



JACOBUS TENBROEK
1911-1968

We dedicate this issue, with fondness and respect, to the memory of Jacobus tenBroek who has taught some of us, written for most of us, and gained the awe of us all.

BOARD OF EDITORS

California Law Review

VOL. 56

MAY 1968

No. 3

IN MEMORIAM

There are, in the course of academic life, so very few whom one may regard as master—in a traditionally scholastic sense. Especially is this true in an institution such as the University at Berkeley, where distance between professor and student is almost inevitable, and a close relationship of teacher and student is the product of art. Jacobus tenBroek was master—teacher if one would rather—to successive generations of students in just this way. His life touched so many of us who later went on to law school that there are “tenBroek alumni” in enough law schools and to such a number that he might well have claimed *ex officio* faculty rank in any of a dozen institutions.

When I came to the University ten years ago, he taught a class in “prelegal” Speech. Then, as (I believe) now, the Speech Department was really a liberal arts college in microcosm, and (largely by Professor tenBroek’s influence) most courses were taught by the Socratic method of inquiry. The “prelegal” class differed from other freshman courses partly in the nature of the material considered—questions of man and authority, of equal protection, of freedom of expression. More than that, however, it differed because of Professor tenBroek. Promptly at ten minutes after eight o’clock three mornings each week, he strode in, placed his cane in the chalk tray, took roll from Braille cards, and began with a challenge to one or more of us. Can you reconcile the seeming antinomy of Plato’s *Apology* and *Crito*? What did de Tocqueville mean in saying that a society which seeks equality will find liberty to be endangered? Out of the Supreme Court’s words justifying the World War II restrictions on the Japanese, what were the central assumptions which had to be made to reconcile such an interference with the constitutional guarantees of freedom of movement, freedom from arbitrary arrest, and equal protection of the laws? As students, we wrestled with these questions, and also with those posed by Milton’s *Aeropagitica* and Mill’s *On Liberty*, by the Smith Act cases, and by Alexander Meiklejohn’s theory of free speech. The rewards for our persistence were more questions, and unceasing pressure for deeper levels of insight. Are you sure of that reading? Haven’t you overlooked the language two pages farther on? And we students were persistent, although perhaps (in reflection) not nearly

so wise as we thought. Woven through the memory of our labor, however, is the voice and tone of Jacobus tenBroek, questioning, arguing, challenging, nettling.

In the years that followed, I came to know him better. He had founded and militantly led an organization of the blind in their struggle for equal access to places of public accommodation and for elemental dignity in the relation of the disabled to those institutions of the state designed to aid them. He was for years chairman of the State Board of Social Welfare, challenging arbitrary administration of public assistance. He had written, with Joseph Tussman, the leading analytical article on the meaning of equal protection of the laws. He had written on the origins of the Civil War Amendments—of their great and, to this day, unredeemed promise of freedom to black America. He published pioneer work on the system of welfare law, forcing it to confront its discreditable origin as Elizabethan contempt for the destitute and vagabond, and inveighing against its implacable tendency to ravage the privacy and dignity of those subject to it. And all the while, in the life of the University, he fought for viable principles of freedom and fairness to govern its dealings with faculty and students.

His writing and his struggle were as much a part of his teaching as what he did in the classroom, especially for those of us who knew him as master, compatriot, and friend. The whole of his personality, and the force of his conviction, is the measure of our loss, just as our commitment to the struggle for dignity and freedom, and to the use of our insight in that struggle, measures whether we are worthy of his memory.

** Michael E. Tigar*

* B.A. 1962, J.D. 1966, University of California, Berkeley. Member of the District of Columbia Bar.