



Review

Reviewed Work(s): HOW TO KEEP OUR LIBERTY by Raymond Moley

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Books for Lawyers

HOW TO KEEP OUR LIBERTY.
By Raymond Moley. New York:
Alfred A. Knopf. 1952. \$4.00. Pages
336.

The book is a continuation, one might say an amplification, of *After Seven Years* by Mr. Moley, released in 1939. This was shortly after his withdrawal from the inner circle of the New Deal. The brand name "New Deal" was designed by Moley, as was the famous "forgotten man" term. After the election of Franklin D. Roosevelt to the Presidency, Moley accompanied him to Washington and during the famous 100 days of history-making legislation acted as liaison between the President and Congress in the formulation and passage of much of this legislation.

The appraisal of a book involves a consideration of the author. The convincing power of an argument is bound up in the personality behind it. Mr. Moley is a commentator. He also has the advantages of a ripe experience as a college professor and, from the standpoint of the book he has created, certain disadvantages too. From his training as a teacher and experience as a news commentator, neither objectivity nor practicality would be expected to come easy.

The book is an important contribution toward a better understanding of the confusion of the times. Not because it reveals any new discoveries or settles a major argument for anyone. But the approach is orderly and at times the perception and analysis keen with insight. The dragon of the piece is "statism". "The concentration of all economic controls and planning in the hands of a highly centralized state government." The treatment is broken down into five major departments of discussion.

In Part One the professor takes over. The mode and manner is dogmatic and savors of the classroom. The basic principles of constitutional government are stated with clarity and force. But he considers that the safeguards which have been erected for their preservation are today "confronted with formidable and dangerous threats".

In Part Two the author begins to develop his ground for concern that "statism" is in the act of destroying our democracy. His prescription for determining our future course is largely the attainment of *economic* liberty.

Part Three is a lucid analysis of processes which his examination finds at work. The great and dominant group in America consists of those having middle interests. These are they for whom the expression "the forgotten man" was originally coined. He deplores appeals to class groups at points where their interests are competitive. These appeals are divisive, whereas appeals to the middle groups tend to unite them. He finds that a very marked progressive change-over is occurring among wage earners as to their political sympathies and outlook because of the economic progress they are making. They cannot be counted on to vote as a labor group without regard for other considerations. The intelligence of the well paid and stock-holding employee will no longer accept the old chestnuts about bloated executives and starving workers. His tables illustrate and prove the statements which he makes about the "vanishing rich". We have travelled about two-thirds of the way to absolute income equality since 1929. The income interests of those previously classified as rich have sunk to the

middle, while those of the workers have risen to that level. Meanwhile gifts and contributions to various cultural and scientific institutions have fallen away or dried up.

The author does not comment upon the desirability of these fundamental changes, but the assumption is that he regards them as a part of the growth of "statism" and so is opposed to them. In so far as these effects are the results of the taxing policies of the Government, his disapproval is not left in doubt. Taxation should be prompted by the needs for revenue and not utilized for social control. He complains that the Supreme Court appears to consider the rights of "life, liberty and property" in descending importance. "The Declaration of Human Rights by the United Nations goes a step further", he believes. There follows a comprehensive arraignment of our current economic, political and governmental policies.

Civil rights should be approached as a regional, rather than a federal, problem. The TVA, Columbia and Missouri Valley proposals are perversions of President Hoover's sound idea which produced the Boulder Dam. In order to effect a restoration of balance between the tax policies and practices of the Federal Government and the states, there should be a fresh start in allocation of the sources of taxation. The principle of "government medicine" is condemned and a good argument advanced for voluntary health insurance and other privately organized plans. Social security and government-aid plans of the various sorts now in operation are shown to be wasteful and unequal. In no circumstances should any one receive a pension except on the basis of need. The weaknesses in industrial pensions now exacted under collective bargaining are a despair. "Experience alone must be the savior there." The accumulation of powers and functions in the Federal Government is deplored and activities which, in the aggregate, now cost the Federal Government about ten billion dollars per year should somehow be

relinquished to the jurisdiction and purview of the states. "Out of bondage, and off the dole" is a striking and appealing phrase by which this policy is presented. Regulation of business without regimentation comes in for its share of approval, as does more justice in the management of industrial relations. Finally he wants a balanced federal budget and a sales tax.

There can be no doubt that some of these objections to present practices and policies are valid. Most of them are being condemned from one end of the land to the other in bursts of patriotic ebullience by other men and women who are willing to make the sacrifices involved in taking over the offices and assuming the task of redemption of the country. But there is this difference: Mr. Moley offers thoughtful, if at times slightly impracticable, programs for change and improvement.

In Part Four he finds that the two-party system, which he approves, does not in fact exist. In the first place, the South does not enjoy a two-party plan of elections and never has done so. The northern Democratic leaders have seized power by various devices, chiefly through arranging benefits to widely different groups so as to weld them together into a federal machine which bears only superficial resemblance to a political party in the accepted sense. "In five short years", he exclaims, "this man (Truman) has managed and directed the most potent federal political machine in our history." There follows a program for individual and group action which, if attainable, would undoubtedly go far toward achieving those changes and improvements which the author so earnestly advocates. Here the professor rides again. He allocates tasks to citizen groups, advertising men, businessmen, doctors, lawyers, women, teachers, farm leaders and wage earners which are chiefly paper plans and (men and women being as they are) may not be possible of achievement.

Finally, in Part Five, the author gathers up the dangling ends and

ties the knot of his logic. The contrasts of the Marxian Iron Curtain country system and of British socialism with liberty as we know it, are sharply drawn. The economic system of America has come to mean that Americans are nine times better off than the average of the world's population. "The distribution of these and other indices of living standards are on an incomparably wider basis than elsewhere." Despite these facts the book seems to be saying that we are lost unless we stop the present trends and change back to the ways of other days. Statism, as Mr. Moley understands and fears it, involves progress of those forms of authority which tend to become paramount over the individual. His own passage from the New Deal philosophy of the 1930's to the present position appears to be complete.

The positions seem to be inconsistent with each other, but this may be so only in a superficial sense. In another aspect the attitude of Mr. Moley is consistent. At both times he has been in opposition. In the year 1932 his opposition was wholehearted, determined, brilliant. The position in 1952 is still opposed—to quite different things to be sure—but the opposition is no less confident, engaging, instructive.

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THE COURT AND THE CONSTITUTION. By Owen J. Roberts. Cambridge, Massachusetts: Harvard University Press. 1951. \$2.00. Pages 102.

Adequately to review this book would take more than the 102 pages of the book itself. Intelligently to discuss it would take more knowledge than any reviewer, not himself a Justice of the Court or an expert on constitutional law, could acquire without a careful study of the more than 300 Supreme Court decisions, which are cited by Mr. Justice Roberts.

In these three lectures delivered at Harvard Law School on the foundation bequeathed by Justice Oliver

Wendell Holmes, the scholarly jurist discusses the growth of federal power in three categories—taxation, police power and the Fourteenth Amendment, where federal and state jurisdictions overlap.

The book satisfies the first tenet of literary criticism. His effort is well worthwhile. As to the second tenet—how does he go about it? It is obvious that he must have carefully studied every Supreme Court case on these three topics. One gets the definite impression that he did not depend on headnotes or abstracts prepared by assistants, but read and annotated every case himself.

He premises that the framers of the Constitution consciously created:

A dual form of government which had no parallel in political history; and that:

They proposed to establish a National Government separate from and superior to the constituent states in the matters committed to it, but they meant that in all matters not committed, the states were to retain the attributes of sovereignty.

In distributing the fundamental power of taxation the Constitution limited the power of the state to get revenue by taxation in only two respects (customs and tonnage dues); and gave the Congress the almost unlimited power to tax. The Congress was prohibited only from levying export taxes, must make taxes uniform throughout the country and must proportion direct taxes by population. That was all. Thus almost the entire field of taxation was left open to both governments; the burden necessarily to fall ultimately on the same persons, corporations, property, privileges and activities.

With these premises to start with and visualizing state and national governments each as a sovereign, the Court has eventually arrived at these conclusions: neither sovereign can tax the property or the obligations of the other, or the interest payments that the other pays; economic burden is probably not banned as the test of the invalidity of a tax by one sovereignty on a governmental agency of the other, although the directness of tax is sometimes the practical test; private interests deal-