Academic Freedom. By Russell Kirk. Chicago: Henry Regnery Co., 1955. Pp. 210. $3.75.

Mr. Kirk's book affords a tolerably good test of the general validity of his "New Conservatism." For the heart of that theory seems to lie in the cultivating of a rather special set of values accessible only to a few Bearers of the Word. In my opinion, the theory rates low on the test. I do not find in the book any clear statement of principle; his closest approach to consistency is in a sterile elitism in which the pursuit for Truth loses serious connection with social or human affairs generally. Mr. Kirk writes cleverly and with polemical effectiveness, but his principal asset is the weakness of his targets. If he is on the whole strong for "academic freedom," that is largely because he does not like its oppressors.

The book proposes to be Platonic, but in that esoteric manner which, stressing Plato's dislike for "debased Athenian democracy," ignores Plato's vision of a philosophic wisdom appropriate to govern society and Plato's conviction that all men have "good in them" and some ability to recognize the authority of good in others. But if Mr. Kirk embraces only a part of Plato, he makes that up by invoking other authorities: he asserts academic freedom to be a private natural right, founded in religion; and again a privilege based upon the funded wisdom of the great and good men of all times. This alliance of theology and history is hardly explained; as one reads along, it seems clear that Mr. Kirk's governing concern is negative—against "secularism," against "politics" ("the preoccupation," he quotes happily, "of the quarter-educated"), most of all against equalitarian democracy.

In his first chapter Mr. Kirk marks out a special domain for "The Academy" and assails those who believe that the freedom of teachers or scholars may be subsumed under constitutional protections in the United States. There is nothing, he says, "in the laws of our federal system, or of the several states" which guarantees the enduring right of a teacher to speak the truth as he sees it.[1] Though in extreme cases a teacher may appeal to the First Amendment or the Fourteenth, such an appeal is not, Mr. Kirk holds, specifically to "academic freedom." It follows, for him, that this freedom "exists in the realm of natural rights and social conventions sanctioned by prescription; and if theorists deny the reality of natural law, logically they must deny the reality of academic freedom."[2]

The argument is of some special interest to students of the law because of the discontinuity it claims between intellectual and other freedoms and because of the way in which it consigns legal judgments generally, including apparently the libertarian guarantees of the Constitution, to a limbo of "ephemeral" judgments of present society. Mr. Kirk seems to forget the distinction between constitutional and legislative provisions as well as judicial

[1] P. 5. [2] P. 5.

review. Though I agree with some of his strictures against "pragmatic liberals" for their concentration on the "mere present," I think he grossly caricatures the American public's efforts, through its courts, to maintain and apply enduring principles of freedom. But then, that public is for Mr. Kirk a "tapioca-pudding equalitarian" affair.[8]

For the justification of his appeal against this or any society, Mr. Kirk turns to Plato's *Apology* and to Socrates' defense in terms of "service to Truth and the God." But he ignores Socrates' insistence that his questions were of transcendent importance to Athens. Socrates, believing that "all men have good in them," appealed to that good in his fellow-Athenians. He insisted upon obedience, not indeed to each and every particular judgment of the Athenian public, but to basic "Laws"; thus he refused to break jail, as earlier he had refused to take part in the illegal arrest of dishonored generals. Socrates regarded Athens as an enterprise seeking the Good, and he defined his privileges and immunities with reference to that enterprise.

Mr. Kirk's appeal to "history" thus rests, in this case, upon an unsound interpretation of the text. More fundamentally, his proposed "historicism" is ultimately unintelligible. No doubt only a very small fraction of any population has received a complete general education in school. Does this prove we must not try to expand that fraction? Mr. Kirk seems to think so. He bids us leave the study of what education can now do and be, and instead adhere to what he thinks of Plato's Academy was like in a slave-based society or to the character of the medieval universities in feudal society. Why this is "historical" is hard to see. The enduring lesson of history is that teachers, like Socrates, are responsible to society—not as servants but as leaders—and that a society which hopes to be well led should keep its leaders free. If some societies make their teachers into servants, this does not mean that the only alternative is for teachers to sever all connections.

For Mr. Kirk this is apparently the only alternative, and the true Teacher or Scholar owes his basic allegiance to the development of private reason and imagination. But "private reason," like "cloister'd virtue," is unimportant and indeed self-contradictory. It is "crawling within dry bones to keep our metaphysics warm." Significant rationality is not this skeletal privacy but is the open pursuit of the universal human grounds for the shared pursuit of Truth. To be a man, as Mr. Kirk would have us be, is to break down, not to heighten, the walls that "separate us from our fellow men."

In his second chapter Mr. Kirk reviews adversely the intolerance of "the right" and, at greater length, the "educational levelling" from the "pragmatists" and "educationists." I have not the space to reply generally to his attack on "contemporary mass public education" except to say that Mr. Kirk does not argue but rather chants in tones to which his fellow Bearers of the Word

[8] P. 7.

might be expected to respond. He traces present academic problems basically to a loss of religious direction; no education can be free, he says, unless it has such direction.[4] On this point, two sorts of comment seem in order.

In the first place, as Mr. Kirk discusses concrete cases involving academic freedom, he offers no serious argument to show that the presence or absence of religious beliefs was decisive. He tells how divinity school faculty members at the University of the South proposed inviting negro students to attend the school, how the proposal was rejected by the university administration, how the faculty members then resigned. This was a "high example," says Mr. Kirk, "of what academic freedom ought to be,"[5] since everyone stood on principle, and that is what academic freedom is. What principle the non-invited negroes stood on, outside the gates of Suwanee, Mr. Kirk does not say. In a second episode, at the University of Nevada, Mr. Kirk links the rough tactics of President Stout with the "educationists," as he identifies Professor Richardson, whom Stout tried to oust, with his own "anti-educationist" views. While I agree with Mr. Kirk on this case's merits, I find no evidence that the offending "educationist" approach was to be explained as "anti-religious." Furthermore, even in Kirk's own account of the case, it was the legal machinery, in Nevada's Supreme Court, which actually restrained the regents from abrogating Richardson's tenure. Mr. Kirk does not try to link the court's action with any belief in natural law.

In the second place, Mr. Kirk's argument fails in general to meet a familiar objection to the invocation of religion. He insists that, without a firm religious belief in things beyond men and nature, we can't be tolerant. But it is no attack on religion to respond that its authority, if effective in human affairs, requires beliefs about what is in men—such as their rationality or dignity—as well as what may be "beyond" them. And what is "in" men turns out to provide all the basis for tolerance that we need. Such is the classic Enlightenment argument, and Mr. Kirk offers nothing to unsettle it.

In his third chapter Mr. Kirk turns his guns on Robert M. Hutchins, whom he "admires" but who is on occasion, thinks Mr. Kirk, guilty of "words without thoughts." I am willing to go along with some of Mr. Kirk's criticisms as they relate to Mr. Hutchins' more abstract declarations; but I think Mr. Kirk wholly off the track when he assails Mr. Hutchins for hoping to increase the number of young Americans who can have a general education. Instead of looking constructively to see how a wider general education for citizens can be combined with higher scholarly training in the later university, Mr. Kirk contents himself with jibes at the "swinish multitude." Mr. Hutchins' position is amply secure as champion of academic freedom and of the intellectual leadership of society by its colleges and universities.

Mr. Kirk takes up in particular the dismissal of Mr. William T. Couch from

[4] Pp. 30, 31, 42.

[5] P. 42.

the directorship of the University of Chicago Press, which Mr. Kirk regards as a serious violation of academic freedom. There are differing views on this case at Chicago, and I suppose that there was confusion and rigidity on both sides. But even on Mr. Kirk's account, the basic reason for the dismissal was an administrative disagreement, turning on a difference of opinion over the propriety of Chicago's publishing a book (Morton Grodzins' *Americans Betrayed*) on which basic research had been conducted at the University of California. One can regret that Chicago could not retain the great abilities of both Mr. Hutchins and Mr. Couch; but this need not mean that they disagreed over whether a "hot" subject should be discussed in a publication of the university's press. One can feel that the university was the poorer for the episode without coming to Mr. Kirk's snide conclusion that "Doubtless the members of the faculty at the University of Chicago were prudent in not protesting with undue vehemence against the dismissal of a colleague. . . ."[6]

Mr. Kirk goes on to survey at large the American scene, under the heading of "The Professor in Politics." He manages often to be shrewd and plausible, despite his fondness for the cutting phrase. He does seem to have been rather undermined by the suspension of proceedings against Owen Lattimore, for he assures us that "A man who can still believe in the integrity of Owen Lattimore would maintain the chastity of Messalina."[7] Here Mr. Kirk seems to be operating on that high plane of Truth which happily is undisturbed by ephemeral affairs in the uneducated world of politics.

Mr. Kirk embraces the familiar view that academic freedom should not extend to those "who would subvert freedom."[8] By "subverting freedom" he appears to mean "indoctrinating students" and "endeavoring to subvert the foundations of society." He thus aligns himself in part with Professor Sidney Hook, but he thinks that he goes beyond Mr. Hook in prescribing restraint, not only by the community of scholars, but also in terms of the consensus of opinion of the ages and the prevailing opinions of the age in which the community of qualified scholars exists; also in terms of loyalty to "the moral order"; also in terms of society's self-preservation. One is reminded of Mr. Chief Justice Stone's noting in the first flag-salute case that "the common good" always is cited when liberty is restrained; we may note also that apparently "ephemeral" opinion sometimes justifies restraint. But the root objection to Mr. Kirk's statement is that the phrase "who would subvert freedom" is hopelessly obscure. Why is "would" employed, instead of "does," as if we should punish for merely anticipated offenses (true, he who dreams the King is dead, may kill the King!)? What does "subvert" mean? It is the worst term in our present anxiety over Communists (and its abuse is shown as well as anywhere in the Landy case and others where family associations have been the basis for imputing disloyalty). There are of course criminal con-

[6] P. 99. [7] P. 135. [8] P. 114.

spiracies that should be punished; there are advocacies and proposals which are protected by the First Amendment. "Subversive" is currently the best accepted instrument to by-pass the First Amendment while seeming to retain it.

Of course indoctrinators or "unfree minds" should not teach in American schools or colleges. But their qualifications should be judged in terms of their personal teaching capabilities, and this means their pursuit of rational method in the teaching process. A far better defense of academic freedom is to be found in the dissenting views of Mr. Justice Black and Mr. Justice Douglas in the *Adler* case[9] than in Mr. Kirk's combination of high sentiment and "practical wisdom."

Mr. Kirk has, indeed, a "principle of order," that State and Academy should live in "separate houses." But having declared this, he proceeds to allow for a lot of visiting, at least in one direction. If "activities inimical to the security of the State"[10] develop within the Academy, or if the Academy is so decayed that society's welfare is threatened, then the State may intervene, actively or through investigations. Thus current congressional probes into education are not improper, for there is danger from communist espionage and "long-continued indoctrination" in American colleges. Professors should cooperate with congressional committees—though there is a limit to the candor the professor owes the public. Imposition of such loyalty oaths as the special regents' oath at California is regrettable—what is proper is a positive oath of loyalty to the Academy.

The same mixture of sense and of confusing qualification appears in Mr. Kirk's discussion of whether Communists should be permitted to teach in American colleges. He proposes to consider this under the head of "enemies of order—any persons who would violently tear up the roots of society. . . ."[11] He draws back from the "doctrinaire liberalism" that deplores dismissal of professors from the University of Washington. Yet he tends to agree with the American Association of University Professors that proven Communist Party membership need not automatically lead to dismissal. And while he seems to believe that in the main such cases should be handled by the universities themselves, he leaves the door open to intervention by political authority.

Mr. Kirk's concluding chapter is "The Dignity of the Academy," and it details a set of reforms to help stem the deterioration he sees everywhere in American education. He would assure full recognition of faculty self-governing bodies, the scholarly character of administrators, the "liberal learning and large views" of governing boards, a "respectable" place for alumni influence, the preservation of private institutions from financial ruin, higher salaries for professors. These proposals, though hardly novel, are scarcely objectionable, but they have little necessary connection with Mr. Kirk's special brand of

[9] Adler v. Board of Education, 342 U.S. 485 (1952).

[10] P. 142.

[11] P. 154.

"conservatism." From such institutional matters Mr. Kirk proceeds to subtler aims: we must assure a professor that he is not a servant but "a learned man invested with the dignity of a high profession"; we must invest our colleges and universities with a sense of purpose, not a social purpose but rather "the elevation of the reason of the human person for the human person's own sake —the proposition that the higher imagination is better than the sensate triumph—the proposition that the fear of God, not the mastery over man and nature, is the object of learning." And so on, including "honor outweighs success."

There is a sad lack of dignity in an Academy which stands resolutely upon the refined isolation of "Bearers of the Word." Of course we are fumbling along as a community in trying to remove education from the preserve of a small number of privileged people. Of course we have not seen clearly how to work out the problem Plato set—how to define the different stages of education—to define what all must have in distinction from that appropriate to the specially gifted. Of course our teaching of citizens must be rational and objective and passionate after Truth. But to find help in these matters we need less contemptuous scolding like that of Mr. Kirk and more seriously constructive thought. We need to know how guarantees of free thought as well as of sanctity of contract may help resist invasions of academic freedom. We need to know how government can help support education while leaving it free to conduct its proper function. The heart of academic freedom is not isolation from a "servile multitude." Rather, it is the ability to lead and develop the thinking power of a free people.

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The Law of Decedents' Estates, 2d ed. By Max Rheinstein. Indianapolis: The Bobbs-Merrill Company, 1955. Pp. xv, 875. $10.00.

Cases and Materials on Decedents' Estates and Trusts. By John Ritchie, Neill H. Alford, Jr., and Richard W. Effland. Brooklyn: The Foundation Press, 1955. Pp. xlvi, 1113. $10.00.

Modern probate law is tooled for the delicate handling of unusual situations. It is too complicated to be a satisfactory social instrument for the handling of the ordinary estate. The complexities of probate administration are primarily occasioned by the retention of old English requirements, the social justification of which has long since vanished. Nowhere in the United States today do the statutes contemplate a simple procedure for the administration of the estate of a man of moderate means. As a consequence the bond salesman through the scheme of survivorship in co-tenancies, the insurance