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Review of How To Keep Our Liberty by Raymond Moley

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claims of his creditors would be thereby defeated, since the heir's wishes are subservient to his obligations.

In line with the minority view is the argument that the judgment creditor has an uncertain and unsubstantial claim which can be defeated in many ways. The devise can be renounced, as above shown, or it may be assigned to a third person who would take prior to the judgment creditor. Cf. *Lee v. Lee*, 207 Iowa 882, 223 N.W. 888, 890 (1929). The contention of both the dissenting and the concurring judges, that the creditors lien could be wiped out by a sale of the property during probate, is weakened by the rule which transfers the lien from the property to the debtor's interest in the proceeds of the sale. In *re Harris' Estate*, 28 Del. Ch. 590, 44 A. (2d) 18, 19-20 (Orphans Ct. 1945). A successful contest must result if the claim is to be satisfied, and the minority regards this tenuous interest too uncertain to harass the courts and heirs. The fact that any creditor can achieve the preferred position of a lien creditor highlights the basic fear of the minority — increasing the number of will contests. In *re Shepard's Estate*, *supra*.

In the last analysis, the controversy is between the policy favoring the enforcement of valid claims, and the policy of protecting probate administration from undue harassment. While it is true that the manner of paying a debt is optional with the debtor, and the obligation of taking voluntary steps to put himself in a position to pay is a strictly moral one which the law does not recognize, it is submitted that natural justice does not permit a debtor to avoid his debts and injure his creditors. If he will not contest the will, the judgment creditor should be given this right, especially in view of the conclusiveness of probate. Without this right, he might be forever prevented from satisfying his claim. In such cases, the law should not allow considerations of time and convenience to deter it from the objective — justice.

Carl F. Eiberger

BOOK REVIEWS

HOW TO KEEP OUR LIBERTY: A Program for Political Action. By Raymond Moley.¹ New York: Alfred A. Knopf, Inc., 1952. Pp. xxvii, 339. \$4.00. — In this interesting and valuable book, Mr. Moley proposes to do something about the disturbed state of our political weather. Pertinently he says:² "Merely to bewail a trend is not to correct it." The American wants to know what to do about it (*viz.*, the preservation of his liberty). The threat to liberty is "Statism,"

¹ Contributing Editor, Newsweek Magazine; Professor of Public Law, Columbia University.

² Text at vii.

which the author interprets to be "the intervention by government in economic, social and personal life." Statism is thus frankly and logically made the villain of Mr. Moley's piece. Liberty will be safe, according to the author, when the force of this unlawful and destructive intervention by government is hurled back and permanently disarmed.

Implicit in this thesis is what Woodrow Wilson said in 1912: "The history of liberty is a history of limitations of governmental power." Thus interpreted, liberty can endure only when and where governmental power is strictly limited. Liberty shrinks with the growth of government and it disappears altogether when the power of government becomes absolute. Those who will object that this conception of liberty is narrow and negative (and believe me, I know that there are many in this category) simply must be asked to take or leave the broad affirmations of the Declaration of Independence upon which this vicarious reciprocation between liberty and government is based.

Early in his book Mr. Moley footnotes Edward F. Barrett's comment in the Natural Law Institute Proceedings at the University of Notre Dame.³ "From that [Natural] Law" writes Mr. Barrett, "resulted certain basic human rights. These rights the State was morally competent to implement and protect but not to impair or destroy." This, which is a substantial paraphrase of the "self-evident truths" of the Declaration of Independence, puts government in its orthodox American place. Like fire, government is a helpful servant but one which constantly threatens to become a dangerous and destructive master. Like fire, government has to be watched and firmly contained behind the iron walls of Constitutional limitations.

Spelling out the role of such a government in the field of economics Mr. Moley says: ⁴

When individual and co-operative efforts fail and government assumes regulatory power, its function should be the making of rules generally prohibiting, not compelling. It is valid for government to tell a man not to do something against another man; it is not only impracticable but a denial of liberty to tell him exactly what he should do for another. The lurking danger in all governmental regulation is like that in press censorship. The censor will never be content to tell people what *not* to print. He ultimately will tell them what to print.

Against this, the libertarian theory of proper governmental action, the author postulates the "initial assumptions" of Statism, *viz.*,⁵

- (1) The basic purpose of the state is to supply the individual with more of the material means of life.
- (2) That political power is attained by the promise of those benefits.
- (3) That political power is further assured by creating envy and hatred among social groups — in short, class feeling.

³ *Id.* at 6.

⁴ *Id.* at 30.

⁵ *Id.* at 172.

- (4) Since the National Government is to be the source of benefits the loyalty of the individual must be to that source rather than to his immediate neighbors and local institutions.

These "initial assumptions" of Statism are now popular American assumptions. The turnabout from the libertarian fear of government to the modern worship of the State as a source of welfare, in Mr. Moley's view, was accomplished by a calculated mixture of practical politics with the "new look" in education, and socialistic economics. After World War I cynical materialistic pragmatism surged out of higher education and infested the grade schools right down to the kindergarten. Mr. Moley does not say so but the moral is pretty obvious; naturally worshipful mankind was turned away from the "impractical" worship of God to the worship of the Welfare State. Henceforth he could make his own handy and convenient devils out of the "Economic Royalists," "Wall Street" and the "Special Interests."

The author shows how our government of laws was turned into an "administration" of benefits, pains and penalties by hordes of "beneficent pro-consuls" sent out from Washington. From his carefully documented record it is clear that this revolution to Statism cannot be reversed by mere wishful thinking. To succeed the libertarians must be just as hard and realistic as the welfare politicians. Contrary to the myopia of popular impression, the record is the best of all briefs against the Statists. In the course of its political strangulation of private business the Federal Government is now violating its own unfathomable Anti-Trust Laws while its "proliferation of miscellaneous and hidden subsidies" launches endless means for the new "privileged groups" to live off the earnings of others.

If the reader desires more than the ample documentation of facts furnished by Mr. Moley let him turn to three other recent books on the same general subject. "Ten Thousand Commandments," by Harold Fleming, (Prentice-Hall); "Toil, Taxes and Trouble," by Vivien Kellems, (E. P. Dutton); "Man to Man," by Bernard Ward, (Caxton Press).

In conclusion, Mr. Moley warns us that "the vote is the pay-off." Liberty cannot be saved by a mere scoring of debaters points. The voters must first be convinced and then induced to kill Statism at the polls. "How To Keep Our Liberty" analyzes the electorate from many interesting and novel points of view and proposes a definite plan of action. The millions who have ruefully asked themselves "what can I do about it" and then proceeded to do nothing at all, should read Mr. Moley's book from beginning to end.

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