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Book Notes

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BOOK NOTES

THE RIGHT OF THE PEOPLE. WILLIAM O. DOUGLAS. Garden City, N.Y.: Doubleday & Co., 1958. Pp. 238.

This latest book by Mr. Justice Douglas is the substance of three lectures delivered in the spring of 1957 at Franklin and Marshall College. The lectures discuss "Freedom of Expression," "The Right to be Let Alone," and "The Civilian Authority."

The first lecture is concerned with the conflict between free expression and other community values, and the recent tendency of courts to uphold legislation designed in some measure to limit this expression. Particularly, Douglas cites *Beauharnais v. Illinois*, 343 U.S. 250 (1951) which upheld an Illinois group libel statute and *Dennis v. United States*, 341 U.S. 494 (1951) which affirmed the conviction of Communists advocating the violent overthrow of government as sanctioning legislation designed to punish one for making unpopular or only potentially dangerous statements. Douglas calls for a strict application of the "clear and present danger" doctrine as the surest legal index to the determination of whether speech should have any penalty attached to it, and he admonishes us to remember that the "antidote is more freedom of expression rather than less."

The second lecture deals with "The Right to be Let Alone." This is a convenient label for the right of privacy and other rights having as their purpose "security for the individual and freedom for the development of his talents." Specifically, Mr. Justice Douglas deplores the investigation into private lives caused by a "legitimate concern for subversion." Legislative investigations undoubtedly have an effect upon the reputation of the person under investigation; and, if allowed a wide range of activity, they also may stifle speech as effectively as any law. The courts should also limit the extent to which loyalty oaths are required. There is no objection to requiring one in a position of public trust to take a loyalty oath, but if the person's beliefs are not related to his occupational qualifications, the oath should not be a condition to his being allowed to pursue that occupation.

The final lecture, "The Civilian Authority," traces the establishment of civilian supremacy over the military; this is a part of the struggle to create a government of law. There is no military jurisdiction over civilians in times of peace, and even in times of war, a civilian has the right to normal judicial procedure if he is outside

the zone of warfare and if the administration of justice through the civil courts is unobstructed. Martial law, being the rule of force and not the law of the people, must be narrow in operation, and the civil courts should be the final judges of whether martial law is justified. If civilian supremacy is to be maintained, it is necessary that the military be limited strictly to military matters, but, unhappily, this has not been the course of events. Military expenditures tend to catapult the military into a strategic position, and the military authority is given more influence in determining foreign policy, although the military mind is not trained to deal with political problems.

Implicit in Mr. Justice Douglas' analysis of the current status of our liberties is the need for a reeducation in the basic ideals of our democracy. Although the courts play an important part in the protection of our liberties, they alone cannot do the job. If we remain a free people, it is because we recognize and believe in the ideals upon which this republic was established, for, as Douglas states in his preface, the enemies of freedom "flourish where injustice, discrimination, ignorance, intolerance, and arbitrary power exist."

Allen Butler

