideas, which he pressed in action as well as in writing, have not prevailed. Yet they have made progress. The deficiencies of the clear and present danger test, as well as of its successor, the ad hoc balancing test, are becoming clearer. At least two members of the Supreme Court, Mr. Justice Black and Mr. Justice Douglas, now take a view very similar to that so insistently urged by Meiklejohn. There is hope that the Court will come to recognize that the Meiklejohn position is right, that under modern government no other legal concept of the First Amendment can support the kind of a system of free expression that a free society must maintain.

I feel confident that future generations will see, more clearly than ours, that Meiklejohn's work on the First Amendment, both on the political theory and the legal doctrine, constitutes a major contribution to one of the most critical problems of modern times. . . .

Right up to the end he was thinking and fighting for a more sensible and sensitive world. The last time I saw him was in a hotel room in New York this July. We were drafting a petition to the House of Representatives to abolish the Committee on Un-American Activities. His spirit was still lively, searching, fundamental.

When I read of his death I wondered how the world could afford to lose him. But, of course, we have not lost him. We can never lose him. As I sensed in my student days he had a quality that is permanent and universal. His life and his ideas will shape future generations as they have the past and the present.

(From speech at New York memorial meeting on January 19 by Prof. Thomas I. Emerson of the Yale Law School, a member of the National Council of the Emergency Civil Liberties Committee)

Both Socrates and Plato

by Scott Buchanan

I speak first about the last time I worked with Alexander Meiklejohn. It was last summer, at the Center for the Study of Democratic Institutions. The Center had decided to make a major effort to arrive at a General Theory of the First Amendment. No one was unaware that the basic work toward a general theory of the First Amendment had already been done by Alexander Meiklejohn and that he who sat with us was the Number One Friend of the Court in these matters, the *amicus primus curiae supremae*.

We had all read and re-read Alec's book on Free Speech—but we found ourselves in deep and frequent disagreement during the month—whether to accept or reject the Meiklejohnian distinction between free speech and freedom of speech, and whether the negative reading of the First Amendment—"Congress shall make no law"—should give way to Meiklejohn's belief in an affirmative interpretation which would acknowledge the obligation of Congress to provide for the institutions which freedom of speech under a Constitution of self-government requires. We had all set out on our separate paths from the powerful little book, but we held our separate convictions passionately. Alec was a little shocked by the conflict but also pleased by the argument.

Rather to our surprise, as the talk continued, we discovered over and over again that wherever we went in our minds, Alec had been there and met us coming back. I had made this discovery in my undergraduate days at Amherst, when I used to go and ask for an argument in his study, and it had happened many times since, but after all these years it was still a surprise and a cause of wonder. It was not that Alec withheld doctrines from his pupils; it was rather that we all found the freedom of our thought in his.

In the arguments of the summer Alec always returned to one theme: a correct interpretation of the First Amendment presupposes the proposition that the liberal college is the key institution in a self-governing society. I knew that this, along with cricket, had been the theme of his whole life, but the occasion turned my mind back to the bright crisp morning in October 1912 when Alexander Meiklejohn was inaugurated President of Amherst College. The ceremonies were held in College Hall, the meeting house where the great issues of predestination and free-will had been argued from the pulpit. Now it had become the hall where the more public events of the College took place. It became for me that morning, a freshman sitting in the balcony, a place of vision. Part of the vision was indeed visual, a human spirit clothed in academic costume. Never were cap and gown worn with more life and grace. But the substance of the vision was what was said.

The whole College knew that the inaugural address had been an event of a new kind. Many who were present never were to discover its meaning; some of us have spent the rest of our lives learning of its meaning. Some of the sentences, fresh and defiant in 1912, have since become

commonplace: the American liberal college is adrift and in disorder, it has lost its purpose; the elective system is anarchic. But these sentences do not come to life until the topic sentence sounds—like a battle trumpet: *the teacher is the intellectual leader of his community.*

This is a yeasty dialectical sentence. In its occasional context, it says that a college is a community, a company of human beings devoted to a common purpose. That purpose is intellectual, the bending of intelligence to the pursuit, the transmission and the possession of the truth. Of course such a community might be a university and described as a family of *scholars*. But the speaker was a *teacher*, a teacher in a liberal college. He went on to say that the business of a *teacher* is to draw wisdom from the raw materials, the skills, the researches, the bodies of knowledge that the scholars irrelevantly cultivate, and from the words of the students. The intellectual leader of a community with this common purpose must be a teacher by criticism and by question—a Socratic teacher.

So it came about that Amherst for the next eleven years was the place of discussion. Almost overnight, incredible as it may seem, the lectures had to be apologized for and justified, the laboratories and the textbooks had to be defended, and like-wise the administration and the student government; the usual bull sessions about religion, women and politics continued, but they took on the style of comic dialectic.

Two days after Alexander Meiklejohn's last commencement, at which twelve students refused their diplomas and eight faculty members resigned, I called on Alec in his study. I told him that he had been Socrates, and now he must become his own Plato. Ever since, I have been overwhelmed by my prophetic powers on that occasion. To a remarkable extent Meiklejohn has been Plato in word and deed the rest of his life. . . .

(From speech made at Berkeley on January 31 by Scott Buchanan, Amherst graduate, Dean of St. John's College, Member of the Staff of the Center for the Study of Democratic Institutions)

Sport and Law

by Harry Kalven

I am something of a sports fan and the metaphor that comes readily to hand is one drawn perhaps incongruously from athletics. There is the special pleasure of seeing an athlete, a center fielder, a hockey forward, a high jumper, perform with such excellence that one feels that all the potentiality of the specific activity has been realized. Alexander Meiklejohn gave me that feeling about living in general. . . .

All of his friends must have at times drawn the analogy to Socrates. But the comparison to Socrates has its limits. I have always suspected that Socrates, however wise and admirable, would have made a trying and difficult companion. Alec was a Socrates who wore well, a Socrates it was fun to be with, a Socrates for all seasons. . . .

Or to vary the format a bit, there is his well known exchange with Mr. Justice Frankfurter, himself a formidable wit. Justice Frankfurter had observed "that their common interests might be better served if Alec would

spend three years in a good law school." And Alec topped him by replying that he would be glad to do so if he could know that the Justice would spend the same three years in a school of philosophy. . . .

The Meiklejohn interest in the law must have been sparked long ago. He was fond of paying us the great compliment of saying that if he had it to do all over again he would design the curriculum for liberal education around a core of law. Yet it would not be amiss to say that his *career* in law began late. Indeed it is a commentary on the stunning fruitfulness of his life that it began when he was well into his seventies. If my history is correct, it began with the occasion of his Walgreen lectures at the University of Chicago in 1947. In written form these lectures became his classic study, *Free Speech and Its Relation to Self-Government*, a book to put on that very special shelf reserved for Milton's *Areopagitica* and Mill's essay *On Liberty*.

There was something exquisitely right about these lectures on free speech coming from Alexander Meiklejohn and coming at that particular moment. As a country we were going into the McCarthy era, and it was stirring to have his voice raised in indignation at our state of mind. But what is truly distinctive about the performance is not his eloquence nor his indignation. It is that he was moved at such a moment to think through profoundly and rigorously the rationale for our commitment to free speech. He tells us at the outset:

Now, the assuming of a high and heavy responsibility for a political principle requires of us, first of all, that we understand what the principle is. We must think for it as well as fight for it. No fighting, however successful, will help to establish freedom unless the winners know what freedom is. What then—we citizens under the Constitution must ask—what do we mean when we utter the flaming proclamation of the First Amendment? Do we mean that speaking may be suppressed or that it may not be suppressed? And in either case, on what grounds has the decision been made?

He was not offering us transient editorial eloquence on the values of political tolerance. He was embarking on a tough original basic exploration of what our commitment to freedom of speech was all about.

A few years ago I found myself in a debate before our student body with one of my law school colleagues on the issue that was whimsically framed: passion vs. competence in the Supreme Court. I am happy to report that I was on the side of passion. The terms worked surprisingly well. We had a gay and profitable debate. But at the end we were in total accord that what was required on the side of liberty in the Court and outside was a combination of both qualities. In the Meiklejohn essay, as in the man, the mix is for once exactly right—a passionate love of liberty coupled with a competence for rigorous disciplined analysis.

Here then is the memory of the original lectures—a memory of seventeen years ago—the slender figure gallantly scolding the country. I have another memory to place alongside. Last summer Alec spent a month with a group of us—Scott Buchanan, Joseph Tussman, Robert Hutchins—at the Center for the Study of Democratic Institutions at Santa Barbara; it was a month of lively daily seminars on problems of free speech. We came to

the end of the month with a major issue unresolved: a controversy over whether the First Amendment was to be given a positive reading or a negative reading. And we were sharply divided. On the Sunday morning of the last weekend, Alec called me in gay excitement; he had awakened in the middle of the night, his mind seized with an idea for an amendment to the Constitution. He had jotted it down and wanted to read it to me. I now read it to you, the Constitutional amendment he jumped out of bed at 92 to draft—in the middle of the night:

In view of the intellectual and cultural responsibilities laid upon the citizens of a free society by the political institutions of self-government, the Congress, acting in cooperation with the several States and with non-governmental organizations serving the same general purpose, shall have power to provide for the intellectual and cultural education of all citizens of the United States.

The Meiklejohn amendment makes it altogether clear that his interest in the First Amendment and matters of free speech was of a piece with his lifetime interest in education and his passion for democracy. He had a whole view of the American plan of government.

The essay and his several subsequent law journal articles on free speech have left their mark on the law. They are by now a familiar part of our commentary in constitutional law. They are cited in law review articles, they are cited in casebooks, they are cited in decisions of the Court. We talk easily of the Meiklejohn theory of the First Amendment. Due to his insight, the Constitution will never read quite the same to us again. It is not yet clear whether its exhilarating thesis that speech on public issues is 100 per cent free will carry the day in the Supreme Court. I am reminded of Helen and Alec reporting on the ceremony at which the Presidential medal was awarded to him. It appears that the nine members of the Court were all there along with other high-ranking government officials. As the ceremony terminated, four of the Justices broke ranks, as Helen put it, and rushed forward to embrace Alec. We were all disposed to reflect that if it only had been five of the Justices who rushed forward the future for freedom of speech in American law would be bright indeed.

The story has not yet run its course and that fifth Justice may be forthcoming. Only last spring the Court handed down a free speech decision in the *New York Times* libel case which appeared to me to mark a new vital approach to the issues and which in its talk about the duties and, therefore, the privileges of the citizen critic of government and in its insistence that discussion on public issues be "uninhibited, robust and wide open" carried unmistakable echoes of the Meiklejohn reading of the First Amendment.

It is, therefore, appropriate to end with one more memory of Alec. Last summer I discussed the *New York Times* case with him. Before indicating my own generous interpretation of the case I asked for his view of it. "It is," he said, "an occasion for dancing in the streets."

(From speech made in Berkeley on January 31 by Prof. Harry Kalven,
School of Law, University of Chicago)



Alexander Meiklejohn and James Baldwin at the dinner of Emergency Civil Liberties Committee celebrating the 172nd Anniversary of the ratification of the Bill of Rights, December, 1963.

Eyeopener for Students

by *Peter Weiss*

Some deaths, like Lorraine Hansberry's last week, are searing indictments of the order of things, or challenges to the very concept of such an order. Others, like Alexander Meiklejohn's after a long life lived on the brink of perfection, dare us to doubt that truth and beauty are archetypes eternally inscribed in the firmament of heaven, just as Plato said they were, or that justice, if not realizable, is at least real.

It was at a seminar on Plato in 1943, during my second year at St. John's, that I first saw him. He sat unobtrusively in a corner of the room, listening intently to our sophomoric dialogue, saying nothing. On the

way out, we arrived at the door together and I deferred to his age, not knowing who he was. He turned to me: "Thank you," he said, "and thanks for letting me sit in tonight. I learned something. I always do." The way he said it left no doubt that he meant what he said. Later that evening, I learned from a fellow student that he was Alexander Meiklejohn, former President of Amherst and one of the grand old men of American education, down for one of his annual visits to Annapolis. I was then only two years out of Europe, and I was still noticing things that could only happen in America. This was one of them.

The next night, Mortimer Adler gave a lecture on Free Speech, full of brilliant ifs and buts. At the discussion period afterwards, Dr. Meiklejohn said, quietly but firmly, that he thought free speech was absolute. "Would you let communists teach?" asked a student. "Surely," he said. "Only teachers with convictions are good teachers. The best way to learn about communism is from a communist." With a pang of anticipation at scoring a rhetorical point in such distinguished company, I asked him to concede that he would draw the line at a Nazi. Oh no, he said, he would let anyone teach who believed in a philosophy that it was important for students to know about and he could think of nothing more important than the philosophy with which the country was at war.

I can still remember the physical force with which that answer hit me, a refugee from Nazism, to whom Nazism was the incarnation of everything evil and degenerate.

I caught him a couple of days later on one of his afternoon walks around the campus, one of several I was to be privileged to share with him, although it was not always easy for my mind or my feet to keep pace with his. On that occasion he explained to me, patiently, with absolute clarity (and, I think, enjoyment) what free speech and teaching were all about and what the relationship was between them. I have no doubt that my decision, years later, to associate myself with the Emergency Civil Liberties Committee, goes back to that afternoon on the banks of the Severn.

The American intellectual landscape is strewn with the remains of exploded myths, conventional wisdoms and unconventionalized and cherished beliefs chucked overboard, over each of which stands a marker with this legend: "Here passed Alexander Meiklejohn, with a twinkle in his eye, the truth by his side, freedom in his bones, conviction in his heart, and scorn for no man."

(Speech made at New York meeting on January 19 by Peter Weiss, New York Attorney and member of the Executive Committee of the Emergency Civil Liberties Committee)

Teacher as Hero

by *Joseph Tussman*

I wish I had known Alexander Meiklejohn when he was an administrator. He spoke of administration as "Idea taking charge of circumstance," and that is surely a text to ponder. But I knew him first as a teacher in the most conventional of settings—an ordinary classroom in a large state university where he was, for a time, not engaged in shaping or reshaping an institution. I was a rather sullen, disillusioned undergraduate; but I was quite unable to resist his gaiety and joy. I liked him. We all liked him. But his ideas seemed to us strangely innocent; and out of sheer affection we set out to save him from what he seemed, incredibly, to believe. I am sure that if we had not liked him we would not have tried so hard. And I suspect that if we had agreed with him, had found his ideas congenial to our sophistication, less would have happened. But there was no danger. We found him irresistible; and hard to agree with. The puzzle was this: in everything that mattered, he was, we thought, clearly and uncompromisingly on the right side. But how did he get there starting with fundamental beliefs so different from our own?

Where others won converts he seemed, instead, to acquire young protectors—puzzled but devoted. And he submitted cheerfully to our attempts to straighten him out, to convert him from idealism to pragmatism, to divorce him from Immanuel Kant and marry him to John Dewey. In the wild confusion of roles we thought that, for a student, he was rather good at listening and at asking questions. But rather stubborn.

No one, I think, has had a deeper understanding of the eternal college generation, of the mind caught and struggling "between two worlds." And this finds sure expression in his characterization of the "reflection" and the "philosophy" to which he led us and in which he involved us. "Reflection," he said, "is the kind of thinking which is done when men are caught by fundamental difficulties but not defeated by them." "Philosophy," he said, "is always an attempt of the mind to rise out of intellectual defeat."

The student or the teacher who tries to grasp the secret of Alexander Meiklejohn as a master teacher is struck by the complexity of the dangerous art. Here and now we can only grasp at a few clues.

I have said that long ago we were troubled by the fact that he acted well and rightly but that his reasons or theories seemed strange and disconcerting. Need I remind his friends of this? Who fought more gallantly for freedom and human dignity? But why, then, did he reject our "individualism?" Was there a stronger defender of academic freedom? But why did he call the teacher the servant of the state? Religious freedom? Certainly. Then why did he say "no" to our "wall of separation"? And freedom of speech? Wasn't Mr. Justice Holmes and "clear and present danger" good enough? No natural rights? No natural law? Must we even think about the Social Contract?

The significance of this puzzle lies beyond the question of who is

right. That, of course, is not unimportant; and, for what it is worth, I think he is right. But to be a great teacher is not simply to be right. It is to display the mind in the exercise of its virtues—unsentimental, unawed by fashion or slogan, independent, imaginative, persistent, hospitable to paradox even while striving for clarity. We are stirred into learning when, engaged with that mind, our confident “How can he think that?” gives way to “Is it possible that I may be mistaken?”

We must let ourselves be troubled by this disturbing ally, troubled into the unending struggle for understanding and coherence. And we will see, then, what it means to say that the teacher must be, as Alexander Meiklejohn was, an intellectual leader of the community.

His teaching, as it related itself to thought and action, insisted on continuity and embraced a high conception of the teacher as advocate. This is not yet the establishment view, but here too he is, I am sure, profoundly right. To see Alexander Meiklejohn at work is to see a powerful, passionate advocate in action. But an advocate with a deep concern for the integrity of the mind of the other, so that, somehow, the more you grappled with him the stronger you grew. This is the heart of the mystery.

He had, as you know, great rhetorical power, and it was a delight to see him sail into Locke, or Dewey or even—perhaps especially—Holmes. I don't really know why, but it always surprised me. He was not cautiously judicious. And he rather stunned me one day when, after speaking kindly of a book I had written, he said, “And now you must write a polemical book.”

And yet, I think he regarded his rhetorical power not as a benign gift but as a danger and a temptation. It was a power that cried for exercise. But this power to move and convince was given to a man who saw that, as a teacher, his mission was not to convince but to cultivate, not to subdue but to strengthen. And I am sure that all his life he fought against himself as orator, saw this gift as a temptation, and curbed it to the teacher's art.

We cannot now resolve these paradoxes nor explore the conception of the teacher as the exemplar of commitment struggling for coherence, of the teacher-advocate, of the person grappling with fundamental difficulties but not defeated by them. But no student of Alexander Meiklejohn can ever see the teacher in any other terms.

Through all his activity—as an educational statesman, as a teacher in the classroom, as an interpreter and defender of constitutional freedom—we can discern his dominating mission as guardian of the power, the integrity, the dignity of the public mind. And not for the sake of the mind alone—for all of its glory and delight—but beyond that, for the sake of community and human brotherhood.

(From speech made in Berkeley on January 31 by Joseph Tussman, Chairman of the Department of Philosophy, University of California)

Adventures in Education

by John Powell

In his sixth decade, Alexander Meiklejohn designed and launched two epoch-making adventures in education. One was the Experimental College, opened in 1927 as a two-year course for volunteer freshmen at the University of Wisconsin. The second was the School of Social Studies for men and women in San Francisco, which opened and continued in the Bay Area and Sonoma County until, in 1942, the war brought to a temporary halt all significant education for understanding. . . .

In the Wisconsin experiment, he sought to bring freshmen and sophomores to a realization of their obligation to be intelligent and responsible, both for themselves and for their society, through focused study of two crucial episodes in Western history: that of Periclean Athens and that of modern America—not through “courses,” but through a totally concerted attempt, by teachers and students, to discover an “appreciation of human activities in so far as they are immediately of value,” and an “understanding of human institutions as instrumentalities made and remade for the furthering of values.” (At most colleges, these are called “Humanities” and “Social Sciences,” and they stubbornly resist seeing themselves as two sides of the same human street.)

In the San Francisco adult experiment, he attempted to “engage men and women in their more mature years in the careful, enthusiastic, and guided study of common values, common dangers, and common opportunities,” by means of weekly reading-discussion groups led by a closely-integrated full-time faculty.

In both, he revealed perhaps more clearly than anywhere else three key facets of his many-sided, but inextinguishably individual, spirit: the logical, the dialectical, and the practical.

Whenever Meiklejohn saw where a train of logic was leading, he went straight to the end of that line, and there took his stand. One of the originators, around 1912, of the “orientation” course for freshmen, he quickly saw that its logic led in the direction of integration, in place of the fragmentation he so often deplored—and which too many colleges still deplore without replacing. In 1924, as editor of *The Century*, Glenn Frank published Meiklejohn’s plan for “A New College.” In 1926-27, as President of the University of Wisconsin, Frank provided the opportunity for action; and Meiklejohn promptly seized it. His integration of curriculum, faculty, and student residence inevitably projected him into the prolonged dialectical debate over curriculum, method, and student policy in which the University had already been engaged; and Dr. Meiklejohn was never so ready, so happy, so incisively clear, as when such debate was afoot. Those who now read, or re-read, *The Experimental College* are urgently advised to begin with Appendix I, the brilliant brief which constituted the opening chapters of his 1931 Report to the College of Letters and Science.

The same triad of qualities marked the San Francisco episode. As early as 1918, in a speech to the American Library Association, Meiklejohn had advocated group reading by adults of the great and living works of

human thought. The moment opportunity offered—again, after some fifteen years—he projected that idea into action. Like the College, the School was built around books; but where the College had found tutorials and class meeting the most appropriate tools, the School gave pragmatic recognition to the rhythms of adult living by concentrating on small continuing weekly groups. We began largely with labor groups. Dr. Meiklejohn spent two years in furious discussion of the United States Constitution with Jack Shelley and the Bakery Wagon Drivers—an education which I am sure has stood both the senator and the mayor in good stead. Helen Meiklejohn led a foreign-born, unschooled group of women for Jenny Matyas and the Ladies Garment Workers Union. We also had well-stuffed groups from down the Peninsula. Dr. Meiklejohn's group of ministers undoubtedly furnished forth most of the sermons in most of their churches during most of that year. Gradually, we were able to combine what we called "the horny hands and the stuffed shirts." I shall never forget my own group in which a longshoreman became our philosopher of Plato, while a young stockbroker from Montgomery Street was the champion of Karl Marx.

With such interests mingled in the groups, Meiklejohn was necessarily involved in the dialectic of faction, party, and pressure groups within the city. And here again he was at the top of his dialectical bent in arguing that democracy is not unanimity but a creative use of diversity; that what is important is not whether men argue, but that they argue about the same things; and that the price of freedom is mutual responsibility of thought, of thinking together, about whatever is vital to the common body.

The School of Social Studies was not tinkering with adult education; it was remaking it. It was the expression of a coherent and explicit philosophy about the meaning and purpose of human intelligence and of democratic society. The School, like the College, was a belief testing itself in action, an idea hurling itself into the arena of fact.

The conviction that underlay both these ventures is revealed in Meiklejohn's classic dictum, "Every conflict of interest is also a conflict of ideas." His goal, with undergraduates as with adults, was to *make available to intelligence* the otherwise blind processes and pressures that condition man's living in society. This was to him the precondition of both individual and social freedom. And it is of the first importance to recognize that, in the growth of his philosophy, the old debate over what constitutes "the educated man" became for him the far more significant question, what produces the *free* man. His goal, for what we still call "liberal" education, was the understanding of the meanings of freedom, law, and society; of liberty and obligation and of the relation of these to each other. This was the deeper dialectic of his mind; and this was, as he saw more and more clearly, the justification for the emphasis in college on the integrated study *of* society, and in the adult years on integrative studies of significant points of view *about* society.

Meiklejohn's Report on the Experimental College proposed to Wisconsin's College of Letters and Science (1) that the experiment, only formulated in the four prior years, be permitted to enter the stage of demonstration; and (2) that not less than three additional experimental

colleges be set up to work out alternative approaches. The proposal, in 1931, was rejected, with shock.

Yet only within the last few weeks, my attention has been called to two of the latest reflections of that dream. Dean Esther Raushenbush, new President of Sarah Lawrence College, wrote, "Alexander Meiklejohn's Experimental College . . . lasted only five years . . . but that college is not only still a force in the lives of people who experienced it; its name and its example rise up even today in any discussion of creative educational design . . ." She goes on to propose "satellite colleges" attached to existing institutions and using their more massive facilities, while experimenting with new varieties of "educational design and style." Dr. Gordon Blackwell, the distinguished president of Florida State University, on leaving for another post, was asked what he regretted leaving unfinished. Dr. Blackwell said he had hoped to establish an experimental undergraduate college. "If it worked effectively, the idea would be extended so as eventually to have enough of these small colleges on campus to serve all undergraduates."

In addition, a few of you may know of Wisconsin's program of Integrated Liberal Studies for freshmen and sophomores, which followed the College by two years. I suppose all of you know of the small-college campuses projected for the newer University of California units. Not many of you may know that Professor Tussman plans to start in December, on the Berkeley campus, a twelve credit, four-semester experimental course covering four crucial episodes in the development of western law and government.

I have not mentioned the many other qualities that enabled Alexander Meiklejohn to carry his crews to a new world, where it could be proven that education was round and not flat, with no edge to fall off of. But three of these qualities are important to remember in connection with the educational ventures.

One was his rare gift for dealing with you in terms of what was best in you; and for making men see each other in terms first of what was positive and good. He loved Epictetus' saying, "Everything has two handles by which it may be grasped"; and he unerringly chose the better handle. He let each reach for his own star, and so welded all of us into teams dedicated not so much to Meiklejohn as to the ideas he kept challenging us to create together, and together put into action.

Second, to say that "he had the courage of his convictions" is to distort and diminish the truth. Courage implies overcoming fear; and fear was a stranger. What he clearly saw, he simply said. What he clearly thought, he promptly acted upon. This was one of the many sources of the excitement he generated, and sustained, in all of us.

The third was his penetrating realism, which kept his vital idealism close to the earth. He knew what we could not expect freshmen to do, even when he sustained in them that expectation of themselves. Again: when a young faculty member suggested that time would remove the reactionaries who obstructed progress, Meiklejohn answered, "Don't count on winning progress that way. They will simply be replaced by younger reactionaries." When I complained to him that we seemed to be rowing

upstream against an equal current, so that whenever you looked at the bank the trees had not moved, his gentle rejoinder was, "True; but where would we be if we stopped rowing?" And, when he was appealed to during an argument over force versus reasonableness in human relations, this champion of peace replied simply, "sometimes a kick in the pants is the only available form of communication."

In short, what I have called his dialectic might better be described as the fugal counterpoint in his mind between the ideals of education and the realities of society: between ideas as real, and people in their reality.

Finally, his profound perception of the nature—and the problem—of freedom cannot be better expressed than in his own words about the role of the teacher, in the two experiments. Of the Experimental College, he wrote, "The suggestion that a student should be made free by his teachers does not mean that the teacher has nothing to do for the pupil. Giving people freedom is not so simple as that. Throughout the history of mankind, the experience of every democratic enterprise reveals the fact that the attempt to deal with men and women, not by compulsion, but by regarding them as free and equal with their fellows, is an amazingly difficult and complicated undertaking."

And, of the School of Social Studies: "The teacher in a democracy must make heavy, severe, rigorous demands upon his students, but it must be clear, to them as well as to him, that these *demands come not from him but from themselves—rather, from the enterprises which, together with him, they have freely chosen to follow.*"

This is the very statement, the very genius, of Alexander Meiklejohn's own leadership of the two ventures whose profound influence on American education is only now beginning to come into clear perspective.

(From speech made in Berkeley on January 31 by Dr. John Powell, who was a teacher in the Experimental College University of Wisconsin, member of the staff of the San Francisco School of Social Studies. He is now at the University of Miami in the office for the Study of Instruction.)

Price of Freedom

by Wilbur J. Cohen

He was our teacher, our adviser. And he asked of every one of us each Monday and then again and again, "What do you know of freedom?" And we began to see, in truth, that we knew nothing.

He was our teacher, and we came to him in our raw youth. We were 400 free men, boys, and eager youth come to learn the meaning of freedom.

What is freedom's form, its shape and size? Its color and taste and feel and smell? Is it cold and hard and strong, like steel? Does it course in swift flashes, like a mountain rill, or meander through time as an ancient river? What is freedom? How is it created and how is it contained? What are its uses? What is its power? And what have we to do with freedom? Where do we fit in?

So our search began—and still continues.

He was our teacher, and he led us in our search for the meaning of freedom, for the meaning of democracy, for the meaning of life.

He led us to his teachers—to Epictetus and Henry Adams, to Socrates and Plato, to Lincoln Steffens, Thucydides and James Stephens. He led us in a deep well, filled with the nectar of human wisdom and experience. He bade us drink, and we drank. We were young and very brash and thirsty for knowledge, and at his bidding we drank the heady draft of knowledge, and we began to know the anguish of learning as we tasted its sweet rewards.

He was our teacher, a kindly man, a gentle man, fragile and persistent, with the rugged Scot will to be free, and for all mankind to be free. He was our teacher, and we loved him then as we love him now.

He brought us to an understanding of what we were and what we might be; of what our country was, and visions of what it might become. He bade us read Pericles whose words became engaved on our memory: "Wealth to us is not mere material for vainglory but an opportunity for achievement; and poverty we think it no disgrace to acknowledge but a real degradation to make no effort to overcome." He gave us insight into the human purpose and understanding of the human order.

We learned from him and from his teachers, from the accumulated wisdom of the ages of man.

We learned the litany of freedom—the guarantee of civil liberties laid down in our Bill of Rights.

We learned the meaning of freedom—and its responsibilities.

We learned the uses of freedom—and its limitations.

We learned the price of freedom—what each of us had to pay. And in this way we found our first freedom, each in his own measure, and each according to his own will.

We were 400 young Americans searching for a meaning to our lives. He taught us with questions, always fearless questions. What is order? What is life? From our search, our questioning, we gained a sense of being, and of always becoming. And we came to know a joyous truth—that the search in fact was freedom. That it was an act of life.

And we learned other things about the act of living. We learned, as he had learned from the stoic Epictetus, "To make the best of what is in our power, and take the rest as it naturally happens." And we learned that in the nature of things there is both joy and sorrow, pleasure and pain, exertion and repose.

We learned that freedom has its tyranny, that good has its evil, and that life has its death. We learned these and many other things.

Now this great life has closed, and we mourn its close. But it has not ended.

The teacher will question his students no more. But he is not silent.

His questions will continue to echo. He will continue to prod us into an awareness of ourselves, our country and our world.

On behalf of his students, we ask, "What, then, is immortality?"

He would argue the question's total irrelevance today, for it is not within our power to know the ultimate answer. . . .

(From speech in Washington on January 15 by Hon. Wilbur J. Cohen, Assistant Secretary of Health, Education and Welfare)

The AAUP Award

by *Louis Joughin*

Many in the AAUP have exchanged letters and words with Alec on countless general questions and numerous specific situations.

The relationship between the man and the organization was fittingly and handsomely confirmed by the creation in 1957, of the Alexander Meiklejohn Award. Alumni and former faculty members of the Experimental College at the University of Wisconsin, many of whom are here today, established a fund which would enable the association to honor outstanding contributions to academic freedom by a college or university administrator or trustee, or by a governing board as a group. Between 1958 and 1964 the Meiklejohn Award has been given to five administrators and two trustees, and governing boards as a group have twice shared in the honor. The citations have been for defense of the right of students to hear speakers of their own choice, for defense of professors who have challenged racial discrimination on and off the campus, and for defense of the general right of teachers to have the same freedom as other citizens.

The administrators and trustees cited have been proud to receive the award. The name of Alexander Meiklejohn has gained added significance by being joined to noted acts of principle and courage. The endowers of the fund and the association have been justified in their linking of a profession charged with the advancement of learning to a man of magnanimous spirit.

(From speech at the memorial meeting in Washington on January 15 by Louis Joughin, Associate Secretary of the American Association of University Professors)

Local Citizen

by *T. J. Kent, Jr.*

For thirty years in Berkeley Dr. Alexander Meiklejohn was a leading citizen of his city, of the University community, and of the San Francisco Bay Area. He combined his role as a world scholar, with his work as a civic man. His interest in human affairs was such that the neighborhood meant as much to him as did the world. . . .

In the particular world of our University community, in which he lived for three marvelously creative decades, he was for so many of us the very essence of intellectual integrity. . . .

(From speech at the meeting in Berkeley on January 31 by Dr. T. J. Kent, Jr., a Professor of City Planning in the University of California School of Environmental Design and Member of the Berkeley City Council)

The Game of Life

by J. Seelye Bixler

I think you who knew him will agree that these topics—life as a fight and as a game—were two of his favorites, to which his mind often returned. He knew well that life calls us to battle, and he gloried in its challenge to excel. He had the gift, also, of persuading others that the prizes offered by the good life are worth the bloody effort they require. But he never would have called it a free for all. He had himself the trait he once ascribed to another as the "sportsman's instinct for playing the game as he found it, according to the rules." He loved to test himself against the rules, as against his opponent—to try out his strength and speed and skill, and those who met him in bowling and tennis and soccer and squash are well aware that he knew how to play to win. His natural ability made him a great competitor, and his love of the contest for its own sake carried over into his intellectual life. For him thinking was both work and play, rigorous labor but also fun, requiring not only dedication, but enthusiasm and zest. "It is worth while," he said in his Amherst inaugural address, "to acquaint boys with the *sport* of facing and solving problems." . . .

His greatness as a teacher stemmed of course from the fact that in addition to being a man of ideas he was a person with strong emotions. He had a passionate devotion to philosophy, both for what it is in itself and for the light it casts on the goals of the good life. "Aren't you proud of making a Scotsman express his feelings?" he once wrote at the end of a letter, in which he had told what philosophy meant to him. The truth is of course that he was constantly expressing his feeling, and that was what drew us to him. He loved the clash of ideas, but it should be added that he hated debate merely as such and as an attempt to score a point. College debating too often becomes this, he warned us, and forgets that argument is properly employed only to the honest search for unbiased knowledge. He loved the process of teaching. He loved the college—it is a "precious" place, he said because of its young life and the natural eagerness of young life for the true and the good. . . .

In chapel he used to read to us from Epictetus, especially the passage where Epictetus shows his admiration for Socrates and compares the regard men have for tyrants with what they have for genuine leaders. "Who pays regard to you as to a man?" Epictetus asks the tyrant. "Who would wish to be like you; who would desire to imitate you as he would Socrates?" How we wished to imitate Alec Meiklejohn! We caught his tremendous sense of mission, especially his feeling for the mission of the college, and we were consumed with eagerness to make the college live up to what he wanted, that it might truly, in the words of its motto, "illumine the lands." We caught his enthusiasm for the examined life, and for extending the privileges of the college so that more lives might undergo self-examination. We tried hard to share his loyalties. We loved to see his face light up—as it actually would—at the mention of the categorical imperative or the transcendental unity of apperception, even though our

own faces might remain impassive or merely perplexed, and we enjoyed watching him thrill to the words of his own philosophical masters even though our own thrill might be vicarious. We did our best to follow him as he followed the argument. But above all we knew and rejoiced in the knowledge that under our own plane trees and in our own agora we were learning in his company how a temperate man meets the pleasures of the banquet, how a reverent man responds to the majesty of nature and the lure of the eternal Form, and how a brave man triumphs over the shackles misunderstanding and injustice would impose, and faces up finally to the mysteries of life and death.

He remained throughout and up to the end a teacher. As many of you know, one of the deepest loyalties was to Bennie Andrews, who came to Brown as president the year he entered as freshman. But he admired him as a *teaching* president, and his description of the way Andrews kept the teaching interest primary is so characteristic of his own conviction and practice that I cannot resist quoting it in detail.

"More than any other man whom I have known in college office," he wrote, "Andrews mastered administration, made it his servant, kept it in its proper place. He hated busyness as healthy men hate shopping. I sometimes think no man should be allowed to have administration in his charge unless he loathes it, unless he wishes to be doing something else. I dare not trust the willing middlemen of life, the men who like arranging other men and their affairs, who find manipulation satisfying to their souls. These men if they can have their way will make of life a smooth well-lubricated meaninglessness. Andrews was not like that. He was a scholar and teacher. He knew that colleges exist for teaching and study, and what he cared for was that study and teaching should be done. He was a maker of men because he had a mad, impetuous vision of what a man may be. He wanted something done, something accomplished in the spirit of man. For him administration was Idea guiding and controlling circumstance. It was not, as many demand, mere circumstances slipping smoothly past each other in the flow of time."

So wrote Alec Meikeljohn of one of his friends, bearing witness to his own ambition and achievement, as to that of the man he described. . . .

(From speech at New York memorial meeting on January 19 by Dr. J. Seelye Bixler, President Emeritus of Colby College)

"What is Truth"

by W. Randolph Burgess

My experience covers a little different period of Alexander Meiklejohn's life than most of those here, for I was a student of his at Brown when he was dean and a young man. It was 55 years ago that I took part in one of the most extraordinary classes I have ever known. It was a group about as large as the number present on this occasion today. Such a class according to the educational pundits is too large for active student participation. But this was not, for Professor Meiklejohn somehow stimulated our interest so that every member of the class became a vigorous participant.

The subject of the course was "Logic." But it was not largely engaged with the syllogisms of formal logic. It was rather a vigorous debate on "What Is Truth," and the members of the class were so aroused as to practically tear at each others' throats to find a solution.

The class was divided up and I was picked with a few others to propound and defend the thesis of the Sophists, which we did with utmost vigor. Before we finished, our position was torn to shreds by the class. In the process we learned to think, hard and sharply. This was Alexander Meiklejohn's great contribution to our generation, that he compelled people really to think.

This was true not only in the classroom but also with his activities as dean, when for example he met around the table with representatives of the fraternities and they had to justify their manner of life.

One day I was in the outer office of the college president and gave tongue to the trite observation that everybody had in the back of his mind some idea of God. Alexander Meiklejohn, who had come into the room, whirled on me and said sharply, though smiling as always, "But how do you know that? And can you really call the crude idea of the savage God?" Thus he carved away the props of loose, but pleasant, notions and compelled one to think.

(From speech at the meeting in Washington on January 15 by W. Randolph Burgess, Fellow, Brown University, Former U.S. Ambassador to NATO.)

Brown's Pride

by Thomas G. Corcoran

Brown's ancient charter states the purpose of the University "to produce a succession of men to fill the offices of life with usefulness and reputation." The President of the University asked me this morning to say to you that Brown feels no alumnus better met that charter purpose than Alexander Meiklejohn.

Brown is proud of him and proud of the force that in him Brown let loose in the world. Every honor within the power of the University to give, he had. When the University itself had no honors left to give him, the Faculty in 1959 awarded him its Rosenberger medal—the highest tribute to learned men Brown's most learned men can give. . . .

Never a closet pedant, always he was part of the action and passion of his time, guide and gadfly to those struggling with the earthy problems of power. Personally, I can attest how much he bolstered the courage of the New Deal. Today's tributes show how far his candle threw its beam and how, like Odysseus, he was part of all he had met. . . .

(From speech at meeting in Washington on January 15 by Thomas G. Corcoran, Washington attorney)

"Minority Man"

by Calvin H. Plimpton

Alexander Meiklejohn was the eighth president of Amherst College and served from 1912-23. While he regarded Amherst as a very difficult and a very sensitive part of his life, it is only proper to recognize the truly tremendous contributions he made there.

Perhaps it is singularly appropriate for me as the 13th president to be speaking about this, particularly since my father George was chairman of the board of trustees during Meiklejohn's presidency, and my brother Francis was in college and spoke for the students in behalf of "Prexy." . . .

In an interview in 1923, he said several key phrases. "Mr. Erskine has just said, 'Keep the best of the past, be sure of that,' and I say 'Yes, and the best of the past is change. For change is life. Life that does not change is dead.'" "I differ from most of you on most of the issues of life and I am going to keep it up."

"The point is that I am a minority man. I am always wanting change. On most of the great issues, I am usually against the greatest number."

Yes, he was controversial and he was lively. Too lively in fact for Robert Frost who occasionally spoke affectionately of dialectics as "Meiklejaundice." But on balance there is no question that he was one of America's great teachers. . . .

(From speech at the memorial meeting in Washington on January 15 by Calvin H. Plimpton, President, Amherst College.)

Man in His Family

by John W. Nason

We have been speaking this afternoon of Alec as teacher, educator, citizen, defender of the rights of man, as honored and often embattled member of the public domain. He was also a mischievous, sport-loving, intensely human individual with an insatiable zest for life. It is my privilege on this occasion to speak of Alec as a person. . . .

The story begins a long time ago—93 years ago, to be exact, when Alec was born, the youngest of eight sons in a Scottish, Presbyterian, working-class family which had migrated from Scotland to England and subsequently joined in the exciting cooperative venture which Rochdale symbolized. His parents must have been very remarkable people, for in spite of the struggle and hardship of the life of textile workers in the nineteenth century his childhood was a happy period, graced by love and understanding at home and filled with enthusiasm for all the sports of boyhood—an enthusiasm which Alec maintained throughout his life.

At the same time the discrepancy between the worlds of the working man and of the gentry in nineteenth century England could not be overlooked and bred in Alec his passionate concern for social justice. Throughout his distinguished career he cherished his identification with the working class. He could speak his deep conviction concerning the evils of an in-

dustrial society, as when he addressed the city fathers of what he called the machine city of Pawtucket, Rhode Island. Constantly he drew both strength and inspiration from an ancestry which he honored. His earliest allegiance was to the Scottish culture which centered about the Bible and the poetry of Robert Burns. . . .

In a baccalaureate sermon at Amherst Alec once said, "It seems to me we tend to be too careful of the things we serve, too cautiously solicitous about them. Like our anxious parents we are not willing to let them take their chances in the world." The Meiklejohn children had to take their chances and shape their own lives without an overdose of parental control. Not always easy or entirely comfortable, but consider the results. Alec was proud of his three sons and daughter, as he had every right to be, proud of them and of his twelve grandchildren now making their own records in as many schools and colleges across the country. One can understand the advice he once offered to a distraught mother, "The primary duty of parents is to enjoy their children."

How much of Alec was his parentage, how much his children, how much the market place of ideas where his public career was made, destroyed, and refashioned time and again? How much of the Alec we have known these past forty years is Helen? . . .

Lewis Mumford is right when he wrote to Helen of his "faith that much of Alec still lives on unaltered in you," right because Alec's capacity to live at his best was made possible by the remarkable human being who was his wife.

*(From speech made in Berkeley on January 31 by James W. Nason,
President of Carleton College)*

Dissident Pioneer

by Roger Baldwin

For almost forty years Alexander Meiklejohn and his wife Helen were among my closest family friends. For all that time, too, he was my colleague in the struggle to maintain American liberties. I knew no man more resolute than he to stick to the basic principles of freedom as the source of man's growth and the guarantor of a living democracy. It is both as friend and as a representative of the American Civil Liberties Union that I join in this tribute to a man of rare stature as a courageous pioneer in education, philosophy and democracy. . . .

Alec never retired from anything since he could not retire from activity. Only a year or so ago he wrote me a brief note, apologizing for its brevity because he had such incessant demands on his time. He conducted an extensive correspondence and in long-hand, with no secretaries. He spent hours a day in his study, writing articles, reading voluminously and thinking up new thoughts. I recollect a greeting by which Thoreau discomfited his friends: not, "how are you," but "have you had any new thoughts lately?" Alec could have answered that right. He was always exploring ideas. Not satisfied with becoming an expert on the First Amendment rights, to which he devoted years of study and writing, he

said to me once, "I've got to get away from the First Amendment or I'll get stale." That was the secret of the unceasing growth that kept him youthfully seeking.

I never knew a friend with whom it was more a pleasure to disagree. He made disagreement a sort of game of merry banter, kindly, but with sharp edges. He rarely moved from the position he had fixed, but he often suffered amendments. He could strike hard, too. He had a colloquy once, he told me, with his friend Felix Frankfurter, over his First Amendment position, which Frankfurter, being a relativist on civil liberties, entirely rejected. Unable to meet the argument Frankfurter finally said, "Well, Alec, you're not a lawyer, so you can't understand the problem." "No," said Alec, "and you're not a philosopher, so you can't understand freedom."

It was freedom always that lay at the heart of all his controversies, from his days at Amherst on through the Experimental College to the San Francisco school and his embattled defense of what he regarded as the absolute demands of constitutional liberty. His lectures and writings were all keyed to the ideas of freedom and the struggle for excellence that freedom alone permits.

We in the Civil Liberties Union, which he served as a national vice-chairman for many years, came to know these qualities in our debates on policy. Meiklejohn was not a man to withhold his dissent nor to fail in telling us plainly its precise relevance to principle. Like the Supreme Court the Union often split over policy in this always difficult and often highly debatable conflict of rights. But to Meiklejohn the problems were simpler; he was on civil liberties an absolutist. If speech and association were to be free, that meant free of all restraints with no nonsense about a clear and present danger. If citizens are sovereign, government is an intruder when it presumes to police their free expression. If academic freedom means what it professes then even communists or "fascists," if academically qualified, should not be barred from teaching.

These are tough doctrines in the temper of American life. They were often pretty tough for the Civil Liberties Union. But Meiklejohn did us a signal service in urging them. If we never quite caught up to him, at least we kept moving in his direction. Always genial in dissent, he never thought of resigning; we might yet be persuaded.

But he did not confine his activity to any one organization. He spoke, wrote, lectured and conferred—an organization in himself. Always his central idea was freedom, American freedom. I do not recollect he ever joined in activities for freedom internationally. He joined no party; he bore no label of any "ism"; no label fits him save "philosopher of freedom." Nor do I recollect his ever mentioning a school of thought to which he gave his allegiance. He embraced what he found useful to his purpose in the ancient or contemporary world. Wherever the relation between government and the governed offered new problems he measured them by his yard-stick of unflinching principle. I quote him. He wrote: "The test of any government is found in the dignity and freedom, the equality and independence of its citizens. . . . Freedom is more clearly seen when viewed rather as a duty than when claimed as a right; the duty

to participate in those activities by which the common life is guided. . . . Democratic government cannot be too strong to maintain freedom and equality."

It was Aristotle, I believe, who wrote that the secret of a happy life is liberty, and the secret of liberty is courage. Meiklejohn knew and lived that secret. That as a dissident pioneer he was recognized (in 1964) by the award of the nation's highest civilian honor was a gratifying surprise, a tribute more to the wisdom of those who gave it than to its recipient, whose whole life was his honor. If the test of democracy's capacity to survive and expand is the quality of its champions, Meiklejohn's influence as the defender of its freedoms has left a lasting mark on the crucial conflicts of his times. He was *in* them, and in a sense *above* them. I am sure he would support by his experience Emerson's observation that living in a democracy is like living on a raft; it never sinks but your feet are always wet. His were. . . .

(From speech at New York meeting on January 19 by Roger Baldwin, Founder of the American Civil Liberties Union)

Human Excellence

by Jacob Klein

None of us, engaged in teaching and learning at St. John's, will ever forget Meiklejohn's upright stature, his gentleness, his indomitable and uncompromising spirit, his seriousness and his intellectual vigor. He often disagreed with us, but this very disagreement was a fruitful one. He challenged our goals and sometimes our methods. He thus compelled us to clarify our assumptions and to view our tasks in a better perspective. Faithful in deed to his own words, he taught us how to become better men. For throughout all his life he proclaimed the inseparability of word and deed, of thought and action. Unyielding on principles, he hated any rigidity that might tend to limit the freedom of thought and action of any individual.

In a speech delivered at St. John's College in 1957, at a meeting called to mark the 30th anniversary of the establishment of the University of Wisconsin's Experimental College and the 85th anniversary of Meiklejohn's birth, he spoke of the combat which, during the 60 years of his teaching, had been waged in the American college. He described this combat in terms of a medieval mystery play in which God and the Devil contend for the possession of the souls of men. To quote him directly: "The Devil, one of whose favorite devices is that of raising for men the standard of living, thereby succeeds in lowering the standard of human intelligence." We should take these words to heart, especially today.

One of my most cherished memories is a lecture he gave at St. John's in 1947, I believe. He spoke of human excellence as the goal to be pursued through education, as the high ideal one should never lose sight of. This ideal was embodied in Meiklejohn himself. He commanded respect.

(From speech made in Washington, D. C. on January 15 by Dr. Jacob Klein, Member of the Faculty, St. John's College, Maryland)

Joyous Fighter

by Alan Barth

I never knew a man who relished argument so much. He loved discussion for its own sake, for the intellectual exercise it entailed, much as he loved tennis for its physical exertion. He valued it even more, however, as a tool for the attainment of truth. He cultivated controversy because he believed that out the conflict of opinion comes the best assurance of unity and of wisdom in the determination of public affairs.

This was, of course, why he was so stalwart a champion of free speech. He believed unreservedly in the utility of freedom. "Freedom," he put it, "is always expedient."

I do not mean to represent Alec as a simple man. His mind was complex—supple as well as strong. Yet there was an extraordinary simplicity in him—a simplicity that grew out of an inner integrity. . . .

I think I have never known a man in whom conviction and conduct were so harmoniously married. What he believed, he acted on. And he was almost wholly free from that kind of self-protecting caution which so commonly passes for prudence.

He was a fierce fighter—but a joyous rather than a rancorous one. There was hardly an intellectual controversy of importance in his time in which he was not an ardent and ebullient participant. Nevertheless, for all his passion, he was a man of the most exceptional sweetness and gentleness and gaiety.

All of us who knew and loved him must feel sadness at his going from us. But we can feel joy as well in the recollection of a life so richly lived, so graced by love, so meaningful and so fulfilled.

Helen, who was closest to him and who loved him most, wrote to me about his death. He was sitting up in a chair after only a day or two of illness, with her on one side of him, his doctor on the other, talking about the troubles on the campus of the University of California—talking, this is really to say, about the twin centers of interest in his life, students and freedom. Suddenly—with no cry, no suffering, no fear—he drew a deep breath and was gone.

What more could we have asked for him? As for us, I think that we shall keep his friendship as long as we live—or as long, at least, as we continue to care about the enduring values he cherished and sustained.

*(From speech at the memorial meeting in Washington on January 15, 1965
by Alan Barth, author and journalist)*

A SELECTED LIST OF MEIKLEJOHN'S WRITINGS ON THE FIRST AMENDMENT

BOOKS

- Free Speech and Its Relation to Self-Government (1948)
Political Freedom: The Constitutional Powers of the People (1960)
(a complete reprint of the 1948 book, together with the Hennings
Committee testimony and selected articles and occasional papers)

ARTICLES AND SPEECHES

(not reprinted in "Political Freedom")

Liberty—For What?

Harper's Magazine, August 1935

Teachers and Controversial Questions

Harper's Magazine, June 1938

The First Amendment and Evils That Congress Has a Right to Prevent
26 Indiana Law Journal 4 (1951)

The Crisis in Freedom

The Progressive, June 1952

What Does the First Amendment Mean?

20 Univ. of Chicago Law Review 3 (1953)

Liberty or Freedom?

Address published by American Civil Liberties Union of Northern
California, San Francisco, 1957

The Barenblatt Opinion

27 Univ. of Chicago Law Review 329 (1960)

The Balancing of Self-Preservation Against Political Freedom

49 California Law Review 4 (1961)

The First Amendment Is an Absolute

Supreme Court Review 1961, p. 245

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