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## Governmental Power versus Individual Liberty.

Vincent R. Johnson

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## BOOK REVIEW

### GOVERNMENTAL POWER VERSUS INDIVIDUAL LIBERTY

VINCENT R. JOHNSON\*

BOOK REVIEW  
FATHER, SON, AND CONSTITUTION:  
HOW JUSTICE TOM CLARK AND ATTORNEY GENERAL RAMSEY CLARK  
SHAPED AMERICAN DEMOCRACY

By Alexander Wohl<sup>a1</sup>  
University of Kansas Press, Lawrence, Kansas  
April 2013, 448 pages, Cloth ISBN 978-0-7006-1916-0, \$39.95

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## I. TODAY'S ISSUES IN AN EARLIER ERA

*Father, Son, and Constitution*<sup>1</sup> by Alexander Wohl<sup>2</sup> is a major contribution to legal scholarship. This dual biography focuses on two public figures, each of whom played a leading role in addressing the most challenging legal questions of their day. The subjects of the book are Supreme Court Justice Tom C. Clark (1899–1977), “who after many years of neglect has suddenly become a person of interest to Court scholars,”<sup>3</sup> and his son Ramsey Clark (1927–), the most liberal attorney general in American history.<sup>4</sup> The Clarks’ stories are told against a backdrop of the continuing American struggle to find the proper balance between governmental power and individual liberty.

Wohl traces the “mutual influence of father and son”<sup>5</sup> and the similarities of the controversies that they dealt with to several high-profile issues of today. These matters include questions related to membership in allegedly dangerous organizations,<sup>6</sup> travel by persons with “terrorist connections,”<sup>7</sup> government surveillance of citizens,<sup>8</sup> exclusion of illegally obtained evidence,<sup>9</sup> and voting rights.<sup>10</sup> Wohl perceptively notes that in recent “landmark decisions like *Hamdi v. Rumsfeld*<sup>11</sup> and *Boumediene v. Bush*,<sup>12</sup> which upheld rights including habeas corpus, due process, and the right to counsel for prisoners confined at Guantanamo Bay, we can see the faded fingerprints of Tom and Ramsey Clark.”<sup>13</sup>

1. ALEXANDER WOHL, *FATHER, SON, AND CONSTITUTION: HOW JUSTICE TOM CLARK AND ATTORNEY GENERAL RAMSEY CLARK SHAPED AMERICAN DEMOCRACY* (2013).

2. Alexander Wohl is a speechwriter for the Commissioner of the Food and Drug Administration (FDA) and an Adjunct Professor at American University Washington College of Law. He served as a Fellow at the United States Supreme Court and a law clerk to Judge Ralph B. Guy, Jr. at the United States Court of Appeals for the Sixth Circuit. Wohl's works have appeared in law reviews, as well as *THE AMERICAN PROSPECT*, *SLATE*, *ABA JOURNAL*, *WASHINGTON POST*, *THE JOURNAL OF SUPREME COURT HISTORY*, and the *SAN FRANCISCO CHRONICLE*.

3. Melvin I. Urofsky, *Introduction*, 38 *J. SUP. CT. HIST.* v, v (2013); see also GERALD T. DUNNE, *HUGO BLACK AND THE JUDICIAL REVOLUTION* 407 (1977) (noting the “critically important and largely unappreciated contributions made by Justice Tom C. Clark” to the Warren Court).

4. See WOHL, *supra* note 2, at 4 (describing Ramsey Clark as ideologically left-leaning).

5. *Id.* at 407.

6. *Id.* at 410.

7. *Id.*

8. *Id.*

9. *Id.* at 411.

10. *Id.*

11. 542 U.S. 507 (2004).

12. 553 U.S. 723 (2008).

13. See WOHL, *supra* note 2, at 409.

## II. AMERICA FROM FDR TO OBAMA

The public careers of Tom and Ramsey Clark were largely sequential, but sometimes overlapping. Together, they spanned three-quarters of a century. Thus, in following this saga of father and son, Wohl marches through a large sweep of American history. Their chronicle runs from Tom Clark's arrival in Washington in 1937 up to today, since Ramsey Clark still represents clients and travels "to some of the most far-flung places in the world."<sup>14</sup>

Wohl's book traverses a gamut of wars, both military and metaphorical. They include the Second World War, the Korean War, the Cold War, the War on Poverty, the Vietnam War, the War on Crime, and (to a much lesser extent) the War on Terror. However, those controversies merely furnish the context. The author's attention is devoted principally to constitutional issues related to the Bill of Rights. The book focuses on questions about the extent to which the government may restrict civil rights and liberties in the name of public order or national security. Tom and Ramsey Clark frequently took center stage in shaping and deciding those debates, although only briefly at the same time.

## III. OVERLAPPING CAREERS IN THE SIXTIES

Tom Clark's floruit (his nearly a quarter century at the pinnacles of the American legal profession as Harry S. Truman's attorney general (1945–49) and as a Supreme Court Justice (1949–67)), overlaps with Ramsey's (which began when he was appointed as John F. Kennedy's assistant attorney general (1961–65) and then rose to become Lyndon B. Johnson's deputy attorney general (1965–67) and attorney general (1967–69)). Tom Clark remained highly active in many capacities related to the administration of justice until his death in 1977. He had resigned from the United States Supreme Court a decade earlier at the "young" age of 67<sup>15</sup> in order for his son to become the nation's top law enforcement officer. The senior Clark's departure eliminated the opportunity for critics to charge that it was a conflict of interest for a father to sit on a powerful court whose most frequent litigant, the Department of Justice, was headed by his son.<sup>16</sup>

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14. *Id.* at 401.

15. *Id.* at 401.

16. See Craig Alan Smith, *Tom Clark Under Fire: The Consequences of Congressional Investigations of Supreme Court Justices*, 38 J. SUP. CT. HIST. 139, 161 (2013) (suggesting that Justice Clark well understood the "wider implications" of Ramsey's becoming attorney general since, as a member of the Supreme Court, he had personally "withstood four years of near continuous congressional probing into his decisions as attorney general").

The period between 1961 and 1967—after Ramsey arrived in DC and before his father left the Court—provides the most tantalizing part of the book. This is true because during this time both men, Tom Clark in the judiciary and Ramsey Clark in the executive branch, were then weighing in on some of the same great issues of the twentieth century. For example, when Ramsey Clark as the new attorney general was a “leading governmental advocate *against* wiretapping,” his father, in his last opinion while transitioning off the Supreme Court, wrote the landmark decision *Berger v. New York*, “upholding constitutional limits on wiretapping.”<sup>17</sup> Similarly, “[a]s Ramsey . . . and his colleagues at the Department of Justice would be advocating in support of the integration of southern schools or working to protect the rights of civil rights workers . . . , Justice Tom Clark and his colleagues on the Supreme Court would be considering and generally upholding those legal challenges to segregation . . . .”<sup>18</sup>

#### IV. MATTERS NEVER DISCUSSED

Based on his dozens of hours of interviews with Ramsey,<sup>19</sup> Wohl reports that the father and son never discussed those issues with one another.<sup>20</sup> This assertion is not new. Ramsey Clark wrote the Foreword to the recent book by his sister Mimi Clark Gronlund about their father, Tom Clark.<sup>21</sup> Discussing his relationship with his father, Ramsey said:

[F]rom the time that I started law school [in 1948], we never discussed his activity in the Department of Justice or on the Court, or my duties in the Department of Justice. The appearance or fact of having inside information . . . would have been devastating to the integrity of the law and our individual reputations.<sup>22</sup>

Consequently, as a dual biography, *Father, Son, and Constitution* is unlike Bruce Allen Murphy’s *Brandeis/Frankfurter Connection*.<sup>23</sup> In that book, the story is told of how a Supreme Court Justice and Harvard law profes-

17. WOHL, *supra* note 2, at 113.

18. *Id.* at 211.

19. *Id.* at x.

20. *Id.* at 230.

21. MIMI CLARK GRONLUND, *SUPREME COURT JUSTICE TOM C. CLARK: A LIFE OF SERVICE* (Jason A. Gillmer & William S. Pugsley, eds., 2009). “Gronlund’s biography is peppered with delightful facts. For example, Clark, the only Texan to serve on the Supreme Court during its first 220 years, was called into the law school dean’s office at the University of Texas and told that he might not graduate because of absenteeism.” Vincent R. Johnson, *Book Review*, 56 *FED. LAW.* 76, 77 (Dec. 2009).

22. GRONLUND, *supra* note 21, at xiii.

23. BRUCE ALLEN MURPHY, *BRANDEIS/FRANKFURTER CONNECTION: THE SECRET POLITICAL ACTIVITIES OF TWO SUPREME COURT JUSTICES* (1982).

sor secretly combined efforts to influence public policy during the 1920s and 1930s.<sup>24</sup>

Wohl expresses skepticism about the extent to which legal issues were not discussed by father and son. He writes:

[W]hile the two men may not have talked about specific cases, it is hard to imagine, given how engaged in their work they were, that there was not some overlap, some simple discussion of general topics, such as the legislative battles over the 1964 Civil Rights Act, conversations that might have informed Tom Clark's understanding of the significance of the law and the impact of a decision that would run counter to the new law . . . .<sup>25</sup>

Wohl details how “the two [Clarks] would have long, wide-ranging discussions about any number of issues.”<sup>26</sup> Those discussions, which related for example to the Cuban Missile Crisis, were often “on a very high level,”<sup>27</sup> according to Tom C. Clark II (Tom Clark's grandson and Ramsey's son), now a lawyer at the Justice Department. He had overheard those conversations as a boy. However, in discussing Tom Clark's opinion in *Berger*,<sup>28</sup> which struck down the New York wiretapping law as unconstitutional, Wohl acknowledges that “[t]here is no indication that the Clarks ever spoke about the decision or issue, before or after.”<sup>29</sup>

The fact that job-related legal matters were not discussed is interesting, if not mystifying. Tom and Ramsey Clark had a close relationship.<sup>30</sup> They shared many interests, a Southern background,<sup>31</sup> an abhorrence to racism (despite a family legacy of segregation),<sup>32</sup> and an appreciation of the fact that crime has social roots.<sup>33</sup>

## V. A WEALTH OF MATERIAL

There are two major challenges to writing about Tom and Ramsey Clark in the same volume. The first formidable obstacle is the sheer

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24. *Id.*

25. WOHL, *supra* note 2, at 231.

26. *Id.* at 185.

27. *Id.* at 230.

28. *Berger v. New York*, 388 U.S. 41 (1967).

29. WOHL, *supra* note 2, at 319–20.

30. *Id.* at 285.

31. *Id.* at 3.

32. *See id.* at 11 (illustrating how Tom Clark was conflicted between his conservative racially segregated upbringing and his own realization of right and wrong).

33. *Id.* at 80.

number of events and persons that must be discussed.<sup>34</sup> Tom Clark was involved with the Japanese internment during World War II (for which he later apologized and which he characterized as a “mistake”),<sup>35</sup> the prosecution of fraud committed by WWII government contractors,<sup>36</sup> and the efforts to protect the federal government from Communist influence,<sup>37</sup> as well as the constitutionality of loyalty oaths,<sup>38</sup> bible reading in public schools,<sup>39</sup> presidential seizure of the steel industry,<sup>40</sup> police interrogation of suspects,<sup>41</sup> and school desegregation.<sup>42</sup> He was a close friend of Harry Truman,<sup>43</sup> Sam Rayburn,<sup>44</sup> and Lyndon Johnson.<sup>45</sup> At the Justice Department, he hired Eunice Kennedy<sup>46</sup> to be his liaison to a committee charged with preventing juvenile delinquency. With Ramsey, he attended the Nuremberg trials.<sup>47</sup> After leaving the Supreme Court, he headed a major evaluation of lawyer discipline, which revolutionized the law of attorney professional responsibility.<sup>48</sup>

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34. See Kathryn A. Watts, *Judges and Their Papers*, 88 N.Y.U. L. REV. 1665, 1682, 1699 n.207 (2013) (noting the large collection of Justice Clark's papers at the University of Texas).

35. WOHL, *supra* note 2, at 48.

36. *Id.* at 52.

37. *Id.* at 99.

38. *Id.* at 137.

39. *Id.* at 178.

40. *Id.* at 144.

41. *Id.* at 172.

42. See DAVID HALBERSTAM, *THE FIFTIES* 421 (1993) (“Tom Clark, with roots in Texas and Mississippi, was perceived as a segregationist [when he joined the Supreme Court], but he would, he signaled the new Chief [Earl Warren], be willing to end segregation as long as the decision reflected the complexity of the problem ahead, region by region, and was not punitive to the South.”).

43. WOHL, *supra* note 2, at 54.

44. *Id.* at 64.

45. *Id.* at 65; see ROBERT A. CARO, *THE YEARS OF LYNDON JOHNSON: MEANS OF ASCENT* 122–23 (1990) (“Johnson pushed vigorously for [Tom] Clark's advancement up the Justice Department ladder.”); see also *id.* at 384 (noting that the investigation by Attorney General Tom Clark's Justice Department into whether Johnson supporters had stolen the 1948 Senate election lacked “investigative and prosecutorial vigor”).

46. WOHL, *supra* note 2, at 80.

47. *Id.* at 98.

48. See Vincent R. Johnson, *Justice Tom C. Clark's Legacy in the Field of Legal Ethics*, 29 J. LEGAL PROF. 33, 35, 42 (2005) (“The *Clark Report* signaled the emergence of a new age in lawyer discipline . . . [and] it is likely that no other public service by a former Supreme Court Justice has had a greater impact on American society or done more to improve public confidence in the administration of justice than Tom Clark's leadership in the field of legal ethics.”); see also Jack Deacon, *United States Supreme Court Justice Tom C. Clark Helps Establish a Disciplinary System for Arkansas Lawyers*, 51 ARK. L. REV. 660 (1998) (crediting Justice Clark with providing the “stimulus, the assistance, and the encour-

Ramsey Clark had a hand in the federal response to the struggles over integration in Mississippi<sup>49</sup> and Alabama,<sup>50</sup> and “an especially significant role in shaping a comprehensive strategy for strengthening school desegregation efforts throughout the South.”<sup>51</sup> He also played an important part in responding to the race riots in Los Angeles, Detroit, and other cities,<sup>52</sup> as well as in passing the Voting Rights Act of 1965<sup>53</sup> and the Civil Rights Act of 1968.<sup>54</sup> Ramsey Clark knew Robert Hutchins,<sup>55</sup> Robert Kennedy,<sup>56</sup> Nicholas Katzenbach,<sup>57</sup> Sarah T. Hughes,<sup>58</sup> Erwin Griswold,<sup>59</sup> Richard Daley,<sup>60</sup> and, like his father, countless other influential figures. Some considered Ramsey as a possible contender for the 1972 Democratic presidential nomination.<sup>61</sup> As Wohl perceptively asks, “[W]hat other father and son pair both befriended and battled J. Edgar Hoover and were both targets of political attack—twenty years apart—by Richard Nixon?”<sup>62</sup>

The key to dealing effectively with this wealth of historical material is for an author to provide the reader with the right amount of detail—

agement which enabled both the Arkansas Supreme Court and the Arkansas Bar to develop an effective and efficient disciplinary system”).

49. WOHL, *supra* note 2, at 221.

50. *Id.* at 225.

51. *Id.* at 226; see ARTHUR M. SCHLESINGER, JR., ROBERT KENNEDY AND HIS TIMES 294 (1978) (discussing Ramsey Clark’s involvement in school desegregation as part of Attorney General Robert F. Kennedy’s Justice Department).

52. WOHL, *supra* note 2, at 278; see LYNDON BAINES JOHNSON, THE VANTAGE POINT: PERSPECTIVES OF THE PRESIDENCY 1963–69 168 (1971) (discussing a conversation with Ramsey Clark about “almost eighty fires unattended” in Detroit).

53. WOHL, *supra* note 2, at 250–56.

54. *Id.* at 347.

55. *Id.* at 193.

56. *Id.* at 205.

57. *Id.* at 247.

58. See SCHLESINGER, *supra* note 51, at 375 (quoting Ramsey Clark’s cogent argument in support of Hughes’ nomination to the federal bench).

59. ERWIN N. GRISWOLD, OULD FIELDS, NEW CORNE: THE PERSONAL MEMOIRS OF A TWENTIETH CENTURY LAWYER 255 (1992) (discussing Griswold’s appointment as Solicitor General).

60. See Ramsey Clark, “How Can You Represent That Man?": Ethics, the Rule of Law, and Defending the Indefensible, 44 GA. L. REV. 921, 926 (2010) (“ . . . I had told Chicago Mayor Daley, a Democrat, that if his police shot looters, he would be charged with a federal crime under the new civil rights law. Needless to say, the Democratic party got a little upset, but I meant it. You can’t shoot a looter; you arrest a looter.”).

61. See THEODORE H. WHITE, THE MAKING OF THE PRESIDENT 1972 43 (1973) (mentioning Ramsey Clark as a possible rival “on the left” to George McGovern).

62. WOHL, *supra* note 2, at 2; see THEODORE H. WHITE, THE MAKING OF THE PRESIDENT 1972 294 (1973) (“‘We’re going to have a new Attorney General,’ [candidate Nixon] promised repeatedly, scoring Johnson’s Attorney General Ramsey Clark as soft on crime.”).

enough to bring sometimes faded issues back to life, to clarify the stakes, and to do justice to the major players. The risk is that the author will get bogged down in endless facts or fail to illuminate what the choices were and what the decisions meant. However, Wohl has the right touch. The discussion is always clear and perceptive, and the book is often engrossing. The story of the Clarks moves along at a comfortable pace without being superficial. Wohl focuses on Tom and Ramsey Clark's contributions during their years in public life, but wisely detours from the main focus of the book when there is a good story to be told, such as the machine-like nominating process that Ramsey watched play out as Robert Kennedy was catapulted to candidacy for U.S. Senator from New York.<sup>63</sup>

In examining the 1960s, Wohl makes thoughtful comparisons about the different executive styles and priorities of Presidents Kennedy and Johnson. He points out that “[t]he Kennedy Administration’s [judicial] nomination record . . . was one of its most disappointing features,”<sup>64</sup> whereas the Johnson process, which Ramsey personally managed, was much more effective in placing on the federal bench judges who would support, not impede, civil rights.<sup>65</sup> Whereas Kennedy “always kept a public distance” from Martin Luther King, Jr., Johnson invited King to the White House after he won the Nobel Prize and made a point of introducing Ramsey to King.<sup>66</sup>

## VI. DIFFICULT TO CATEGORIZE

A second serious impediment to writing about Tom and Ramsey Clark in the same volume is that, at times, the subjects are difficult to categorize. It is impossible to quickly and confidently sketch the character and motivations of either man. Both men are complex. Of course, this offers a refreshing obstacle in an age when many political figures now espouse unchangeable beliefs, giving the impression that they are one-dimensional, closed-minded, and incapable of growth.

### A. *Tom Clark, A Conservative Justice Who Evolved*

Tom Clark is an elusive character—principled, if not always predictable. One of the nation’s first Eagle Scouts,<sup>67</sup> he had strong beliefs, but was not doctrinaire. He honored the rule of law, but sometimes deferred to political exigencies. Thus, for a period of time, in Wohl’s assessment,

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63. WOHL, *supra* note 2, at 244.

64. *Id.* at 288.

65. *Id.* at 287–91.

66. *Id.* at 245.

67. *Id.* at 11.

Tom Clark was a “true cold warrior,” but never a “reactionary.”<sup>68</sup> Alan Kohn, a law clerk for Justice Charles W. Whittaker in 1957–58, recalled that “Justice Clark was undoubtedly the most gracious Justice on the Court.”<sup>69</sup>

Tom Clark thought of himself as a reformer, a “trust buster in the Theodore Roosevelt tradition.”<sup>70</sup> He made tough decisions (such as creation of the Attorney General’s List of Subversive Organizations),<sup>71</sup> but he comes across the pages of history as decent,<sup>72</sup> hardworking, honorable, and fair. He championed immigration of fleeing refugees,<sup>73</sup> crusaded against the problems of juvenile delinquency,<sup>74</sup> lobbied Congress to pass the Marshall Plan,<sup>75</sup> and recommended (unsuccessfully) that Truman use his 1946 State of the Union Address to highlight the dangers of “intolerance, religious bigotry and racial prejudice.”<sup>76</sup>

The difficulties in understanding Tom Clark are partly a function of the fact that, in line with the most interesting of Supreme Court traditions, he “evolved” during his years on the Court. For example, although “[t]hroughout his public service, Tom Clark exhibited a fundamental embrace of religion and spirituality,”<sup>77</sup> he “appeared to have come full circle, moving from the view that church and state should be intimately linked in the value and use of religious teachings to a stronger understanding that tolerance and neutrality were critical constitutional rights to be protected.”<sup>78</sup> When he left the Supreme Court in the late 1960s, he was not the same man who had joined it in the late 1940s.

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68. *Id.* at 100.

69. Alan C. Kohn, *Supreme Court Law Clerk, 1957–58 A Reminiscence*, 2 J. SUP. CT. HISTORY 40, 50 (1998) (“[Justice Clark] even had all the clerks, along with the Justices, to his home for a small cocktail buffet. And his wife was even more gracious than he.”).

70. WOHL, *supra* note 2, at 70.

71. *Id.* at 100. Another example relates to the Tideland’s Controversy. Clark hailed from Texas, but “many Texans viewed Tom Clark’s action advocating the federal government’s claim [to title of submerged lands] as betraying his home state of Texas.” MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* 110 (2011).

72. See HALBERSTAM, *supra* note 42, at 412 (describing Tom Clark and other Truman appointees to the Supreme Court as “generous by nature”).

73. WOHL, *supra* note 2, at 57.

74. *Id.* at 78.

75. *Id.* at 110.

76. *Id.* at 47.

77. *Id.* at 176.

78. *Id.* at 178. Justice Clark wrote the majority opinion in *Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963). *Schempp* has been described as “probably the best known of the Supreme Court’s school prayer cases, and the most fully reasoned.” Douglas Laycock, *Edward Schempp and His Family*, 38 J. SUP. CT. HIST. 63, 63 (2013). Clark’s “workmanlike opinion” has been contrasted by Professor Laycock with Justice William J. Brennan’s “long scholarly concurrence.” *Id.* at 76. “Writing for a near-unanimous Court,

Wohl explains that “Tom Clark’s role as a member of the most progressive Supreme Court in the nation’s history only adds to the challenge to categorize him.”<sup>79</sup> Clark’s migration from the executive to the judicial branch was a “far-from-smooth transition.”<sup>80</sup> However, “[d]uring his eighteen years as a justice he evolved from a strict law-and-order conservative into a moderate at the ideological center of a Court that transformed American law through its expansive and egalitarian interpretation of the Constitution and Bill of Rights.”<sup>81</sup> According to Wohl, during his tenure on the Court, “Tom Clark evolved into a more thoughtful and often more progressive Justice, a change due in no small measure to the greatness of those around him, as well as to his own gregariousness and open-mindedness.”<sup>82</sup>

Capturing the impact of Tom Clark on the American justice system, Wohl writes that as “[a]n active and powerful attorney general, he ran the Department of Justice with a free hand and the full trust and backing of his president.”<sup>83</sup> As a Supreme Court Justice, “[e]ven as he shared some of the underlying judicial restraint of John Marshall Harlan, . . . [Clark demonstrated] an understanding of the need to resourcefully apply the Constitution to modern-day challenges and to the issues and requirements of people and groups who are shortchanged of their constitutional protections.”<sup>84</sup>

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Justice Clark articulated a two-part test for determining a statute’s constitutionality under the Establishment Clause.” Max Guirguis, *A Coat of Many Colors: The Religious Neutrality Doctrine from Everson to Hein*, 43 STETSON L. REV. 67, 76 (2013).

79. See, e.g., Mark Srere, Note, *Justice Tom C. Clark’s Unconditional Approach to Individual Rights in the Courtroom*, 64 TEX. L. REV. 421, 421–22 (1985) (“Despite [his] conservative public reputation and his caution in granting constitutional protection to criminal suspects, Justice Clark upheld the rights of criminal defendants in two notable cases involving the sixth amendment right [sic] to a fair trial.”).

80. See Urofsky, *supra* note 4, at v (“[T]here were constant calls for [Tom] Clark to resign or face impeachment, or at the very least to appear before congressional committees and defend his record as Attorney General.”); see also *id.* at vi (discussing the scholarship of Craig Alan Smith).

81. WOHL, *supra* note 2, at 404; see Dennis D. Dorin, *Marshaling Mapp: Justice Tom Clark’s Role in Mapp v. Ohio’s Extension of the Exclusionary Rule to State Searches and Seizures*, 52 CASE W. RES. L. REV. 401, 402 (2001) (“Few Supreme Court decisions have been as far-reaching, or as controversial, as *Mapp*’s declaration that ‘[a]ll evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible’ in state criminal trials . . . . [That ruling] was a direct product of Clark’s extraordinary actions. . . . Seldom in the Court’s history had one of its members so ‘seized the time’ to . . . marshal the Court into a fundamental doctrinal change.”).

82. WOHL, *supra* note 2, at 183.

83. *Id.* at 68.

84. *Id.* at 181.

### B. Ramsey Clark, A Liberal Who Moved Further Left

Ramsey Clark, a former Marine, has been a liberal since at least the early 1960s, “to the ideological left of his father.”<sup>85</sup> As attorney general, his commitment to effective law enforcement was tempered by a noble concern for those accused of crimes and a zealous commitment to their constitutional rights. In contrast to many of his predecessors and successors, he took firm stands against wiretapping<sup>86</sup> and the federal death penalty.<sup>87</sup>

Wohl discusses how Congressional critics attacked Ramsey Clark throughout his time as attorney general for being “soft on crime.”<sup>88</sup> He says that Ramsey “stuck to his principles, which involved a strong compassion for individual rights, a common sense approach to problem solving, a heavy dose of morality, and a firm embrace of the principles enshrined in the Constitution and Bill of Rights.”<sup>89</sup> In a recent law review article that he authored, Ramsey seemed entirely comfortable with the facts: “I was supposedly soft on crime because I opposed the death penalty, wiretapping, and excessive use of force by police; and favored professionalization, educational programs, and a service concept of the police function.”<sup>90</sup>

Ramsey Clark was attorney general during tumultuous times involving social upheavals at home and the unpopular Vietnam War abroad. According to Wohl, “Ramsey’s ability to operate under the daily pressure he faced—from dealing with the crisis of the [race] riots and assassinations to criticism from Congress, the media, Richard Nixon, and internal White House conflicts—is a remarkable demonstration of calm under fire.”<sup>91</sup>

After leaving the Justice Department, Ramsey became more liberal. He authored a best seller, *Crime in America*,<sup>92</sup> a “remarkable book about poverty and urban decay.”<sup>93</sup> He also traveled to North Vietnam to advocate for fair treatment of American prisoners of war.<sup>94</sup> In the words of Arthur Liman, it was “only a matter of time before [Ramsey] decided . . . to become a ‘people’s lawyer’ and champion of the underdog.”<sup>95</sup> In recent years, Ramsey has opposed the War on Terror, called for the im-

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85. *Id.* at 4.

86. *Id.*

87. *Id.*

88. *Id.* at 327.

89. *Id.* at 326.

90. See Clark, *supra* note 60, at 926.

91. WOHL, *supra* note 2, at 354.

92. *Id.* at 282.

93. ARTHUR L. LIMAN, *LAWYER: A LIFE OF COUNSEL AND CONTROVERSY* 60 (1998).

94. WOHL, *supra* note 2, at 386.

95. LIMAN, *supra* note 93, at 60.

peachment of George W. Bush, and defended controversial clients ranging from Slobodan Milosevic<sup>96</sup> and Radovan Karadzic<sup>97</sup> to Saddam Hussein.<sup>98</sup> Ramsey's representation of well-known public figures stretches back four decades and includes William O. Douglas,<sup>99</sup> Philip Berrigan,<sup>100</sup> Lyndon LaRouche,<sup>101</sup> the Palestine Liberation Organization,<sup>102</sup> and Nazi war criminal Karl Linnas.<sup>103</sup>

Wohl quips that after a certain point, Ramsey Clark's "list of clients could have been taken from an encyclopedia entry for modern-day dictators and war criminals."<sup>104</sup> In an effort to explain these controversial choices to provide legal representation, Wohl quotes a number of well-informed persons who obviously have had the opportunity to think about the issue.<sup>105</sup> However, Wohl ultimately concludes that there is "no one explanation."<sup>106</sup> He recounts Ramsey Clark as saying:

I decided that war and violence [were] the greatest sin. I had a deep experience in civil rights in the United States and it was part of the same value system that involved international human rights. And I had an obligation to try to take that abroad and work toward a civil rights, human rights international system that was just.<sup>107</sup>

In Ramsey's own words, "The rule of law today is essential to peace and to the development and protection of human rights—civil, political, economic, social, and cultural. Lawyers must always act to protect, serve, and enrich the rule of law with equal justice for all."<sup>108</sup>

96. WOHL, *supra* note 2, at 395.

97. *Id.* at 395.

98. *Id.* at 2.

99. *Id.* at 195; see BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS: INSIDE THE SUPREME COURT* 134 (1979) (noting that Douglas recused himself from a case argued by Ramsey Clark, apparently because "Clark's law firm had represented him during . . . impeachment hearings").

100. WOHL, *supra* note 2, at 2.

101. *Id.*

102. *Id.* at 395.

103. *Id.*

104. *Id.*

105. *Id.* at 397–99 (giving the opinions of Mel Wulf, his former partner, Mimi Clark Gronlund, his sister, as well as opinions from Nicholas Katzenbach, Ernie Friesen, and John Nolan).

106. *Id.* at 399.

107. *Id.* at 397.

108. Clark, *supra* note 60, at 921. See generally Vincent R. Johnson and Stephen C. Loomis, *The Rule of Law in China and the Prosecution of Li Zhuang*, 1 *CHINESE J. COMP. L.* 67, 76–77 (2013) ("The Rule of Law is a philosophic concept, an ideal against which any legal system can be measured . . . [T]he Rule of Law demands that a legal system: operate transparently and consistently based on neutral principles that manifest due concern for the correctness of decisions; provide fair notice of what the law requires and treat all per-

## VII. PRAGMATISM VERSUS IDEALISM

The organization of *Father, Son, and Constitution* is logical and clear. After presenting the Clarks in the introductory material and Chapter 1, Wohl focuses Chapters 2 to 9 on Tom Clark and Chapters 10 to 15 on Ramsey Clark, devoting virtually equal time to each. The trick then is to sum up these largely sequential biographies in a way that is satisfactory. Wohl does so effectively.

Chapter 16 is devoted to what Tom Clark did after leaving the Supreme Court<sup>109</sup> and to a parallel period in Ramsey's career. Chapter 17 is then a synthesis of "the Clarks as a reflection of America's conflicting views on law and justice."<sup>110</sup> In that Chapter, Wohl offers a final colorful sketch of the "amiable pragmatism of Tom Clark"<sup>111</sup> and the "impractical idealism of Ramsey Clark."<sup>112</sup> Those differences are drawn into amusing relief by an anecdote about Lyndon Johnson, the president who appointed Ram-

sons equally; hold governmental actors and private individuals accountable for their misconduct; and merit public respect through practices which manifest an essential respect for human dignity."); Vincent R. Johnson, *The Rule of Law and Enforcement of Chinese Tort Law*, 34 T. JEFFERSON L. REV. 43 (2011) (analyzing what the United States Supreme Court said about the requirement of the Rule of Law in opinions issued during the Court's first 220 years).

109. Many of Justice Clark's endeavors after leaving the bench related to his long-standing interest in improving the administration of justice. Judge Paul Reardon ranked Justice Clark among the four individuals who did the most during the first eight decades of the twentieth century "to provide muscle to the state tribunals." Paul Reardon, *Chief Justice Burger and the National Center for State Courts*, SUP. CT. HIST. SOC'Y YEARBOOK 11, 11 (1987). Shortly after Justice Clark's death in 1977, Chief Justice Warren E. Burger noted that Clark's "imprint can be found on virtually every important improvement in justice in the last 15 years." *Id.* at 12. See also ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT 180-81* (1991) (discussing how Justice Clark's vote in the famous case of *New York Times v. Sullivan* (376 U.S. 254 (1964)) turned on the inclusion of language stating that "a review of the evidence was required by 'effective judicial administration'").

110. WOHL, *supra* note 2, at 402.

111. *Id.* at 403-04; see also Alexander Wohl, *Tom Clark's Transition from Attorney General to Supreme Court Justice*, 38 J. SUP. CT. HIST. 168, 180-81 (2013) (asserting that, in the area of civil rights in the early 1950s, "Tom Clark played a critical behind-the-scenes role that shaped the discussion and provided a workable solution for a Court not yet willing or able to . . . overrule *Plessy v. Ferguson*").

112. WOHL, *supra* note 2, at 404-07. See, e.g., DAVID M. O'BRIEN, *STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS* 57 (4th ed. 1996) ("Attorney General Ramsey Clark . . . confided to President Lyndon Johnson, 'I think a most significant contribution to American government would be the non-political appointment of judges.' Yet Johnson's appointments of Abe Fortas and Thurgood Marshall were political, as those of all other Presidents have been."); see also NICHOLAS DEB. KATZENBACH, *SOME OF IT WAS FUN: WORKING WITH RFK AND LBJ* 161 (2008) ("I liked Ramsey. He was good on civil rights and well liked by its leaders, and he was a person of high principles and ethical standards, although sometimes a little rigid in his views.").

sey to be attorney general.<sup>113</sup> As reported by Wohl, during a discussion about a controversial judicial nomination, “Johnson . . . ‘leaned way over and got in Ramsey’s face,’ telling him, ‘Ramsey: I wish you could be more like your daddy.’ Ramsey responded with no hesitation: ‘Mr. President, a lot of people say that.’”<sup>114</sup>

#### VIII. CONCLUSION: COMMON CONVICTION, SHARED PASSION

Wohl is not disturbed by the fact that Tom and Ramsey Clark sometimes espoused conflicting views on law and justice. He writes that “[t]he ebb and flow between the often contradictory forces of the government’s responsibility to protect individual liberties and its duty to develop policies for the defense of its citizens is at the center of the American democratic experience . . . .”<sup>115</sup> Tom and Ramsey Clark were “two individuals [who] advanced often shared policies from opposite ends of the government power-individual rights spectrum through a common conviction in the meaning of the Constitution and the authority of the rule of law.”<sup>116</sup> “Though their causes and battles were often different, at their core Tom and Ramsey Clark were not that dissimilar, sharing a passionate commitment to justice, the rule of law, and the Constitution.”<sup>117</sup>

*Father, Son, and Constitution* is well worth reading. It should be part of every good library because it illuminates issues that are both important and timeless. As Alex Wohl explains, “Tom and Ramsey Clark . . . helped the nation determine the proper role and power of government and the appropriate strength and breadth of America’s constitutional protections, a dynamic that plays out daily in legislatures and courtrooms across the land.”<sup>118</sup>

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113. WOHL, *supra* note 2, at 405.

114. *Id.* at 405.

115. *Id.* at 409.

116. *Id.* at 403.

117. *Id.* at 401.

118. *Id.* at 412.



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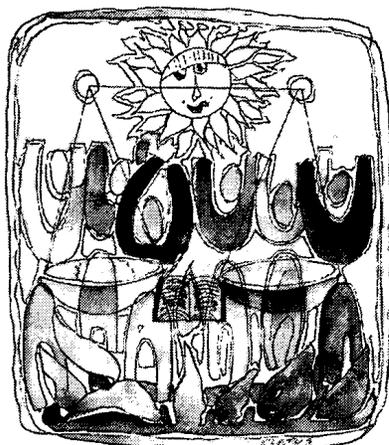
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