

BOOK REVIEWS

Government and Mass Communications. By Zechariah Chafee, Jr. Chicago: University of Chicago Press, 1947. 2 vol. Pp. xvii, vi, 830. \$7.50.

Probably the most significant thing about the Hutchins commission's several reports on freedom of the press was the short shrift they got from most of the press. It was a one-day story of no special meaning for the average newspaper, and the radio comment was equally evanescent. According to the prevailing standards of news, there wasn't much news in the deliberations of a privately financed commission on what's wrong with the press.

Maybe the news editors were right. Far more serious was the evident disposition of the press to brush off the commission's work. Even if that work did not add up to a hot news story, one would expect the managers of a severely criticized institution to show some concern, from the standpoint of their own professional interests, over the occasion and the reasoning behind the criticism.

There has been very little of this. Most of the press has treated the reports either as the babel of a few college professors who can safely be ignored or as the dangerous nonsense of sinister characters who want to substitute control for the historic freedom of the First Amendment. The typical reactions have been rocklike complacency or resentful hostility.

The complacency springs from the press' habit of regarding commercial success as the final answer to all criticism. People are still buying newspapers, aren't they? Still going to the movies? Still listening to the radio? It is hard to convince a commercial agency of communication that it is not a roaring success so long as it goes on making money. Easily overlooked is Chafee's warning note that "the First Amendment was not adopted to protect vehicles of advertising and entertainment. They are legitimate and beneficial activities, but so are stock-broking and circuses, which receive no constitutional immunity. The more newspapers and radio allow advertising and miscellany to swamp news and ideas, the greater the risk of losing some of their privileged position."

Where indifference became hostility, the reason usually was another long-standing habit of the press—the inclination to regard discussion of its faults as an assault on its freedom. The Hutchins commission chose to consider the problem not only of freedom but of responsibility; and the minute you begin talking about a responsible press you bring up the guard of managers and owners who expect such talk to lead into some sort of restriction or regulation.

Zechariah Chafee's book, which presents the reasoning behind the commission's findings (including some fascinating debates cast in the form of Platonic dialogues), makes it clear that the press has little to fear on this score. The fact is that Chafee, and with him the majority of the commission, just does not know what to do about the press. Nearly every suggestion for governmental action is brought up, chewed over, and finally rejected in this book. So far as legal steps or measures of public policy to improve the press are concerned, Chafee and the commission stand where most of the press does—unalterably against infringement on liberty of expression in whatever

guise. Again and again Chafee gives vent to a jurist's distrust of the law as a remedy for social evils. Again and again he comes back to the view that press reform must be internal.

Where Chafee and the press part company is in his recognition that a problem exists. We live in a technical society which makes for the centralization of economic power and sets up a drift toward monopoly. These influences are as deeply felt in the agencies of communication as elsewhere.

[They present us] with the problem as to how various sections of the community shall have adequate channels to make their appeal to the conscience and mind of the community. As the instrumentalities increase in quantity and variety, they tend to pass under the control of corporate wealth and like-minded individuals, so that they cease to express fully the diversified interests of the public. . . .

The principle of freedom of the press was laid down when the press was a means of *individual* expression, comment and criticism. Now it is an industry for profit, using techniques of mass suggestion and possessing a great power. A government is always quicker to exercise control when organizations are involved rather than individuals. Is the old principle of the *Areopagitica* applicable to this new situation?

Concentration of newspapers and broadcasting stations in the hands of the wealthy group causes inadequate access to less fortunate groups, a peril to justice. The press then fails to satisfy the need for social health through adequate communications in order to relieve the stresses and strains and class antagonisms caused by increasing industrialization. A widespread belief in the unfairness of the media arises.

When a considerable number of people voice a grievance, they bring pressure on the government to do something on their behalf.

There, Chafee and the commission feel, lies the real threat to a free press—not in the ambition of government to control it, but in the shortcomings which may inspire a public demand for control. The self-righting process, he finds, is not working too well at the moment. The commission is thoroughly convinced that “. . . the output of the press includes an appallingly large quantity of irresponsible utterances and even deliberate lying.” But where is the remedy? Adopt the French principle of the right of reply, which gives an injured individual space in the offending publication for retraction or rebuttal? Chafee is rightly skeptical of a device which would only clutter the press with irrelevant stuff. In general he finds “. . . the chief cure for falsehoods in mass communications should be sought outside the realm of law. . . . Law cannot reach what is inside human beings. . . . Somehow the community must make the newspaper want to be better. If this task be hopeless, then a way must be found to get another and better newspaper started. The remedy for Falsehood in the communications industries is to extend and strengthen by all possible means the professional obligation to tell the truth.”

Chafee devotes his first volume to the negative powers of government in limiting press freedom. He finds no pressing need for changes in the law of libel; considers and rejects various proposals for a group libel statute; and conducts a lengthy and interesting discussion of moral censorship of books, theater and films. It's no use protesting against this sort of censorship, he says; the best we can do is to hold it within the bounds of reasonable protection for community moral standards. In deciding what standards shall apply, he is more willing to trust a judge than an administrative official like the Postmaster General, whose censorship record he powerfully criticizes, and more willing to trust 12 jurors than one judge.

In the current atmosphere the most cogent section of the first volume is that dealing with peacetime sedition. Chafee tells why the commission called for repeal of state

and federal statutes of this stripe, especially the Alien Registration Act of 1940—essentially, because the conspiracy statutes are sufficiently sweeping to deal with most of the dangers which are invoked to justify peacetime sedition laws, and because any other kind of statute hits not only the treasonable thought or word but other thoughts and words as well.

“Even if a particular writer or publisher does not deserve freedom of the press,” says Chafee, with his eye on the Communists, “that freedom exists for the good of his readers as well as for him.” So he would let revolutionaries talk, so long as there is no clear and present danger that violence will result. He goes straight back to Jefferson: “Our best protection against internal enemies of freedom lies in the free flow of discussion, in the absence of spies and eavesdroppers on conversations and seizers of private correspondence (who are the inevitable instruments of a regime of suppression), and in the adoption of well-considered improvements of political and economic institutions. Safety against disloyalty will come from producing the conditions which evoke loyalty in an increasingly large number of citizens.” Some of the movie producers who abased themselves before the Thomas Committee should have read Chafee first.

When he comes, in the second volume, to government activities of a positive nature for encouraging the communication of news and ideas, Chafee concludes that there is not much that can safely be done. The government has a duty to keep the channels of communication open, to keep the market in ideas free. But by and large this boils down to removing restraints imposed on access to news facilities by monopolies or combinations.

The idea of a “Free Press Authority” to exert continuing government intervention he dismisses as unwise, if not unconstitutional. He rejects subsidies for new or small units as a dangerous and probably useless discrimination. As for the anti-trust laws, they are valuable for certain limited purposes, as in the *Associated Press* case, where established publishers were required to share their news-gathering facilities with newcomers whom they had sought to exclude solely on competitive grounds. But we cannot hope to use the anti-trust laws, says Chafee, to compel the press to give us what we want. If they are used to make little units out of big ones, there is no guaranty that the little units will be any better. Bigness is not necessarily badness, particularly in the press, where bigness can often make possible standards of excellence altogether beyond the reach of little fellows. Any attempt to impose an obligation of public service on the press, then, must be confined to its marketing practices and its physical facilities, and not to content. “You might as well try to have compulsory happiness in marriage as compulsory open-mindedness” in the press.

Press monopolies are as baffling as monopoly in general. “The truth is that we do not know what to do with monopolies,” says Chafee. “When we are so uncertain about the proper policies for business in general it is much too soon to be sure that the Sherman Act is just what the press needs. . . . When you look at the swirling human and material forces which bring about a broadcast or motion picture or one issue of a newspaper, the Sherman Act recedes. You stop expecting that a few lawyers in the Department of Justice and a statute passed in 1890 can do much to make the press of 1950 what you desire.”

To sum up, Chafee questions:

. . . whether law can impose more than a low minimum of fairness and decency upon the instrumentalities and frame reasonable regulations for the orderly flow of their output through

the channels of communication to citizens. Compulsion cannot stop any tendency toward meaninglessness and vulgarity, and it will do more harm than good as a remedy for the uncertainty that truth will prevail over error. The only direct cure for these evils lies in the internal ideals of the enterprises. Organized outsiders can improve these ideals by persuasion and approval, but not by force or extensive financial support.

And so Chafee hopes that newspapers, radio stations and film producers will become like endowed universities. President John Gilman of Johns Hopkins took Professor Gildersleeve into a bare room and said, "Now radiate." A free society needs newspaper editors, broadcasters and film producers who will "radiate"—who will shape what they communicate in accordance with the social purpose, and not merely the commercial purpose, of the enterprise.

One field which Chafee and the commission unfortunately failed to explore is the possible changes in the structure of communications ownership which might encourage this sort of "radiation." What about some form of trust ownership, where the stockholders take their dividends but leave editorial direction of the enterprise in the hands of professional "radiators"? The *Manchester Guardian* and some other publications in England now operate under such a trust.

On the whole, it is difficult to deny Chafee's contention that government cannot do much about the press. We fall back on the hope that its owners and managers will come to understand its social mission and its shortcomings in fulfilling that mission—and on the hope that such work as that of the Hutchins commission will stimulate this kind of self-examination. For ". . . institutions become vulnerable when they cease to do their main jobs well. . . . The strongest assurance which the press can have against governmental encroachment is the vitality of its service to the community."

ROBERT LASCH*

Dangerous Words. By Philip Wittenberg. New York: Columbia University Press, 1947. Pp. ix, 335. \$5.00.

This is a book on the law of libel, the substance of which consists pretty largely of quotations from the opinions of appellate courts, often without benefit of the factual context of the opinions or, indeed, the decisions. As about anyone might guess, the result is not startling for accuracy or clarity. What, for instance, is one to think when he reads on the same page¹ that ". . . it [fair comment] must not contain imputations of corrupt or dishonourable motives on the part of the person whose conduct or work is criticized *save in so far as such imputations are warranted by the facts*," and that ". . . a comment is fair when it is based on facts truly stated and free from imputations of corrupt or dishonourable motives on the part of the person whose conduct is criticized"? Confusion resulting from negative pregnant and inferences is scarcely less pardonable than that resulting from the literal meaning of language.

Not only are the quotations mixed up, but one cannot escape the suspicion that the author occasionally suffers from the same trouble. In a chapter entitled "Privilege of Political Criticism," he is loose to the point of recklessness in his treatment of absolute privilege, conditional privilege, the in-between privilege of reporting governmental and other "public" meetings, and that trickiest of all privileges to defame, "fair comment."

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¹ P. 62.