

Book Review of Expanding Liberties: Freedoms Gains in Post-War America

Joseph C. Kallenbach

Repository Citation

Joseph C. Kallenbach, *Book Review of Expanding Liberties: Freedoms Gains in Post-War America*, 9 Wm. & Mary L. Rev. 541 (1967), <http://scholarship.law.wm.edu/wmlr/vol9/iss2/20>

BOOK REVIEW

EXPANDING LIBERTIES: FREEDOM'S GAINS IN POST WAR AMERICA. MILTON R. KONVITZ. New York: The Viking Press, 1966. pp. 429 \$8.95.

As an irreverent wag once remarked, "Liberty is like a beautiful blonde on the beach—it never tires of being saved." Levity aside, there is profound truth in the observation. Mankind's eternal struggle has been a quest for freedom from the manifold evils that beset him—from physical want, from threats to his personal security and property, from doubt and ignorance, from oppression of mind and body, from exploitation by others. Professor Konvitz has chosen in this work to center attention upon what he readily concedes is only a severely limited phase of that struggle. As the title of his book shows, his concern is only with Freedom's *gains*, not its losses, over a *short* period of time—the period since 1946—and only in America. Even so, as he also admits, the topics he has chosen to focus on are not all-inclusive. They include only "freedoms that emerged in this period for the first time or came up for a new lease on life" (p. xii), and he acknowledges there have been "omissions" even under this heading.

The greater part of his book—some two-thirds of the total content—is concerned with certain of the First Amendment freedoms: religious liberty, freedom of association, academic freedom, the Communist Party and freedom of association, and censorship of literature. The second section, under the heading of "Civil Rights," deals with racial equality in educational opportunity and places of public accommodation, civil rights demonstrations, and public policies affecting the non-white, non-Negro elements in American society. A brief concluding section entitled, "Human Rights," surveys American participation in international agreements intended to assure humane and equal treatment of minorities.

Obviously this selective approach leaves out a great many topics that one might expect to see included, even if one confines one's attention only to "gains" and omits "set-backs" to the cause of human freedom in America. One wonders, for example, why the revolutionary developments in the 1950's and 1960's looking toward elimination of suffrage restrictions based on race and establishing the right of fair and equal representation were not included—indeed, why were they not

given top billing? But the author has pointed out the limits of his study, and, of course, he should not be faulted for not doing what he did not set out to do.

This is an informative and thought-provoking book. Though the author gives major attention—and in this writer's opinion, possibly too much credit—to contributions made through Supreme Court rulings to the advancement of freedom's cause, his study is more than simply a survey and critical analysis of selected Supreme Court cases. He also explores in depth their underlying philosophy, meaning, and assumptions and evaluates their probable long-range impact. Their inter-relationships are emphasized as elements in a "seamless web," an "endless process," in the struggle to realize the ideals of freedom, equality, justice and truth.

Some of his readers will doubtless find it difficult to follow the author all the way to some of his conclusions. For example, he has chosen to give top billing to "religious liberty" in his analysis of freedom's "gains" in America during the past 20 years. One may readily accept his proposition that "religious liberty transcends in importance and influence all other liberties" (p. 14), for the whole scheme of respect for the individuality of man, the freedom of his intellect and conscience, and his right to be dealt with humanely and fairly by government and by society, has its roots in the Judeo-Christian ethic. But it does not follow that the lessons of respect and toleration taught the nation by the Court through the Jehovah's Witnesses cases—important though they were—could have had as much significance as the author seems to think they did. After all, America's record in the field of religious toleration prior to 1946 was not bad. And one wonders whether the Supreme Court's pronouncements in these cases could have played any great part in the breaking of the anti-Catholic tradition in the choosing of the President in 1960, as suggested by the author (Cf. p. 47)

On the point of maintaining the essentially fictitious (from the point of view of the Constitution's actual commands) "wall of separation between state and church," moreover, the record of the Court in the period covered has been a rather spotty one. It is true the Court has held invalid on this basis "released time" for religious instruction on school premises as well as non-compulsory participation in public school prayer and Bible-reading exercises. But through applying the so-called "secular purpose" test, it has upheld public financial support for certain phases of parochial school education and the Christian-oriented com-

pulsory Sunday closing law system. As Justice Jackson warned in his concurring opinion in the *McCullum* case, the wall of separation between state and church as perceived by the Court seems likely to become "as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded," as the Court continues in its thankless and impossible task of trying to determine what belongs to Caesar and what to God in American culture in the face of declared public policies of increased support for parochial schools.

While there are a number of points of interpretation, such as those cited, upon which some readers will doubtless take exception to the author's conclusions and judgments, Professor Konvitz has written a most stimulating, perceptive study on a very significant period of American constitutional development. The matters he deals with have an importance not only in the life of the nation, but in the world as well. This work deserves, and doubtless will have, a wide readership.

JOSEPH C. KALLENBACH
Professor of Political Science
University of Michigan