

## We Hold These Truths (2nd Ed.)(Book Review)

Stowell Rounds

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

One chapter in the book is devoted to some of the procedural sections of the Code—assessment and collection of deficiencies, interest and penalties and overpayments.

There is, too, a chapter on personal holding companies, which apparently the authors think should be discussed in a book of this kind as being of general application.

There is no doubt that the authors give the reader a general familiarity with the tax law. They point out all the problems that are presently engaging the attention of tax practitioners and the courts. Twenty-three years ago this reviewer was given the task of instructing a group of students interested in income taxation. There were no "tax courses" available at that time, so this reviewer wrote something he called *A Guide to the Revenue Act of 1926*, for use in his classes. It perhaps served the purpose for which it was written. However, the book this reviewer would have wanted to write is this one, so well and ably done by Joyce Stanley and Richard Kilcullen.

The practitioner who shies away from this book because it may seem elementary, in that it is "only" a guide and discusses only matters of general interest, is missing something.

BENJAMIN HARROW.\*

---

WE HOLD THESE TRUTHS. Second Edition by Stuart Gerry Brown. New York: Harper & Brothers, 1948. Pp. xi, 396, index. \$2.75.

In these days of seminars on semantics, it is interesting to find an attempt to bring together the basic documents for the study of the meaning and implication of a word. As Mr. Stuart Gerry Brown points out in his thoughtful introduction to this casebook on the American idea of democracy, it is too easy to use a word for its effect on the hearer, instead of as a means of communication, or definition of ideas.

Semanticists would call democracy a rather high order abstraction; if they are right, the dictionary definitions will be of little help towards understanding the meaning of the word. The express purpose of this little book is to collect the materials for a more extended study of the American idea of "democracy," beginning, in fact, with the Mayflower Declaration. We are given the documents setting up the government machinery designed to ensure democracy and its continuance (or prevent its undue extension), including not only the Constitution,<sup>1</sup> but the Articles of Confederation,<sup>2</sup> the Massachusetts Bill of Rights,<sup>3</sup>

---

\* Professor of Law, St. John's University School of Law.

<sup>1</sup> P. 76.

<sup>2</sup> P. 58.

<sup>3</sup> P. 52.

and the Hartford Constitution.<sup>4</sup> We find also the debates that preceded this country's first great internecine struggle,<sup>5</sup> and are refreshingly reminded that our grandfathers rationalized, or translated, this latter conflict (which we are nowadays told was essentially economic) into a battle of ways of defining democracy.

It is curious that we often find much less verbiage and discussion of "general principles" in contemporary political documents than in the eighteenth and nineteenth century pronouncements. Thus President Truman in his proclamation granting independence to the Philippines uses scarcely more words than are necessary to effect his purpose.<sup>6</sup>

The author gives gratifying recognition to the dual role of the United States Supreme Court: at once the guardian (if partly self-constituted) of the constitutional safeguards of democratic institutions, and the most articulate and authoritative expounder of the basic ideals and concepts behind them. But it is to be wished that the selection of judicial opinions had been wider. If the debates between Webster and Calhoun over states' rights are worthy of extensive treatment (though "lots of Webster" and some even here, is "fustian")<sup>7</sup> why omit the more contemporary, and hardly less heated argument over administrative law, over the impact of government on the individual? Both Hughes' prevailing and Cardozo's dissenting opinion in the "Hot Oil" case<sup>8</sup> are certainly relevant. If the Supreme Court majority later became more friendly to "new deal" legislation, it should never be forgotten that basic safeguards were written into such laws in deference to these and later opinions.<sup>9</sup>

A criticism of the book, in fact, is that while up to the 1880's the documents appear to reflect contrasting points of view, the later quotations tend to represent only the prevailing opinion. It can be argued that while democracy means, in the first analysis, majority rule, there is a necessary implication that the minority must be heard, and at least respected; for if the minority ideas should, by the passage of time or change of conditions or otherwise, come to represent majority opinion, they must be given a chance to prevail, or democracy has ceased to be—has, in effect, committed suicide. Our institutions cannot be interpreted in such a way as to admit the seeds of their own destruction.

But if the idea or abstraction "democracy" is bound to supporting governmental institutions, and to ideas of a balance between state, economic, in-

<sup>4</sup> P. 11.

<sup>5</sup> See famous speech on the slavery question made in 1850 by John C. Calhoun, p. 164; Daniel Webster (*Seventh of March* speech, 1850), p. 183; Abraham Lincoln (*House Divided* speech, 1858), p. 232.

<sup>6</sup> Proclamation of Philippine Independence, July 4, 1946, p. 382.

<sup>7</sup> Judge Learned Hand, quoted in *The New Yorker*, June 10, 1944, p. 18.

<sup>8</sup> *Panama Refining Co. v. Ryan*, 293 U. S. 388, 79 L. ed. 446 (1935); *cf. Mr. Chief Justice Hughes' opinions in Morgan v. United States*, 298 U. S. 468, 80 L. ed. 1288 (1936), and *Morgan v. United States*, 304 U. S. 1, 82 L. ed. 1129 (1938); the question of the judicial temperament might also be considered, as in Clark's concurring and dissenting opinion in *N.L.R.B. v. Baldwin Locomotive Works*, 128 F. 2d 39, 51 (C. C. A. 3d 1942).

<sup>9</sup> *Cf. the court review provisions of the Emergency Price Control Act of 1942*, 56 STAT. 31 (1942), 50 U. S. C. App. § 924 (1946); and the *Administrative Procedure Act*, 60 STAT. 241, 5 U. S. C. § 1006 (1946).

dividual and geographical rights on one hand, and popular majorities on the other, it is less clearly bound up with ideas of independence and liberty;<sup>10</sup> these may be more or less unrelated abstractions. Freedom from British rule may have been an essential condition to the inception of the American democratic idea; but arguably Thomas Paine's "fight talk" to the Continental armies (included in this book)<sup>11</sup> could have served equally well to encourage the troops of a would-be South American dictator. The words used in our Constitution may have influenced the idiom of the Latin American constitutions, yet few of these latter, during the nineteenth century, made much contribution to our ideas; and the Monroe Doctrine,<sup>12</sup> burdened as it is with implications of hemispheric defense and the balance of power, is only secondarily a declaration of a democratic ideal. Possibly Mr. Brown wished to suggest, by including President Monroe's statement of the Doctrine, that democracy, in American thinking, has never been dynamic in its relations with other nations. Aside from a few ideologically dubious episodes such as the Mexican and Spanish American Wars, this non-aggressive attitude is apparently so deeply ingrained in American thinking that it may not be separable from the abstraction "democracy." Furthermore, a rival abstraction is being built up by the Cominform which, judging by its actions, believes in imposing its institutions on non-communist countries. It is helpful to have in one volume the documentation at least of one of these two ideas of democracy.

Interesting sidelights are Carl Schurz's moving statement of the meaning of America to an immigrant filled with the idealism of 1848,<sup>13</sup> and Turner's study<sup>14</sup> of the interaction (or "feed back")<sup>15</sup> of the frontier on our institutions. Some of the selections from Franklin D. Roosevelt's papers seem to be chosen more for intrinsic historical importance<sup>16</sup> than as expressions of the late President's philosophy of democracy.

The book contains a number of documents not easily available to the general reader and is a timely source book for anyone interested in trends in American and world government.

There is an elaborate index.

STOWELL ROUNDS.\*

---

<sup>10</sup> "Liberty" seems to be a word representing not one but several different abstractions. An idea of an individual liberty, in varying amounts, seems to form part of the complex of ideas that makes up American democracy. Cf. *To Secure These Rights*, p. 391, and *The Four Freedoms*, p. 362, and Judge Learned Hand's speech made at I Am an American Day ceremonies, New York City, 1944, quoted in *The New Yorker*, June 10, 1944, p. 18.

<sup>11</sup> *The Crisis*, 1776, p. 44; much of the quotation from *Common Sense*, pp. 26-33, seems irrelevant.

<sup>12</sup> P. 147.

<sup>13</sup> Famous address entitled *True Americanism* made in 1859, p. 236.

<sup>14</sup> See excerpt from essay by Turner, *The Frontier in American History*, p. 270.

<sup>15</sup> See WIENER, *CYBERNETICS* (1948).

<sup>16</sup> Cf. the War Message of December 8, 1941, p. 373.

\* Member of the New York bar.