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Free Speech in the United States by Zechariah Chafee, Jr.

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BOOK REVIEW

FREE SPEECH IN THE UNITED STATES, BY ZECHARIAH CHAFEE, JR.

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Harvard Law Professor Zechariah Chafee, Jr. combines in his book on *Free Speech in the United States* the astuteness of the legal scholar, the story-telling art of the novelist and the insight of the sociologist. Some readers may disagree with a number of his conclusions, especially those dealing with the question whether to deny freedom of speech to minority radical groups. More, I believe will hail his approach to the problems of constitutional liberties as effective, legitimate and sane.

Chafee presents not only excellent briefs of the many cases he cites but also their historical, political and social settings. His bibliographical notes, his summary of statutes affecting free speech and his comprehensive index should make his text a handy reference for civil rights attorneys and political scientists.

My personal reaction to his book obliged me to "brief" practically the entire text. I felt what it had to say was important enough for me to digest. In the book report which follows, I have quoted Chafee often and at length, trusting that the many passages in his own words would capture his spirit and enhance the review.

In his preface to *Free Speech in The United States,* published in 1946, Author Zechariah Chafee, Jr., states that the occasion of his writing the text was to replace his book on freedom of speech, which made its appearance in 1920. He points out that in the present work he has fused together all his ideas "past and present on freedom of speech"

Primarily, *Free Speech in The United States* is an inquiry into the proper limitations upon freedom of speech. In part one, there is a broad survey of freedom of speech in 1920, which discusses at length freedom of speech in the Constitution, war-time prosecutions, the *Abrams* case, the post-war sedition laws, the deportations and also questions concerning the "purification of the legislature"

Chafee mentions two mutually inconsistent theories concerning the nature and scope of the First Amendment to the Constitution which have been successful in winning judicial acceptance and which frequently appear in the Espionage Act cases. One theory construes the First Amendment as enacting Blackstone's statement that "liberty of the press consists in laying no previous restraint upon publications and not in freedom from censure for criminal matter when published" The other theory draws a line between liberty and license and holds that the interpretation of freedom of speech clauses limits them to the protection of the use of utterance and not of its abuse. The First Amendment protects two kinds of interest in free speech, namely, the individual interest and the social interest in the attainment of truth. In concluding this section of part one, Chafee urges that the "true boundary line of the First Amendment can be fixed only when Congress

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and courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing of two very important social interests, that is, public safety and the search for truth"

The book relates that the war-time prosecutions under the Espionage Acts of 1917 and 1918 illustrate what happened to free speech in the United States in times of panic. The 1918 Espionage Law, sometimes called the Sedition Act, added nine more offenses and inserted "attempts to obstruct" in the third of the original offenses. In the case of *Masses Publishing Company* v. *Patten*,[1] for example, the postmaster of New York enjoined the *Masses*, a monthly revolutionary journal, from printing an issue which contained articles, poems and cartoons attacking the war. Judge Hand of the Southern District of New York issued an injunction against the postmaster from excluding the August issue and stated the test under the law was whether there was "the strong danger that the speech or words would cause injurious acts" He viewed the 1917 Act as supporting an objective test for criminality. However, Judge Hand was reversed on a point of administrative law stating that the postmaster s decision must stand unless clearly wrong. The Circuit Court of Appeals rejected Judge Hand's objective test and substituted the view that allowed conviction for any words which had the indirect effect of discouraging recruiting and war spirit, if only the intention to discourage existed.

The effect of this decision was to establish the old time doctrine of remote bad tendency in the minds of the district judges. The District Court cases showed that the courts treated opinions as statements of facts and then condemned them as false because they differed from the President's speech or resolutions of Congress. Almost all convictions were for expressions of opinion about the merits and conduct of the war.

The human machinery of the Sedition Acts exhibited many weaknesses. The prosecuting officials had the people who were opposed to the war practically at their mercy. Prosecution almost invariably resulted in conviction. Juries seemed to think that the only verdict which could show loyalty in a war case was "guilty" Very few trial judges emphasised the desirability of wide discussion so long as there was no real interference with the raising of armies. There was a tendency to convict for long terms. Several land-mark Supreme Court decisions illustrating these points are then discussed. *Schency* v. *United States*,[2] for example, shows the adoption of the "clear and present danger" rule; the *Frowerk* case[3] reveals the disastrous consequences of an unsatisfactory record, implying bad defense counsel; the *Debs*[4] case indicates how bad tendency and presumed intent were made tests of criminality. *Schaefer* v. *United States*[5] offers a study in judicial methods — Justice McKenna approaching the problem from the side of war power while Justice Brandeis starts from the danger test of freedom of speech and from the actual words of the Act; and finally, the case of *Pierce* v. *United States*[6] discloses how opinions were regarded as false statements. Chafee reflects, at the end of this section, that 'in our efforts to silence those who advocated peace without

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[1] 244 Fed. 535 (S.D.N.Y. 1917).
[2] 249 U.S. 47 (1919).
[3] 249 U.S. 204 (1919).
[4] 249 U.S. 11 (1919).
[5] 251 U.S. 466 (1920).
[6] 252 U.S. 239 (1920).

victory we prevented at the very start that vigorous threshing out of fundamentals which might today have saved us from a victory without peace"

The *Abrams* case[7] was cited next to bring out the difficulties of trying political offenses satisfactorily in our courts. Jacob Abrams and several other defendants, all Russian citizens residing in the United States, had been prosecuted because of agitation against the government's policy in dispatching American troops to Vladivostok and Mumansk in the summer of 1918. He and his associates had printed pamphlets, urging munitions workers, amongst others, for a general strike to oppose the United States intervention in the Russian revolution. They had thrown some leaflets from a window in a New York manufacturing district and had passed others around at radical meetings. Indicted for conspiracy to violate four clauses of the 1918 Espionage Act, they were tried in the District Court in New York City by Judge Henry De Lamar Clayton, who was the regular judge for the Northern and Middle Districts of Alabama. Judge Clayton had never tried any important Espionage cases before; he came from a "remote district where people were of one mind about the war and where the working class was more conspicuous for a submissive respect for law and order than for the criticism of high officials."

The defense contended, among other things, that the government's main task was to establish an additional intention to interfere with the war with Germany. They introduced several American eyewitnesses of Russian affairs to prove that the Bolshevist situation was such that our intervention was not anti-German; but this testimony and all questions of constitutionality of intervention were excluded by the judge. The government contended that the defendants did intend to hinder the fighting against Germany and so were properly convicted on the theory that the circulars intended to cause armed revolts and strikes and thus diminish the supply of troops and munitions available against Germany on the regular battle front. After analyzing the testimony, Chafee concludes that the pamphlets in question protested against our Russian policy and not against the war; and that the defendants had intended to defend the Russian Revolution rather than hinder us in our war against Germany. He charges that a specific intent to hinder the war with Germany was never proved by the evidence and that no explanation of the importance of specific intent was given to the jury. The Supreme Court affirmed the conviction, with Holmes and Brandeis dissenting.

Chafee feels that the lesson of the *Abrams* case is that Congress alone can effectively safeguard minority opinion in times of excitement. He recommends that Congress should not revive the Act of 1918 because trial judges will be found to adopt a free construction of the Act so as to reach objectionable doctrines and the Supreme Court will probably be unable to afford relief.

In the 54 pages on post-war Sedition Laws which follows the chapter on the *Abrams* case, Chafee discloses his ideas on the normal law against violence and revolution, the normal criminal law of words, the difference between the normal law and new legislation, the Red Flag statutes, criminal anarchy and criminal syndicalism, the Federal Sedition Bills of 1919 and 1920, the constitutionality of a Federal Sedition Law, and the wisdom and expediency of a Federal Sedition Law.

With respect to the normal law against violence and revolution, the author believes that local laws enable police and the courts to deal vigorously with the actual or threatened insurrection, explosions or assinations. Most states have

[7] 250 U.S. 616 (1919).

statutes or common law to handle conspiracy to commit crime. The Federal Criminal Code provides against schemes to overthrow the government by bombs or any other means. It is suggested that the October 6, 1917 law making the use of explosives subject to strict government regulation be extended beyond its war-time existence. In that manner Chafee contends, "the normal law will be entirely adequate to guard us against dangerous anarchy"

The normal criminal law of words extends to special classes of words which cause present injury and also punishes speech as an attempt or solicitation although it falls short of actual injury The law of attempts and solicitation is directed not against the words but against acts. In this section, a warning is issued that all crimes of injurious words must be kept within very narrow limits if they are not to give excessive opportunity for outlawing heterodox ideas.

In pointing out the difference between the normal law and the new legislation, Chafee notes that the former is willing to run risks for the sake of open discussion and the latter is directed against those who express or hold opinions which are distasteful to the substantial majority of citizens. The best test of permissible speech, he argues, is the clear and present danger rule as declared in the *Schenck* case.

In mentioning the several types of state sedition statutes, Chafee marks the "Red Flag Laws" as being the simplest. He states that by 1920, 32 states had adopted some version of this law. A more important group of statutes are the criminal anarchy and criminal syndicalism laws. They differ from the normal criminal laws in the following three ways, namely,

(1) by labeling opinions as objectionable and punishing them for their own sake because of supposedly bad tendency, without any consideration of probability of criminal acts,
(2) by imposing severe penalties for advocacy of small offenses, and
(3) by establishing a practical censorship of the press, ex post facto.

After the section on state sedition laws, Chafee takes up the Federal Sedition Bills of 1919 and 1920. He raises two questions with respect to a peacetime Federal Sedition Act, namely, how far is such a measure constitutional and how far is it wise and expedient. In considering the first question — he advances the notion that the United States has affirmative power to protect its own life under Article 1, Section 8, unless that power is restricted by the treason clause and the First Amendment; that the treason clause needs further interpretation for a clear definition; and that the Sedition Laws of 1798 and 1920 are violations of the First Amendment. In an attempt to answer the second question concerning the wisdom and expediency of such a law, he gives three reasons why he thinks a Federal Sedition Law will fail; first because of the unexpected ways in which the law would be applied with loose interpretations; second, because such a law prevents the discovery of grievances which need removal; and finally, for the reason that like laws often suppress much good with a little bad.

The ensuing section treats the subject of deportations, specifying the classes of aliens who are deportable under the Alien Law in force in 1919 and 1920. The groups include aliens who are anarchists; who believe in or advocate the overthrow by force or violence of the government of the United States or of all forms of law; those who advocate or teach the assassination of public officials, etc. Chafee claims that the administrative machinery for deporting these people does not provide for a jury or a judge according to the usual legal procedures, but con-

ducts its hearing and proceedings in secret. In addition, he claims that despite the fact that these aliens must be arrested on warrant signed by the Secretary of Labor and are supposed to get a fair administrative trial, in practice many not criminal were arrested, their property overhauled and seized without search warrants and the hearing turned out to be unfair. One of the worst evils of the sedition legislation, according to the text, however, was the creation of the government spy system. After distinguishing the different types of radicals held for deportation, including communists, members of the Industrial Workers of the World and anarchists, he explains that some deportations were based on the results of the immigration inspector's inquisition rather than previous overt or expressed acts. Chafee believes that denying aliens the right to remain here denies persons already here the privilege of listening to and associating with a foreign thinker, since freedom of speech is a social interest of the community as a whole. He feels also that we should be more humane toward aliens; that although they cannot be forced to love this country, they "will" love it because it does not employ force except against obviously wrongful overt acts.

In the last section of part one, the topic "Purifying The Legislature" is expanded and the cases of John Wilkes, Victor Berger and the five socialist members of the New York Assembly are briefed. John Wilkes, the reader is reminded, led the fight to establish the right of people in England to choose their representatives even though their political opinions had supposedly "evil tendencies" Berger's unseating in the House of Representatives despite his second election thereto from Wisconsin in 1920 caused Chafee to raise such questions as: may the House reject a person for any reason the majority chooses; are the qualifications to be applied by the House limited to the constitutional requirements for membership; and is opposition to a war a disqualification under the 14th amendment? Chafee thought the twofold denial of Berger's seat (he ran on the Socialist ticket) was a great mistake and a wrong to the people who elected him. He felt also that the unseating of the five socialist assemblymen in New York constituted a disfranchisement of some 60,000 Americans on "the basis of a caricature of Socialism" This type of action, he thought, appealed to force as the normal method for settling conflicts between ideas.

Part Two

In part two, entitled The First Decade of Peace, the period from 1920 to 1930 is covered. Two of the last war cases, namely *Gilbert* v. *Minnesota*[8] and the *Milwaukee Leader*[9] case are commented upon in detail. In the *Gilbert* case. where the defendant was convicted under a state statute (making it unlawful to interfere with or discourage the enlistment of men in the military forces of Minnesota or the United States) for making statements which allegedly violated the statute, the majority opinion of the Supreme Court upheld the power of the state to punish opposition to the war. The dissenting opinion by Brandeis maintained that freedom of speech was protected against state action by the United States Constitution. The majority held that freedom of speech could be limited by state action. Chafee is under the impression that Gilbert was improperly convicted since the Minnesota statute in question required no clear and present danger of interference with enlistment as a basis of guilt. In the *Milwaukee* case, the

[8] 254 U.S. 325 (1920).
[9] 255 U.S. 407 (1921).

Supreme Court upheld the Postmaster General's order denying second class mailing rates to Victor Berger s *Milwaukee Leader* because some issues allegedly violated the Espionage Act. Since there was a revocation of a permit for future issues, it is pointed out that the decision was not limited to war cases because the postmaster, under such an interpretation of the postal statutes, could suppress any newspaper with a few articles which are unmailable, on any grounds.

A chapter is devoted to the *Rand School* case, involving the Lusk Law of 1921 in New York, which required a license for all schools from regents of the state education board and provided that no license should be given where it shall appear that the instruction proposed includes teaching of any doctrine that organized government shall be overthrown by force, violence or unlawful means. The Rand School, a socialist and labor college, refused to apply for a license and the Attorney General obtained an injunction against the school. While appeal was pending, the governor who signed the bills was defeated at the polls and the new governor, Al Smith, led their repeal. Chafee remarks that "the cause of liberal education was won, not in the courts, but at the polls"

Gitlow v. *New York*[10] is cited next to show how the Supreme Court's position that it had power to protect liberty of speech under the Fourteenth Amendment (even though it didn't exercise same in this particular instance) promised future federal protection against state suppression. The court had upheld the constitutionality of the New York State Criminal Anarchy Act and considered the question of the constitutionality of the Act as construed by the state courts.

From this discussion of a State Criminal Anarchy Act, Chafee leads into a chapter on criminal syndicalism. He refers to the California I.W W injunction of 1923 and points out two significant legal tendencies of late, namely, government suppression of radical discussion and organization and government use of the injunction instead of criminal prosecutions to maintain "law and order" He concludes that "a grave mistake is being made in allowing prosecuting officials to employ courts of equity in place of criminal courts" and suggests that "the machinery of criminal justice be tightened to punish violent acts"

Following the I.W W injunction, another California case, *Whitney* v. *California*[11] is briefed, showing how criminal syndicalism reached the Supreme Court. Miss Whitney had been convicted primarily for organizing or assisting in organizing an organization for the purpose of advocating, teaching and aiding and abeting criminal syndicalism. The facts showed that she was convicted for being at a meeting of a Communist Labor Party convention and nothing more. The statute made it a felony to organize or assist in organizing or to be a member in any group which assembled to teach, advocate or aid and abet criminal syndicalism. The conviction was upheld by the Supreme Court. In a concurring opinion Brandeis suggested that 'the issue whether there actually did exist at the time a clear and present danger, whether the danger, if any, was imminent; and whether the evil apprehended was one so substantial as to justify the stringent restriction interposed by the legislature" should have been brought up by the defendant. Because this question was not raised, the court was unable to make use of the clear and present danger test.

Chafee winds up the section by advocating the clear and present danger test as the most practical; by warning that the easy acceptance by courts and leg-

[10] 268 U.S. 652 (1925).
[11] 274 U.S. 357 (1927).

islatures of guilt by association should cause anxiety to others besides supporters of freedom of speech; and lastly, by pointing out that criminal syndicalism laws are dangerous because of their easy interpretation by juries in times of excitement to include peaceable advocates of industrial or political change.

Part Three

Part Three, called The Second Decade of Peace, is concerned with the period from 1930 to 1940. Early in February 1930 Chief Justice Taft of the Supreme Court resigned and Charles E. Hughes was appointed in his place. The Supreme Bench had become more liberal and its decisions affected freedom of speech rights favorably. For example, in the case of *Stromberg* v. *California*[12] in 1931, there was a conviction under a statute which made it a felony to display a red flag in a public assembly "as (1) a sign, symbol or emblem of opposition to organized government, or (2) as an invitation or stimulus to anarchistic action, or (3) as an aid to propaganda that is of a seditous character." Miss Stromberg, in conducting a summer camp for children, had supervised a daily a ceremony which displayed a red flag (a reproduction of Soviet Russia s and Communist Party flag) and included a "pledge of allegiance to the workers red flag and to the cause for which it stands, freedom for the working class." The Supreme Court reversed the conviction on the grounds that the statute violated the Fourteenth Amendment. Chafee notes that the implications of the decision extended beyond the issue of red flags, in that it holds that a criminal statute may be unconstitutional for indefinitness; that it throws doubt on the validity of guilt by association; and that it extends constitutional protection beyond liberty of speech in the narrow sense.

In the same month that year the case of *United States* v. *Macintosh*[13] raised a federal rather than a state problem. The defendant, a 54 year old Canadian Baptist minister was denied citizenship because he would not swear to bear arms. He wanted to limit the oath with the qualification that he (Macintosh) must believe the war was justified before he would swear to it. The Supreme Court affirmed the denial of citizenship. Hughes dissented, advocating the tradition in American legislative policy of avoiding unnecessary clashes with the dictates of conscience.

A week later a third opinion on free speech, this time a majority one, was issued. In the case of *Near* v. *Minnesota*[14] the Court showed a strong hostility to previous restraint in publication of printed matter. The Minnesota Gag Law, which provided for the abatement, as a public nuisance, of a "malicious, scandalous and defamatory" newspaper and other periodicals (truth being a defense only if "published with good motives and justifiable ends") was invalidated as an improper deprivation of liberty of the press.

Five years later the Supreme Court considered a different kind of a previous restraint on the press – a heavy state tax on newspapers. In the case of *Grosjean* v. *American Press Company*,[15] the state of Louisiana had imposed a two per cent tax on the gross receipts of any newspaper, etc., engaged in selling ads in the state and having a circulation of more than 20,000 per week. The tax was held uncon-

[12] 283 U.S. 359 (1931).
[13] 283 U.S. 605 (1931).
[14] 283 U.S. 697 (1931).
[15] 297 U.S. 233 (1936).

stitutional as being contrary to the freedom of press and equal protection of law clauses of the Fourteenth Amendment.

The next year, 1937, the Supreme Court decided in the case of *De Jonge* v. *Oregon*[16] that peaceable assembly for lawful discussion could not be made a crime and that the state could not take away the right of the people to petition the government for a redress of grievances. This case was important because it extended the concept of liberty under the Fourteenth Amendment.

Also decided in 1937 was the case of *Herndon* v. *Lowry*.[17] It involved a negro communist organizer who was convicted under a Georgia statute for attempting to incite insurrection because he was found to possess pamphlets advocating, among other things, a revolution uprooting the existing capitalistic state, confiscation of landed property of white landowners for benefit of negroes and the establishment of a "Black Belt" of independent states. A bare majority of the Supreme Court released him, stressing the point that "the dangerous tendency" test (as applied in the state court) violated the guarantees of the Fourteenth Amendment in that no reasonably ascertainable standard of guilt was prescribed.

Chafee then considers the constitutionality of ordinances requiring permits for two different methods of communicating thought, namely — the distribution of literature and the assembly with speaker and audience. The first type, involving the "peddling of ideas" is illustrated by the case of *Lovell* v. *Griffin*,[18] where an ordinance in Griffin, Georgia forbade the distribution of literature of any kind, free or sold, without prior written permission from the City Manager. Alma Lovell, a member of the Jehovah s Witnesses went around the city of Griffin, speaking to pedestrians on the street, canvassing house-to-house, offering to sell religious booklets, telling about her faith and soliciting contributions without applying for permission to do so. She was arrested, fined and jailed. She lost her appeal in the State Court and took the case up to the Supreme Court. A unanimous decision rendered the ordinance invalid as being a denial of freedom of the press. The author notes that *Lovell* v. *Griffin* marked a sharp turning point in the law and checked the use of permits for activities concerned with speech. He suggests that the doctrine in the case might serve as a protection from oppressive censorship of motion pictures and radio.

The second type of ordinance mentioned above, requiring permits to communicate ideas, is concerned with freedom of assembly The constitutional question involved received full Supreme Court attention in the case of *Hague* v. *C.I.O.*,[19] where a Jersey City ordinance forbade any public assembly from taking place in or upon the streets, parks, or public buildings unless a permit had been obtained three days ahead from the Director of Public Safety. The Director could refuse issuance thereof only "for the purpose of preventing riots, disturbances or disorderly assemblage." Permission was refused for an open-air C.I.O. meeting and the C.I.O. brought suit in the United States District Court to enjoin the Mayor from enforcing the ordinance. From a sweeping injunction granting all the prayers of the plaintiffs, the officials appealed. In the Supreme Court the ordinance was held void on its face. Chafee sums up the result of the *Hague* decision to mean that "speakers are free to talk without previous permission from anybody, but remain fully responsible for what they say."

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[16] 299 U.S. 353 (1936).
[17] 301 U.S. 242 (1937).
[18] 303 U.S. 444 (1938).
[19] 307 U.S. 496 (1939).

In the remainder of Part Three, the 1940 Alien Registration Act is treated as well as the subject of excluding communists in many states from the ballot. The 1949 Act is in effect a Federal Sedition Act and contains the "most drastic restrictions on freedom of speech ever enacted in the United States during peace." The provisions are substantially similar to the Espionage Act of 1917. Chafee objects to the statute because it is not limited to a national defense emergency and because it is a law abridging freedom of speech and of the press in times of peace. Recalling what happened in the United States after the first World War, Chafee views with alarm the danger that the 1940 Act will be used in times of excitement to suppress the discussion of public affairs among civilians. He critizes the "guilt by association" possibilities in the law and points out that this constitutes a departure from one of our traditional democratic doctrines, namely, that guilt is personal and not by association. He feels that such a law encourages "spies, persecution and hysteria."

With reference to the number of states which have enacted statutes to exclude communists from the ballot, Chafee urges the four following reasons against such a ban:

(1) in the first place, their desire to be on the ballot is a departure from the basic principles of their creed and we should encourage them to carry that departure as far as possible;

(2) in the second place, if communists go on the ballot, the authorities will receive an accurate knowledge of the true size of the group;

(3) thirdly, if you outlaw the Communist Party, some communists will become Democrats or Republicans or form a new party. Consequently candidates will be found who will promise extreme measures to satisfy the new left-wingers of the lawful party·

(4) finally, since the prime cause of all dangerous political agitation is discontent, then outlawing the Communist Party will double their discontent and aggravate the situation.

Part Four

Part four, entitled Wider Horizons begins with a review of the history of the law of sedition in England and the United States. After summarizing the historical growth of sedition with an emphasis on earlier periods and other English speaking countries, Chafee arrives at the conclusion that the Twentieth Century has witnessed increased control over speech and writing, for the most part through comparatively recent legislation. In his survey of the past English and American attempts to end sedition by severe penalties, he brings out the following thoughts.

(1) Persons punished were for the most part unimportant and comparatively harmless.

(2) Suppressions of one period are condemned a generation later or much sooner, as unnecessary, unwise and cruel.

(3) The main principles of the speeches and pamphlets which the government made vigorous attempts to suppress are often put into force within a few decades.

(4) History shows that sedition is often the symptom and not the cause of serious unrest.

In recommending approach to the problem of sedition the author uses a sug-

gestion from one of Francis Bacon s "Essayes of Seditions and Troubles" written in the Seventeenth Century, quoted below·

> "The surest way to prevent seditions (if the times do bear it) is to take away the matter of them."

Leading from the general problem of sedition to specific problems involving free speech, Chafee then delves into methods of controlling discussion in peace time. He begins with the premise that the constitutional definition of a given liberty in the Bill of Rights is not as important as the legal machinery which determines the scope of the liberty in a particular case. He argues that "the guarantees of liberty in the Bill of Rights do not of themselves operate to preserve liberty," but that they are 'brought actively into our lives by the intervention of human beings in ways which must be determined by specific rules." In this connection, he indicates that four aspects of such machinery bear careful scrutiny, namely, its nature, the persons who constitute it and draw the line in the particular case, the time when the line is drawn, and the speed and expense and risks with which the line is drawn.

Keeping these aspects in mind, Chafee proceeds to consider several points at which liberty of discussion is subject to restriction by law and by the existing or appropriate legal machinery for demarcating the limits of liberty. He explains that prosecutions with a jury may be brought for sedition, indecency, blasphemy and libels so outrageous as to make breaches of the peace probable. Petty offenses and those connected with indoor and outdoor meetings are usually within the province of the local police. Laws against indecent publications and plays are usually found on the state level and present the very difficult problem of providing proper machinery and personnel for testing. Chafee advises that suits for declaratory judgmentss be utilized together with qualified juries to decide on the issue of indecency before publication and showing. In this manner the risk of criminal prosecution of honest theatre owners, producers, publishers and bookseller s would be lessened.

Chafee objects to state censorship of motion picture control on the grounds that it hampers the chief function performed by the novel and theatre, that is, the criticism of life. He favors, instead, a centralized federal board to avoid the multiciplity of state and municipal authorities. In mentioning the great power of the post office to limit the liberty of the press he urges a thorough presidential and congressional reexamination of the fitness of its machinery. He winds up the chapter by admonishing the citizens against being content with merely adjusting the negative forces which restrain liberty He advises that we consider the development of positive forces which will encourage liberty and remove the "sluggishness of thought into which we all easily lapse even without any prohibitions upon opinion."

At this point the author brings his text on free speech to a fitting close with this warning:

> "Let us not, in our anxiety to protect ourselves from foreign tyrants, imitate some of their worst acts and sacrifice in the process of national defense the very liberties which we are defending."