Meiklejohn’s Commitment to Freedom

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BOOK REVIEWED:

In September 24, 1982, the heads of their representatives of thirty national academies of science from around the world issued a “Declaration on Prevention of Nuclear War.” The statement was released at the Vatican with the support of the Pope. It culminated a three year period of preparation among scientists and Catholic leaders. Our Catholic Bishops cited it generously in their Pastoral Letter on War and Peace of May 1983.

The Declaration itself contained, as we say, nothing new. Its description of the horror and madness of nuclear war, and the arms race which could make it inevitable, was all too familiar. Coming from scientists, there was about it a strong note of pathos, but that also has been tragically familiar since the 1940s, when men such as Oppenheimer and Szilard expressed their own sense of terror over their accomplishment. This Declaration speaks of “the perversion” of scientists’ “achievements,” and calls upon them “to use their creativity for the betterment of human life and to apply their ingenuity in exploring means of avoiding nuclear war and developing practical methods of arms control.”

Alexander Meiklejohn was no scientist. Far from it. In his writings, he typically treated science with a sort of wearied disdain. He was, however, wary of it as well. What the Academicians abhor as a “perversion” of science’s achievements, he would have seen as a natural outcome. He might even have shared with today’s laymen the secret suspicion that modern physics and physicists are a pestilential plague, with no redeeming social value at all.

Yet if no respecter of science, Meiklejohn was preeminently a major prophet of that free intellectual discourse that is as much the parent of science as of the ethical and political philosophy he loved. If scientists must face the predicament of their inability to control the uses of the discoveries resulting from their intellectually free methods, then Meiklejohn—and indeed every apostle of liberty who pre-
ceded him from the Renaissance on—has an even larger predicament to face, for intellectual freedom is a disturber of all order and stability. Plato, with his awesome prescience, saw that and drew back from it: whether in his ideal or some next-best state, fully free thought and investigation would be restricted to a few. For their own reasons, Western ecclesiastical and political institutions throughout the Middle Ages would concur. So do modern national states, each setting its own limits.

Meiklejohn would have none of that, and in his refusal was heir to the boldness of the modern creed of liberty, which is why in these days when national states are preoccupied with enlarging their might a Meiklejohn anthology is particularly welcome. *Alexander Meiklejohn, Teacher of Freedom*, edited by Cynthia Stokes Brown, contains a biographical essay and extensive bibliography as well as selections from his educational and political writings. As the anthology is sparing in its use of material from Meiklejohn’s *What Does America Mean?* and, surprisingly, even more so from his *Political Freedom*, those need still to be read by anyone wishing to know what in the way of political insight and conviction this man learned in an extraordinarily long and socially active life.

Long it was, ninety-two years, from birth in a textile worker’s family in England to death in 1964 in Berkeley, a planned letter of admonition to the University of California for its conduct toward rebellious students occupying some of his last thoughts. Peter Weiss, one of his students, said this farewell: “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.” (AM, p. 54).

Meiklejohn’s residential changes seem vaguely symbolic. They were a steady westward progression. He was born of Scottish parents—their youngest and only child not born in Scotland, a happenstance he would rue a bit—then living in Rochdale, England, where once had begun the English cooperative movement and where in his boyhood the famous Rochdale Principles of Cooperation were still a force. When he was eight, the family followed the father’s trade to Rhode Island, and there he stayed through graduation at Brown, and there he returned to teach and exercise a deanship at Brown after completing his doctorate at Cornell with a dissertation on Kant. He moved a bit west in 1912, to the presidency of Amherst College; and when his liberal stance (among other things, he had not much encouraged his students to enlist in the war) led to his dismissal in 1923, he moved on in 1927 to create and lead the Experimental College of the University of Wisconsin. That lasted until nervous public opinion, academic jealousies, and Depression-induced scarcity of funds closed it in 1932. Then he went to Berkeley,

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1 Hereafter *AM*.

and in 1934 founded the San Francisco School for Social Studies, a venture in adult education. World War II and its dominating concerns brought the San Francisco school to a close in 1942. For his remaining twenty-two years, he wrote, taught, lectured, fought within and for liberal causes and organizations, and was in the best sense a public person. The year before Meiklejohn's death, President Kennedy chose him for the Medal of Freedom.

Meiklejohn was first of all an educator. He wrote extensively about education, including that tired horse of so many educators, curriculum reform, and the Brown collection includes many pages of this. There is, unfortunately, no necessary connection between good teaching, good educational leadership, and good writing about them. His views do not appear very interesting or fresh. Essentially, he believed in Socratic methods, the reading of classics and Constitutional law, comparative studies, and untrammeled inquiry. But his educational convictions did overlap considerably with his political ones, so I shall touch upon them in that context.

Meiklejohn's political philosophy was Rousseau plus the American Constitution, a blend willed together by and required to serve his fundamental value, which was popular self-government. "To be free does not mean to be well governed. It does not mean to be justly governed. It means to be self-governed" (PF, p. 98). That seems a rather strained and unconvincing formulation, but when he strove for emphasis he seldom avoided overstatement. Self-government was for him the supreme political value. It stood for a Kantian form of autonomy by which citizens were to be responsible for what is done in their names.

Among his contemporaries he gave invariably courteous and fraternal remarks to such as John Dewey and Oliver Wendell Holmes, but he had little philosophical agreement with them. He wrote many pages of strong criticism of Holmes, warning us to beware "of the dangers of his rhetorical skill" (PF, p. 43). His quarrel with Holmes was over the First Amendment, and Holmes's "clear and present danger" test that Meiklejohn saw as robbing "the amendment of its essential meaning—the meaning of our common agreement that, working together as a body politic, we will be our own rulers. That meaning is the highest insight which men have reached in their search for political freedom" (PF, p. 75).

The First Amendment was his passion. Yet he was driven by his own logic to subordinate it to other parts of the Constitution; Article I, section 2 and the Tenth Amendment. "When the Constitution-makers adopted article I, section 2(1) they laid a foundation for political freedom in relation to which all other provisions of the Constitution are mere instruments and safeguards" (PF, p. 97). This provision for popular election of the House of Representatives, extended by the Seventeenth Amendment to the Senate, plus the Tenth's reservation of undelegated powers to the people, created what he came to call the "Fourth Branch"; i.e., the electorate. "There are then, four different agencies commissioned by the Constitution to carry on the governing of the United States—the Electoral, the Legislative, the Executive, and the Judicial. And the greatest among these governing equals is the Electoral"
Dunbar / Meiklejohn

He also writes: "The First Amendment does not protect a 'freedom to speak.' It protects the freedom of those activities of thought and communication by which we 'govern.' It is concerned, not with a private right, but with a public power, a governmental responsibility" (AM, p. 248). This is an essentially utilitarian and political defense of the freedom of speech, coupled with an idealist affirmation of autonomy and self-government.

Faithful to his argument, he allowed himself once to imply agreement with Hamilton that given a legislature subject to the people's will no Bill of Rights was appropriate (PF, p. 104). But to get to that point, Meiklejohn trod the distinctly un-Hamiltonian route of Rousseau.

Running throughout all his political writings are the "general will" and the contrasting "will of all," though not typically called by those names: the one is the public interest, the common good; the other is the aggregation of all private and constantly competing interests. To Meiklejohn, the freedom of speech is the servant of the general will, of the "common spiritual life" that alone can give sense and meaning to any nation (WD, p. 180). Free discourse is the only possible avenue to, the only possible discoverer of, the common good. That is its justification.

Free discourse is not necessitated by "some supposed 'Natural Right'" (PF, p. 79). It is not grounded in men's need to realize themselves through expression. It derives instead from a society's need to listen to all opinions and ideas as it goes about the business of governing itself. The First Amendment "is a device for the sharing of whatever truth has been won. Its purpose is to give every voting member of the body politic the fullest possible participation in the understanding of those problems with which the citizens of a self-governing society must deal" (PF, p. 75). To the American Association of University Professors he asserted: "Our final responsibility, as scholars and teachers, is not to the truth. It is to the people who need the truth" (PF, p. 128).

All of this is perhaps well and good, if sometimes a bit airy, but it does obviously lead into some hard questions. For example, if freedom of speech is not a "natural right," why does self-government seem to be? More immediate questions arise from, on the one hand, his well-known distinction between "freedom of speech" (absolute) and "free speech" (subject to governmental restraints); and, on the other, his idealization of the self-governing process.

To put the first matter briefly, absolute freedom attaches to all speech that deals with public affairs. * Other speech may be regulated in the spirit of the Fifth Amend-

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3 In his 1912 Inaugural Address at Amherst, he laid down the principle that scholars should not tailor their teaching to suit the career needs of students; thirty years later he apologized for this "high-and-mightiness" (AM, pp. 67, 80). One of longevity's advantages is the chance to do that sort of thing. In similar vein, it may be noted that the derivation of freedom of speech from the utilitarian needs of self-government, which is clearly his mature conviction, had apparently not always been so; in fact, he had earlier specifically rejected that argument in favor of the rights of the human spirit.

4 It may not be unfair to point out that the teacher, Meiklejohn, brought all academic discourse under this tent, as "a special form, a sub-form, of popular freedom" (PF, p. 128)
ment, as "liberty" that can be deprived—but can only be deprived—with due process of law. I agree generally with that dichotomy, but keeping the principle from being submerged in its applications can be devilishly hard. Here are some forms of speech that Meiklejohn would put outside the First's absolute protection:

- Libel, slander, incitement to the commission of crime (PF, p. 21);
- abusive language in political fora (PF, p. 25);
- advertising, lobbying (PF, p. 37);
- speech within the armed forces, prisons, and insane asylums, these being "communities" that "are not governed by consent of their members" (PF, p. 84);
- radio [this was written in 1948], which is merely a vehicle for paid speech (PF, p. 87).

More troublesome (the first three above, remembering always the due process protection, would not much trouble this writer) are some other set-asides from the First Amendment embrace. Before turning to them, however, it is useful to look at Meiklejohn's differences with Holmes, who for long was thought of by liberals, and even venerated by them, as the staunchest defender and clearest teacher of the meaning of free speech. Meiklejohn's criticisms were general and philosophical, but they do group around his rejection of Holmes's "clear and present danger" test. Holmes would have extended the First Amendment's protection over all speech except that which by its particular use or "nature" might "create a clear and present danger" of "substantive evils that Congress has a right to prevent." Meiklejohn believed that a heavy cost had been paid for the adoption of that standard. He held the Court more blamable "than any other agency or person in our society," for the destruction of Constitutional principles during the years from the end of World War I to the 1950s (PF, p. 106). He concentrated not upon what "clear and present" allows that other interpretive principles might not but on its implied conclusion that there is public speech beyond Constitutional tolerance. On the contrary, Meiklejohn insisted that the First Amendment can only be read to affirm that even evils must be endured if their avoidance requires abridging speech. The later classification, which Brandeis with Holmes's agreement offered in dissent in Whitney v. California (274 U.S. 532), met his near approval: no abridgement is allowable so long as time permits discussion. But the incurable and inherent flaw reemerges, he thought, in the tortured formulations of Judge Learned Hand (subsequently accepted by Chief Justice Vinson) in the Smith Act case, where it became "the gravity of the 'evil,' discounted by its improbability," with utmost deference accorded to legislative judgment. Such a test, Meiklejohn was right in believing, "has no dependable meaning," either for defendants, attorneys, or courts (AM, p. 243; PF, p. 121). The underlying fault, he contended, was the Court's determined refusal to distinguish between public speech—which the First Amendment guarantees absolutely to the electoral power—and private speech that at best is part of that
“liberty” that the Fifth Amendment allows to be regulated according to due process.

The result has become a cheapened right. The courts, and the lawyers who press them, have loaded the First with endless baggage while yielding its protective force over all public speech. (It is a fair guess that he would be appalled by recent claims that corporations have free speech rights.) “Individual self-seeking has been given the same constitutional rating as national provision for the general welfare. The rights of men as makers of law are now indistinguishable from their rights as subjects of law” (PF, p. 51).

There seems to have been no instance when Meiklejohn, confronted with an actual question or issue, did not come down on the side of freedom. Take, for example, the question on the teaching of communism. His position was, as he wrote in 1938, “quite unequivocal.” First, all teaching must have relevance to the capitalism vs. communism conflict; second, teachers should take sides (“To be a teacher... he must be a believer in some plan of human living”); and third, school administrators must “see to it that among our teachers there is an adequate supply of ‘Communists’,” else one side of this fundamental debate would not be well represented (AM, pp. 208-9).

His loyalty to freedom’s faith was simply magnificent. He once wrote that everything worthy in Western civilization was founded on the Socratic command to be self-critical and on Jesus’ teaching, “Be kind”; to which he added a third precept, “the principle of liberty” (WD, pp. 25, 203).

Given these strong affirmations, it is slightly puzzling, though perhaps in common sense unavoidable, that Meiklejohn did support the Brandeis view that when, in “a civil or military emergency... the processes of public discussion have broken down,” the government may temporarily end all public discussion until order has been restored; but he found, apparently, no example—past or prospective—to offer (PF, p. 49). More puzzling was his adoption in congressional testimony of 1955 of a distinction between advocacy of action (absolutely protected) and incitement to action (protected not at all) (AM, p. 244; PF, p. 122; also WD, pp. 219-21). This was specious stuff, beneath the man; no one has ever or can ever maintain that distinction case-to-case by any objective criteria. The distinction appears not to have been applied in his writings, and can be charitably forgotten. What we should not forget, however, is that no one (so far as I am aware) has ever found no exceptions to unbridled speech. Words can hurt, and each of us draws some line, somewhere. Meiklejohn was no lawyer (as Frankfurter once peevishly pointed out), but chose to tilt with lawyers on their own ground, and enjoyed doing so. What was so impressive was his own greater loyalty to, and understanding of, the essential character of the Constitution. If speech had its limits for him, they were never ones that protected government’s prerogatives and its force over citizens. He never, as lawyers are prone to do, looked at questions from the eyes of a self-protective and self-justifying government, but always and only from those of citizens seeking among themselves to discover the common good: in other words,
Contested Terrain

always from the requirements of the fourth branch of the government, the electoral.

Another potential exception to freedom of speech is of particular contemporary interest. Writing in 1948, he anxiously questioned whether "the devising of 'atomic' and 'bacteriological' knowledge" for military use may not require that scholarly research will have to be abridged, the First Amendment notwithstanding. It is a murky passage; unfortunately, he left it unchanged in the 1960 edition of Political Freedom, nor did he then venture any answer to his question. Nevertheless, the predicament he was feeling is real. He, like many of us, was struggling with the hazy intuition that civilization may not be able to assimilate a boundless science. When a Galileo is silenced, one sort of issue is created. When governments and corporate powers put science, and scientists, to work for them, a very different one is with us. Whether called a "perversion," as by the Academicians at Rome, or seen as a natural outcome of the scientific method, the issue is close to being the central concern of our time.

Meiklejohn allowed yet another exception, a disturbing one:

If the meaning and validity of the First Amendment be derived from the principles of self-government, still another very serious limitation of its scope must be recognized. The principle of the unqualified freedom of public speech is, then, valid only in and for a society which is self-governing. It has no political justification where men are governed without their consent (PF, pp. 84–85).

He offered as example the control of teaching and speech in occupied Germany. But nothing in his argument limits the exception to that case. It is hard to see how his defense of political freedom could support a Russian, Polish, South African, Korean, or Guatemalan dissenter. The difficulty logically derives from his insisting that individual freedom depends upon a social contract and the self-governing polity it establishes. It draws from his denial that there is a natural right to speak, and his preference for the citizen's right to listen and be informed. It is narrow, even something of an intellectual conceit, to argue that freedom of speech is the most precious of all rights and then to deny it to all but parliamentary republics.

The "clear and present danger" test has of late evaporated, though probably has only ascended into that "brooding omnipresence" of old maxims that consciously and subconsciously determine our law. Meiklejohn was right to challenge it, and his challenge goes as well to the foggy notions—one or another form of "compelling state interest"—that do its work today. He gave the right response to such insidious conceptions more than a quarter century ago, when he told a Senate committee that the balancing had already been done in 1787–91, when the Constitution and Bill of Rights, with their pure command that no law shall abridge,  

5 To its credit, the American Civil Liberties Union reprinted and distributed the Harper's article from which this came. Later, Meiklejohn became an active part of the loyal opposition within the ACLU to its rapprochement with 1950s anti-Communism.
were framed and adopted (AM, pp. 234–36; PF, p. 111). He was right too in pointing out that Holmes, like naturalist philosophers generally, had to take mystical leaps in order to affirm any goodness and altruism among and within men (see PF pp. 65–75). He was right in declaring that our Constitution must be seen as resting upon a social contract, one that must be continually renewed, so that its validity derives not from an historical act “but from its acceptance by us, now” (PF, p. 3). He was right in his insistence, which the American Civil Liberties Union should begin to take seriously again, that some forms of speech, some subjects about which men speak, are intensely more valuable than others.

To deduce the freedom of speech, however, solely from the self-governing needs of citizens will never reach the situation of the really unfree; indeed, would shut them out unless they first achieved, somehow, citizenship in an electoral system. Meiklejohn’s idealized (consciously so) America was a huge town meeting, within which speech on public issues had to be unrestricted or else the “sense of the meeting” would be defective. But people who live beyond even the imagining of a politics of consent are the majority, and have always been, of the world’s residents. An overly idealized image of what our society is like—because that is what it ought to be like—should not be permitted to differentiate our needs of freedom from those of other and less secure persons.

Meiklejohn’s conviction that individual freedom is a chimera except as an attribute of citizenship in a free order led him to call for a world state: “There has come upon us all the necessity, as well as the opportunity, of creating a world-state, of making reasonableness prevail for all humanity. But that means that we cannot teach world reasonableness unless there is a reasonable world. We cannot teach citizenship in a world-state unless a world-state exists” (AM, pp. 168–70). The present democracies, such as Britain, France, and the United States, should lead in the creation of a new world order, and the primary means of firmly establishing it must be education under state direction. To that end, he proposed with some detail the establishment of an International Institute of Education; with the realism that was always the other side of his naivete, he would charge it not only with teaching the politically backward but also what we have come to call the “free world”: “The lessons of freedom and equality are not easy for nations accustomed to superiority and domination. It is upon them that an International Institute of Education must lavish its efforts. It is idle to plan for a free world and, at the same time, to plan that we shall be masters of it. A free world is a world of equals” (AM, p. 194).

He held education of such purpose to be the third leg of a world order, and the one most likely to be omitted, the others being political and economic. With impressive prescience, he saw the economic as the most likely to take on its international dimensions, and the question was whether it would be under public or private control: “a world economy in private hands means war—and war again. Only under a free world government is a free world economy possible” (AM, p. 188).
Meiklejohn had one other basic concern about American democracy, in addition to faithlessness to its own Constitution and laggard leadership toward a new world order. The third was perhaps even more fundamental, because corrupting and determinative of our entire society, politics, and law. It was capitalism. Root and branch, he rejected it because his rationalism could make no sense of it at all. "Our national mind is stuftified and beaten by its own scheme of economic arrangements. What, then, is the alternative? It is the establishment of an economic order... intelligible to the common mind" (AM, pp. 132–33; WD, p. 246). Capitalism he called "revolting as a form of human behavior" (AM, p. 130; WD, p. 242).

He gave some polite approval to a vaguely described socialism and registered his sympathies for and identification with oppressed economic classes; but he would not subscribe to class struggle theory, knowing that any dominant class would in turn "take for itself the spoils of victory, will cut down its enemies, will suppress them by brutal and violent action... will itself break up into hostile factions, each fighting for the mastery" (AM, p. 135; WD, p. 250).

Scattered throughout all he wrote are his observations, nearly despairing ones, of the effects of capitalism. It is unjust in its distributions, cruel in its imposition of poverty on the many, manipulative of minds and talents, immoral in the deceptions of salesmanship and advertising, corrupting of the educational institutions it supports, demeaning of politics and government—the list could be extended. Worst of all is its impact on minds.

I am afraid that the scheme may work, that it may produce wealth so richly and distribute it so widely that we shall be satisfied with it and keep it as our mode of life. My terror is that laissez-faire may meet the external test of happiness, of material success, and may at the same time lead us to such inner madness that the excellence of the spirit will be lost, that men, as human beings, will be destroyed (WD, p. 154).

The following comes from a 1918 speech:

Machines have increased the numbers of our population and, at the same time, the supply of material wealth. But again, the machines have claimed the people themselves as parts of the machinery. Again, machines have broken down the continuity and stability of towns and cities. And still again, the machine has cut the family into parts.

And through all this one other change has run in varying forms. While individual men have wandered and scattered, the net which holds them all has drawn more tightly in. The world is bound together in certain external, mechanical ways. We saw this in the recent war. That was no war of groups or tribes or even nations. It was the world at war, two huge, enormous forces fighting for mastery of our industrial power, with every ounce of strength the world and its machines could give being
used to turn the scale. It was a war so great that all men had and all they were seemed to depend upon the issue, so great that many of us lived in ghastly fear that human life as we now have it would smash and go to pieces. Machines brought on the struggle, and when it came they made it monstrous in its power (AM, pp. 123–24).

What is to be done? In *What Does America Mean?* he asked himself that, and gave two imprecise and conventional answers (more and better popular education and democratic economic planning) and one unorthodox one (the decommercializing of the media, possibly by bringing them under the governance of the universities). Ultimately, he had no program except education.

The race of man has before it the possibility of being civilized. And it is that possibility which defines the course of education. It follows from what has been said that all human beings should have the same essential education. Humanity has, I insist, one intelligence. That intelligence, it is true, is only “in the making.” Its making is a difficult and precarious venture. It may at any time collapse. And yet...there is a fellowship of civilizing intelligence into which every human being, so far as he is capable of it, must be initiated. Each of us must have loyalty to that company. As pupils, we must turn aside from the resort to violence. We must acquire skill in the appeal to reason. We must become citizens of the world (AM, pp. 164–65).

He spoke disparagingly of “those who, under the spell of the Declaration of Independence, think of freedom as a gift with which all men are endowed from birth. But to those of us who have spent our lives, as teachers, in the desperate attempt to find some way by which Americans, including ourselves, can become free, that belief seems meaningless and negligible. Freedom is not a gift. It is an achievement. It can be won only by hard work and good fortune—the good fortune including normally much help from others” (AM, p. 111).

Education is a function of the state; it is its primary function, and the state’s responsibility for it, Meiklejohn believed, should be exclusive. Like American liberals traditionally, Meiklejohn was a nationalizer. “Teacher and pupil are not isolated individuals. They are both agents of the state” (AM, p. 162). Private institutions are marginally useful, but dispensable; “education by the government is radically sound in principle. As our culture now stands, no other institution can equal the state as the representative of those purposes and beliefs which are the fruits of human reasonableness” (AM, p. 165).

Meiklejohn’s political writings ring with contemporaneity, which is not only a tribute to him but a mark of the stubborn endurance of our political ills. He offered to us, however, only a sense of direction into that enlargement of democ-
racy and public order he knew was necessary. His practical program consisted of little besides humanistic education and acknowledged supremacy of public over private matters.

Neither direction is much to the taste of many of us today, exasperated and disillusioned as we are with the institutions they both require. But if it may seem dated to put faith in the triad of the state, education, and world super-government, radicals and liberals today need to put their minds, as he did, to social reconstruction and not principally, as we do, to social criticism. "The human spirit," he told us, "when it is stirred to life, is not a weak and pitiful and helpless thing. It is efficient as well as magnificent" (AM, p. 135; WD, p. 251). Efficient, though slow and meandering and often requiring the fulsome stench of its own crisis to move at all. "We are beginning to be ashamed of ourselves. And it is in that sense of shame that we are, with new clearness, being brought face to face with our ideal purposes" (WD, p. 74). But slow is the progress of American shame.

Meiklejohn came into prominent leadership of the combat for civil liberties already by then in his sixties, over no lesser cause than resistance to the national government's claims of its right and power to establish ideological conformity. That is a world wide cause. Today it reaches toward its predestined rendezvous with its old rival, human civility. To survive that fated meeting we shall need not only the "creativity" of scientists and the devoted citizenship of republicans but the will of all life-loving people, wherever.

The December 1982 issue of the Bulletin of the Atomic Scientists spoke pessimistically of "the inexorable drive from truth to power." That has been a historic progress, from scientific truth to political power, and on our ability to redirect it depends the continued chances for self-government and political freedom. Whether we oblige ourselves to do so, as I conceive that we should, simply from our rights as free personalities or from the rights of Meiklejohn's free citizens is a worthwhile philosophical question. But as another dissenter once said, the necessity is not to interpret society more to our liking, but to change it. With that bit of Marxism Meiklejohn would have agreed.