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BOOK REVIEW

Preserving the Constitution: The Autobiography of Senator Sam Ervin

BY SAM J. ERVIN, JR.

Charlottesville, Virginia: The Michie Company, 1984. Pp. xiv, 436. \$19.95.

REVIEWED BY ALBERT COATES

Preserving The Constitution is the title of a recently published 420-page book, subtitled *The Autobiography of Sam Ervin*. It is fitting that the title and the subtitle are in the same size type, for each is about the other and there is no need to tell which is which. This Review follows that pattern.

The theme of the book appears in its Prologue, titled Apologies and Acknowledgments.¹ If I picked one paragraph as the background of Sam Ervin's discussions, it would be this:

As the sole possessor of the nation's power of the purse, Congress must end the federal fiscal follies, which have saddled the American people with a national debt exceeding a trillion dollars and given them an inflationary spiral that robs the past of the value of its savings, the present of its financial strength, and the future of its economic hopes and unearned income. To do this Congress must end its own deficit-financing and the "back-door spending" by federal departments and agencies, compel the federal government to confine its expenditures to those which can be defrayed by reasonable taxes currently collected, and stop scattering the patrimony of our people throughout the earth in the vain hope that by so doing it can buy friends, purchase peace, and persuade other nations to change their ways to ours.²

The first six chapters in the book take up seventy pages and cover his youth and education;³ his experience as a soldier in World War I⁴ and in law and politics thereafter;⁵ his work as a Superior Court Judge and a Justice on the Supreme Court of North Carolina;⁶ his election to the United States Senate and

1. S. ERVIN, JR., PRESERVING THE CONSTITUTION: THE AUTOBIOGRAPHY OF SENATOR SAM ERVIN ix (1984).

2. *Id.* at xi.

3. *Id.* at 1-19.

4. *Id.* at 21-27.

5. *Id.* at 29-44.

6. *Id.* at 45-62.

his taking of the oath of office on June 11, 1954, at the age of fifty-eight.⁷ The final eighty-seven pages review the ten years of his life immediately prior to the writing of this autobiography,⁸ as well as appraisals by others of his principal activities from World War I to the end of his Senate career.⁹

The intervening pages cover his discussions of the highlights of his Senate career, including his battles over civil rights,¹⁰ the Constitution and religion,¹¹ prayer in the public schools,¹² the first amendment,¹³ the equal rights amendment,¹⁴ the fourth amendment and the "no-knock" laws,¹⁵ bail and preventive detention,¹⁶ and Watergate.¹⁷ In these pages Senator Ervin outlines the issues underlying these battles and tells where he stood on each of them and why, without equivocation, with the clarity of light; they give a definitive picture of Sam Ervin in action at his battling best.

Senator Ervin stood up to be counted for the rule of law and the Bill of Rights in the 1950s in a speech on the floor of the United States Senate, involving a provision in the United States Constitution which provided that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place."¹⁸ Senator Joseph McCarthy had been using this provision as a cloak of immunity from prosecution while he was smearing the reputations and characters of American citizens whom the Bill of Rights had been designed to protect. Sam Ervin spoke in support of a Senate Resolution censuring Senator McCarthy for this abuse of a Senator's privilege.¹⁹ That speech was his finest hour up to that time.

He stood up to be counted for the rule of law and the Bill of Rights throughout the 1960s and 1970s. He protested against a bill that would have permitted police to break into a man's house by day or night "without knocking" on mere suspicion that he had "dangerous substances" in his possession which he might destroy if he was not taken by surprise;²⁰ against bills permitting the courts to deny the right to bail to persons whom policemen and judges suspected might commit new crimes while out on bail;²¹ and "against regulations of the Census Bureau and other government agencies permitting the use of data collecting programs, sophisticated surveillance techniques, and . . . computer

7. *Id.* at 63-70.

8. *Id.* at 333-70.

9. *Id.* at 371-420.

10. *Id.* at 151-61.

11. *Id.* at 219-35.

12. *Id.* at 237-48.

13. *Id.* at 209-17.

14. *Id.* at 249-74.

15. *Id.* at 281-91.

16. *Id.* at 293-316.

17. *Id.* at 317-32.

18. U.S. CONST. art. I, § 6.

19. S. ERVIN, JR., *supra* note 1, at 102-07.

20. *Id.* at 288-91.

21. *Id.* at 306-07, 311-15.

and data banks in ways violating the individual's historic right of privacy."²² Sam Ervin also protested against regulations allowing government employment agencies to ask prospective employees "probing questions about religion, family, and sexual matters";²³ regulations requiring "the disclosure of personal finances and creditors of employees and their relatives";²⁴ and [p]ractices coercing employees to buy bonds and support political parties and participate in community activities having nothing to do with their jobs, and to conform their personal behavior and associations outside the office to agency rules and [their] supervisor's whim."²⁵ He "protest[ed] against activities of military agencies operating a data bank 'collecting files on private citizens' and spying on the lawful pursuits of Americans in public and private assemblies throughout the country."²⁶ At the same time, Senator Ervin "remind[ed] privileged students on college campuses, as well as the underprivileged inhabitants of slums and ghettos, that the freedoms guaranteed in the U.S. Constitution do not go so far as to provide a cloak of immunity for such crimes as 'treason, felony, or a breach of the peace' committed by anybody, anywhere, at any time."²⁷

If I had to pick the finest day of his life, I would pick the 18th day of July 1917 at the battle of Soissons in World War I when the 28th Infantry was halted by machine gun fire from an emplacement 100 yards ahead.²⁸ Here is one man's account:

Private Ervin called volunteers to silence the gun At his orders, we fired upon its position as rapidly as possible as we rushed forward. All of our volunteer comrades were mortally wounded . . . , and Ervin and ourselves continued the attack. Ervin was struck in his left thigh by a shell fragment . . . , and knocked flat upon his face by its impact. We reached the gun pit, killed the gun's crew, and thus silenced it.

[W]e went back to where Ervin lay, bandaged his wound as best we could . . . , and offered to aid him to return to American lines He refused our offer of aid and urged us to return without delay to our lines. Ervin then crawled to a deep communications trench Here we helped him to establish an automatic rifle post to await an expected counter attack by the Germans.²⁹

This performance won the Distinguished Service Cross for "extraordinary heroism in action" and for "exceptional courage and leadership [that] was an inspiration to his comrades."³⁰

The finest accolade of his lifetime was the tribute of the Majority Leader of the United States Senate on February 8, 1973, in picking him to head the most

22. *Id.* at 393 (quoting A. Coates, *Three North Carolinians Who Have Stood Up To Be Counted for the Bill of Rights 15* (1973) (available in UNC Law School Library)).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 64, 371-76

29. *Id.* at 372-73.

30. *Id.* at 25 (quoting citation accompanying Distinguished Service Cross).

important Senate committee of this generation—the Senate Select Committee on the Watergate Affair. Senate Majority Leader Mike Mansfield stated that he was looking for a good, fair, and impartial investigation; Sam Ervin “was the only man we could have picked on either side of the aisle who’d have had the respect of the Senate as a whole.”³¹

That statement was rooted in a twenty-year record of day-to-day work by Sam Ervin with his fellow senators who knew him well in committee and on the floor. They had discovered that he knew his business, loved it, and tended to it; that he moved in his own orbit full of common sense and mother wit; that he was all of a piece—not a lot of planks nailed together, but a growing tree with the sap rising through it—; and that he would vote and act from forces welling up inside, not from any outside influence or external pressure. In short, the United States Senate recognized the career of a man who was “born of the sun,” has kept on walking toward the sun, and at every step along the way has “left the vivid air signed with his honor.”

If I had to pick one sentence from all his sayings that characterized Sam Ervin throughout the comings and goings of his life, it would be a sentence that he didn’t have to think up—it came to him from the certitude of his own being while he was talking to his homefolks in Morganton upon returning from World War I. He had been reported as “missing in action” on the western front, and his neighbors were telling him that they were glad he had been found. “I was never lost,” he told them. “I knew where I was all the time.”³²

The University of North Carolina at Chapel Hill can take pride in the fact that in talking to the University faculty in Chapel Hill in spring of 1973, Sam Ervin praised Dr. de Roulhac Hamilton’s course in American Constitutional History: “He made it plain that if one is to understand the fundamental principles of the Constitution he must know the history of the events which brought those principles into being. I cannot over magnify the benefits which I received from his instruction.”³³ He also commented on Dean Lucuis Polk McGehee’s course in Constitutional Law:

Dean McGehee was one of the greatest lawyers as well as one of the greatest scholars I have ever known, and he emphasized above all things the necessity of being thorough in one’s studies and endeavors, and being completely honest intellectually. I cannot adequately express my appreciation of the aid which his instruction has given me through all the intervening years.³⁴

His alma mater also can take pride in the fact that in speaking to 5000 students on the Chapel Hill campus who had assembled to hear him during the Watergate proceedings, Sam Ervin said: “As long as I have a mind to think, a tongue to speak, and a heart to love my country, I shall deny that the Constitution

31. *Id.* at 319, 404.

32. A. Coates, *Three North Carolinians Who Have Stood Up To Be Counted for the Bill of Rights 25* (1973) (available in UNC Law School Library).

33. *Id.* at 14.

34. *Id.*

confers any arbitrary power on any President, or empowers any President to convert George Washington's America into Caesar's Rome."³⁵ He was prepared to issue a subpoena to the President of the United States to appear before the Senate Select Committee. The President knew it and knuckled under to the rule of law as represented in that moment by Sam Ervin—the Senior Senator from North Carolina.

Sam Ervin's love of the Constitution has been the guiding star and passion of his public service, "the inarticulate major premise" of his life. It is fitting that the overriding title of his book is *Preserving the Constitution*, and that the subtitle, *The Autobiography of Sam Ervin*, is printed at the bottom as the underpinning. It also is fitting that the page following the table of contents is a cartoon of a recognizable Sam Ervin handing a roll of the "U.S. Constitution" to the "Public," with the bottom line inscription: "Take Care of It and It Will Take Care of You!"³⁶

35. *Id.* at 24.

36. S. ERVIN, JR., *supra* note 1, at viii.

