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Rene de Visme Williamson

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Book Reviews

FREEDOM, VIRTUE AND THE FIRST AMENDMENT by Walter Berns.
Baton Rouge: Louisiana State University Press, 1957. \$4.00.

In an age when conflicting ideologies are competing for the support of mankind and when constitutional issues regarding civil liberties are dividing the American people in opposing camps, there is likely to be a renaissance of critical and speculative thinking about fundamentals. Not all this thinking is of high quality, as the refurbishing of the old doctrine of nullification and much of the so-called "neo-conservative" literature so amply testify. Nevertheless, controversy brings thought, and some of this thought will be of enduring value.

Walter Berns' *Freedom, Virtue and the First Amendment* is a notable example of the best kind of thought which controversy can engender. It is a very important contribution to political thought and will attract attention among social scientists for many reasons, not the least of which is the fact that it is a ringing challenge to the system of values which has dominated them. One does not need the gift of prophecy to predict that this book will be vigorously and widely attacked. It will likewise influence the legal profession because its immediate concern is with court decisions and the factors which influence them. Finally, it will interest many people in the thinking public who are looking for a truer and more adequate philosophical foundation for our constitutional democratic way of life.

In general the thesis of Berns' book is that no viable constitutional democracy or sound system of jurisprudence can be based on freedom as the ultimate value of civil society. Freedom, like happiness, is a by-product which is lost when it is treated as an end in itself and which can thrive only in a good society. Liberty can exist only within a moral context or it will cease to be liberty, and it is something deserved rather than conferred or interjected. Dr. Berns reaches this conclusion after a careful analysis of court decisions dealing with freedom under the First Amendment. One by one, he eliminates the principles which have guided these decisions, particularly the clear and present danger test of Holmes, the preferred position theory of Black and Douglas, and the Roscoe Pound theory of judicial decision as the

reconciling of group interests and pressures with a minimum of friction. He follows this up by an examination of the teachings of the leading thinkers of the liberal tradition and finds them wanting because of this failure to give a central position to justice and virtue.

In spite of the dire need of contemporary liberalism for an adequate philosophical foundation, Dr. Berns' book will not be pleasing to most liberals. One reason is that his thesis rejects the relativistic philosophy which inspires so many liberals. Relativistic liberals do not believe that concepts like justice and virtue can have any content other than the changing and variable one derived from transitory conditions of time and place. For that reason they will label this book as authoritarian and destructive of democracy.

Non-relativistic liberals, on the other hand, will also be in a critical mood. They will regret the fact that Dr. Berns makes no attempt to give substantive content to the concepts of justice and virtue. It is obvious that he does not accept the content which "competition in the market place" has put there, but he offers no substitute. It is one thing to say that freedom requires a moral foundation; it is quite another to explain what a moral foundation is. Dr. Berns rejects the "ideologies" of "isms" as sources to which we should turn for an answer. The two most obvious sources left are the Judeo-Christian tradition and the Greco-Roman tradition. While he does not rule out the former, he ignores it. The latter, however, commands his sympathy. And yet it is noteworthy that though he stresses justice, he gives neither analysis nor endorsement to the greatest piece of Greek thought on the subject, namely Plato's *Republic*. In the case of virtue he does commend Aristotle, but only in general terms. His handling of Aristotle is curiously relativistic. For example, he quite correctly states Aristotle's view on the relation between a good man and a good citizen, but he does not endorse the Greek philosopher's own concept of virtue.

It is, of course, true that the destruction of error is a contribution in itself because it prepares the way for something better. In this case, however, the matter of content is urgent as well as important. It is urgent because liberal values are everywhere under attack, and liberal values are worth defending. If virtue be accepted as the ultimate value of civil society, it is only by spelling out in some detail what virtue is that its re-

relationship to freedom can become clear. Only thus can one say whether in the author's mind virtue would maximize or minimize freedom. But spelling it out is the same thing as committing oneself to it. Without faith there can be neither virtue nor liberty, and faith, as Calvin said, is part knowledge and part commitment.

Dr. Berns set a high, though not the highest, value on freedom. For that reason it is unfortunate that he used "libertarian" and "liberal" as interchangeable synonyms. It would have been better to have reserved the former to describe those who make liberty the ultimate value and the latter for those who value liberty because of its part in the fulfillment of the Greco-Roman idea of a good life or the Christian idea of the nature and destiny of man. Such a discriminating use of terminology would have saved him from those neo-conservatives who will mistakenly clasp him to their bosom in spite of what he said about them in his preface.

In conclusion, it is the considered opinion of the reviewer that *Freedom, Virtue, and the First Amendment* is a brilliant contribution to the political thought of our time. Its logical reasoning is superb, its thesis is sound and will invite other thinkers to embark in a new and much more promising direction, and its literary style is of the very finest quality in clearness and elegance. It is to be hoped that this book is only the first of several such contributions and will place the author on the side of those whose tolerance rests on conviction rather than indifference and whose liberalism is affirmative rather than negative.

*Rene de Visme Williamson**

THE LION AND THE THRONE—The Life and Times of Sir Edward Coke (1552-1634), by Catherine Drinker Bowen; Atlantic-Little, Brown, 1956-1957. Pp. 652.

Those members of the American Bar Association who were fortunate enough recently to witness the opening ceremony of the London meeting in Westminster Hall¹ were afforded a glimpse of the background of one of the most colorful and dynamic expounders of the common law. For in that great Hall, "the very work-shop of the law," Sir Edward Coke, as lawyer,

*Professor of Government, Louisiana State University.

1. For an interesting account, see 43 *A.B.A. J.* 883 *et seq.* (1957).