

Missouri Law Review

Volume 13
Issue 3 June 1948

Article 5

1948

Book Reviews

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Recommended Citation

Book Reviews, 13 MO. L. REV. (1948)

Available at: <https://scholarship.law.missouri.edu/mlr/vol13/iss3/5>

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Book Reviews

GOVERNMENT AND MASS COMMUNICATIONS. By Zechariah Chafee, Jr. Chicago: University of Chicago Press, 1947. 2 vols. Pp. 830. \$7.50.

This is one of the "reports" issued by the Commission on Freedom of the Press which was set up under the chairmanship of Chancellor Robert M. Hutchins, of the University of Chicago, through a subsidy of \$200,000, the gift of Henry R. Luce, publisher of *Time* and *Life*. It is one of seven publications of the Commission and, on the whole, the most satisfactory of the series.

The brief introduction signed by the members of the Commission seems slightly grudging in tone. It quotes "one wise informant" who had appeared before the Commission as saying, "Not even ten per cent of the problems of a free press arise from governmental action." Just what this statistical and anonymous informant meant is a little vague, "problems of a free press" being a term incapable of strict definition; but the Commission was amply justified in discarding this bit of "wisdom" and permitting its most voluminous report to deal with the relations of government and press. The present work demonstrates that governmental activities touch the functions of a free press at a multitude of points.

The author is a professor of law at Harvard University, and the author of *Free Speech in the United States*, a notable review of infringements on freedom of speech and publication during the First World War. He served as Vice-Chairman of the recent Commission on Freedom of the Press and was without doubt one of its best informed members on the subjects discussed.

The present work is divided into three parts: (1) "Use of Governmental Powers to Limit or Suppress Discussion," in which libel, obscenity, sedition, contempt, and war censorship are the chief topics; (2) "Affirmative Governmental Activities for Encouraging the Communication of News and Ideas," in which major space is given to the impact of antitrust laws on the press; and (3) "Government as a Party of Communications," in which the chief topic is the problem of government information services. In this logical and convenient framework the author has given us a comprehensive and highly valuable résumé of the many controversial topics in which the modern press is affected by government. It is a remarkably full discussion, though newspaper men who have read it from beginning to end (and it is a readable work, devoid of technical terminology or stumbling writing) have complained of the neglect of certain economic questions relating to the publishing business. Control of the newsprint industry, adjustments of postal rates, and legal aspects of the printers' union are given short shrift. But taken altogether, this book brings together more of the fundamental problems in press-government relations than any other book has ever attempted to discuss. Though designed for general reading, it is especially valuable and interesting to the student of law.

There is an excellent section on the censorship of obscenity. Beginning with definitions in early English cases, coming down to an analysis of the decision on *Strange Fruit*, elaborating on procedural problems (especially as to the comparative values of jury trials and single-judge hearings), discussing indecency in motion pictures and on the radio, and considering at length control of importations by Customs and of periodicals by postal regulation, this division of Professor Chafee's work is most comprehensive of all, comprising about one-fifth of the whole work. It is an orderly, liberal, calm, and reasonable treatise on a difficult subject. The author believes that "no attempt to frame a definition [of obscenity] which will work in all situations is likely to succeed. . . . judges and officials who have to pass on an obscenity case will find it more fruitful to develop an attitude than to search for a definition."

In the discussion of antitrust laws in relation to mass communications, much space is given to an analysis of the Supreme Court decision of 1943 against the Associated Press. Here the author falls into the not uncommon error of assuming that the AP is "an almost indispensable source of national and international news." The fact is that the Associated Press and the United Press are of almost equal size and scope, and scores of cities are served by newspapers which refuse AP service because they think UP or INS serves them better and which do not feel the need of two services. The present reviewer once drew up an imposing list of such papers for Truman Arnold. Chafee quotes the government allegation that the *Chicago Sun* was the only exclusively morning paper with over 25,000 circulation in the United States which did not have an AP membership. The joker in that statement lies in the decline of morning journalism; a count reveals that out of 1,769 daily newspapers, only 37 are exclusively morning papers with over 25,000 circulation. All this, however, does not alter the specific fact that the *Sun*, in its exceptional field, like any large metropolitan newspaper, needs all three services.

A more serious error of the author's is a certain confusion which mars his discussion of compulsory disclosure: he confuses again and again the disclosure of the information obtained and the disclosure of the source of information. It is the latter which was at issue in the *Deutsch* case and other important contempt cases; and thus these have no analogy with attempts to penetrate the confessional or the confidences of a patient or client in medicine or law.

The vital question of government reports and information bulletins is treated at length, with both sides of the case fully stated. The conclusion is that, good or bad, or good and bad, we are "going to have a good deal of government information of some sort or other."

One of the most interesting chapters is the one entitled "Is Bigness Badness?" Here the author uses long quotations from the recorded discussions of the Commission on such subjects as monopoly, the profit motive, and so on. He does not wish to identify the speakers; and instead of calling them A, B, C, etc., he at least makes his page look more attractive by naming them after famous thinkers of the past. If he compliments Hutchins by calling him Milton, and Hocking by naming

him Plato, and so on, who should complain? Those worthies are beyond dissent or reply, and if Xenophon speaks with a Harvard accent, no harm is done.

Professor Chafee's book is not only a valuable compilation of points of view and important thought on its many topics, but a challenge to thinking for the future. Perhaps its leading challenge is in the author's belief that government should not only refrain from restrictions upon press freedom but should assume the positive duty of promoting that freedom.

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REGULATION OF TRANSPORTATION: PRACTICE AND PROCEDURE BEFORE THE INTERSTATE COMMERCE COMMISSION. By Joseph H. Tedrow. Dubuque, Iowa: Wm. C. Brown Company, 1947 (2nd edition). Pp. 222. \$6.

This study is an expanded collection of notes and materials of the author, Lecturer in Transportation Law of the University of Kansas City, the first edition of which appeared in 1946 under the auspices of the Kansas City Board of Education. The principal objective was the compilation of instructional materials for admission to practice before the Interstate Commerce Commission. "This work is intended to be elementary—a primer so to speak." The author reports 90 per cent of students completing the work outlined have been admitted to practice.¹

It would be carping on the part of the reviewer to be critical of the modest length and rough form of the author's brief outlines and notes when a tome could be wrought on several of the regulatory issues that are glossed over in passing. What the author appears to be interested in is advising of the ways and means of maintaining one's rights and remedies before the Commission. It is typical of the usual practitioner's approach to obtain a snatch here and there of the conflicting philosophies of commerce and regulation involved in the application of the Interstate Commerce Act. However simple the diction may be for outlining the elementary principles of carrier law, it is feared there is an oversimplification.

Certain features the author incorporates are very helpful, *i.e.*, the collections of similar and dissimilar sections of Parts I, II, III and IV of the Interstate Commerce Act, as amended; the checklists of quiz questions for hopeful laymen-practitioner aspirants; the listings of sections of the Act, and some of the decisions, involving points of practice and procedure to save the novitiate's time; and the

1. The Commission maintains a roll of practitioners composed of lawyers and laymen. For lawyers admitted to the bar of character and ability and who present a certificate of good standing and take an oath, no examination for enrollment is required. 49 U.S.C. sect. 17(12); 49 C.F.R. 1.1 *seq.* For laymen, the qualifications limit applications for enrollment to citizens or residents of the United States of good moral character satisfying the Commission they are possessed of the necessary legal and technical qualifications to render valuable service and assist in presentation of matters before the Commission. Rule 8 of the Rules of Practice, I.C.C. [49 C.F.R. 1.8(b)].

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collections of the regulatory acts in historical and analytical order are about as helpful guides to understanding the structure of regulation as it has been the pleasure of this reviewer to encounter. To the active practitioner or experienced lawyer, the chief value of the study consists in the author noting some of his personal experiences, since such seldom get into print.

This second edition suffers from the author's persistent habit of using an abbreviated outline form. Additional editing, better choice of diction and use of good English could have resulted in a more lasting contribution to the literature. The beginning student, for whom the work was prepared primarily, may wind up with only a "cram" understanding of transportation issues without further grounding in the basic conflicting philosophies of economics, regulation and the law. The author appears too enthusiastic about laying bare the fundamentals of commerce and the reasons for regulation. The reviewer is skeptical of the author's stressing, *inter alia*, of correct methods of reasoning and the study of logic. The reviewer's reaction from experience with students of transportation and study of the decisions of the Commission and the courts is to query whether flunking a course in orthodox logic might not be a better prerequisite to realistic comprehension.

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