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THE NEW FEDERALISM; An Inquiry into the Means by Which Social Power May be so Distributed Between State and People as to Insure Prosperity and Progress. By Samuel Seabury. New York: E. P. Dutton and Company, Inc., 1950.

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invaluable to lawyers, legislators, and laymen. Some may be compelled not to agree with all of the general objectives or the specific proposals of the Simons plan, but all should admire Simons' sensitive skill in having concerned himself with fundamentals and having presented his theories concisely in a context of policy discussion. Law teachers may with good conscience prescribe this book for their students, for law case study should proceed from an understanding of policy problems.

May Simons' incisive studies help us (who, I trust, will follow through with action-out-of-discussion, which is the essence of our democratic political process) to reverse the devastating tendencies in governmental tax policy of which he was a constructive critic.

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THE NEW FEDERALISM; An Inquiry into the Means by Which Social Power May be so Distributed Between State and People as to Insure Prosperity and Progress. By Samuel Seabury. New York: E. P. Dutton and Company, Inc., 1950. Pp. 311. \$5.00.

OF making books about the dangers inherent in Centralism, in "big government," there is, or seems to be, no end. Beginning with the much-controverted exposition by Hayek and reaching its ridiculous zenith in John T. Flynn's effort to equate New Dealism, Fair Dealism, the "welfare state," democratic socialism, and authoritarian Communism, the threat to freedom from expanding governmental functions has been trumpeted to the world, with an able assist from many newspaper editorialists and columnists and radio commentators.

Judge Seabury's book is not to be classed with those of the aforementioned writers. His writing is certainly not characterized by the irresponsible shibboleths and generalizations which Flynn uses in his tirade. Nor is it based on the type of economic analysis which Hayek employs. It is more in the nature of a theoretical and juridical presentation, based on his interpretations of the concepts of law, sovereignty and federalism. It is described in the publisher's blurb as "Judge Seabury's political testament . . . — a permanent contribution to the thinking of our time."

It is difficult to judge just when this "political testament" took shape in the mind of the author. Although there is very little of an explicit nature to indicate that Judge Seabury is attacking the New Deal and Fair Deal in this country, there is certainly ample implicit evidence that the book is primarily designed to discredit these trends. Yet the bibliographical materials cited in the footnotes and listing of principal works considered

antedate, for the most part, the advent of the New Deal. Only eighteen titles listed bear a publication date as late as 1933, the latest being 1942. There are some eighty titles bearing earlier publication dates, with the bulk of them being works published in the first quarter of the twentieth century. It would appear to this reviewer that this situation can be explained on the basis of one or both of the following factors: (1) Judge Seabury virtually discontinued reading after the 1920's; (2) the writings of nineteenth and early twentieth century authors provided a more satisfactory medium for authenticating the subjective conclusions reached. One obvious result of such selection is that the current views of certain scholars are inaccurately depicted. For example, in his discussion of "Illusions as to the Sanctity of Majority Rule" (Book II, Chapter I) Judge Seabury takes Professor R. M. MacIver to task for his alleged blind adherence to the absolute validity of majority rule, basing his attack on excerpts from *Community, A Sociological Study*, published in 1917. Professor MacIver has authored many subsequent books and articles, any of which might have shed significant additional light on the subject.

The publishers describe Judge Seabury's work as "a closely reasoned analysis of the dangers of our present national tendencies toward centralization and statism." (Note the utilization of the term "statism," which has been successfully established, by frequent usage in editorial columns of certain publications, as something extremely approbrious and dangerous). The author himself has stated the solution to the problem of "centralization" and "statism," in his preface (p. 6) and throughout the treatise, by asserting that "the political state should be limited to the discharge of its political functions which affect the general and universal interests of individuals as individuals." Derivative from this concept, asserts Judge Seabury, is the principle that "industrial government should be self-government, and should find its expression outside of the state through voluntary agencies of labor, capitalists and consumers operating under a New Federalism within which representation should be accorded upon a functional basis." (*Ibid.* and p. 189).

This pluralist conception of society, as Seabury recognizes, is an old and sometimes honorable doctrine. In fact, the writer cites excerpts and summaries from the writings of probably the two leading twentieth century expositors of pluralism, G. D. H. Cole and Harold Laski (Note, particularly, Book II, Chapters II and III). However, he is careful not to follow the doctrines of these two men too far, lest they lead to acceptance of some ideas of some form of socialism. Mr. Cole is immediately identified with Guild Socialism. For many years prior to his recent death Mr. Laski was generally recognized as the intellectual leader of the less conservative element of the democratic socialist British Labour Party. Their advocacy of "the wide dispersion of authority" as quoted by Judge Seabury (p. 195) from Laski's *A Grammar of Politics*, (p. 139) certainly cannot be inter-

preted as intended to "preclude its (the political state's) interference with industry," which Judge Seabury says must be done (p. 195).

In the process of developing his thesis, Judge Seabury analyzes the traditional conceptions of the state, sovereignty and law. He attacks the claim of some that sovereignty resides in the state. Instead, he says, sovereignty is the source from which laws and states spring; the state and laws are merely expressions of sovereignty (p. 38). Sovereignty itself "is nothing more or less than social authority employed to define the rules of conduct which men in every stage of their social development recognize in some form as having authority over them." (*Ibid.*) "It is the product of the people, not necessarily of the state . . . a relation existing between the members of a commonwealth which includes the state." (p. 40). "The state is a social body whose authority is limited to the sphere of action assigned to it by the sovereign power of the commonwealth which creates it and defines its sphere of action." (p. 69). "In a primary sense sovereignty is the only direct source of law; . . ." (p. 96). "Laws have existed before states, and have frequently sprung from sources other than states." (p. 106).

Few present-day students of the science of politics and government would question the need for careful and continuous re-examination of the classical concepts of sovereignty, law, rights and even the state itself. There are some who maintain that the whole doctrine of sovereignty should be discarded. Certainly most persons who look at the matter objectively recognize that the tenacious clinging to the claim of national sovereignty is a major deterrent to the achievement of any effective international or world organization or understanding. Yet not nearly all students of the subject would agree with the use to which Judge Seabury has put his analysis of these doctrines.

The conclusion reached from the analysis of these concepts is stated by the author in these words: "The new federalism contemplates a division or apportionment of the sovereign power partly upon a territorial basis and partly, and especially insofar as it is operative within the industrial or economic sphere, upon a functional basis." (p. 139). Functional representation, he then concludes, is not suited to be incorporated into the structure of the state (p. 204 f.). Therefore, the powers which have been usurped by the state must be withdrawn from it, and the state, as merely one of the corporate bodies in society, must be limited to action only in the political sphere. The affirmative functions of the state, then consist of: "(1) the police functions; (2) the functions requisite for the preservation of equality of opportunity . . . ; and (3) functions which the state must perform until other agencies better adapted than the state to perform them come into existence, in order to do those acts which are necessary to promote the health, education and social convenience of the commonwealth." (p. 208).

Following this statement of the classical doctrine of individualism, with its twentieth century modifications to fit the needs of large-scale capitalistic

"private enterprise," Judge Seabury points to the dangerous concomitant of the extension of the powers of the state in remedial labor and social relations. "The addition of these powers to the state's sphere of action has also been accompanied by a host of new evils, not the least of which has been the abuse of the powers conferred, the vast horde of public servants that have been added to the public pay roll, the increased burdens upon the taxpayers and the corruptions incident to these administrative activities." (p. 214). Like others of his contemporaries in this school of thought, he apparently concludes that there has been no abuse of powers, increased burdens upon the taxpayers (consuming public), or corruption in the large-scale monopolistic control by "private" industry. In fact, he implies that, if the political state will withdraw into its shell of minimum "political functions," giving other functioning bodies a free hand, the problem will be solved. "If the state will cease to make impossible cooperative efforts within industry, such cooperative efforts will express themselves. They cannot be expected to express themselves when the whole sphere of action in relation to them is preempted by the state. Wherever the state leaves any given field of action free from its regulatory powers, those who are active within such field now prescribe their own rules and regulations." (p. 218). Thereupon, the trend toward socialism, with its accompanying bureaucracy and inefficiency, will be effectively estopped.

If this tendency toward socialism shall continue, industrial and political evils will multiply. The effect of such a development will be to place in the control of the state or its bureaucrats the multiple agencies which are now operating voluntarily through a very complicated social life. Rules of industry which are now flexible and capable of being easily adapted to industrial conditions will become fixed and rigid. . . . Furthermore, the existing system must result in increasing the army of unproductive departmental officials, whose support is derived not from the wealth which they produce, but from the exactions which they are able to make upon the industries upon which they are a burden, or upon the general taxpayer. (p. 218 f.).

To those who wish to have their position of anti-"statism" bolstered, this book is a valuable, if not permanent contribution. It is a mid-twentieth century restatement, with appropriate adaptations to fit current conceptions of "individual initiative," of nineteenth century classical individualism. To the ardent advocate of the "welfare state" it will provide some insight into the line of argument employed by those who are using doctrines of human freedom to justify opposition to cooperative planning for meeting the needs for *all* men. To the scholar it will merely provide an interesting example of one type of rather shrewdly presented polemical writing.

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