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CENSORSHIP OF THE MOVIES: THE SOCIAL AND POLITICAL CONTROL OF A MASS MEDIUM. By Richard S. Randall. – AMERICAN LAW OF ZONING: ZONING, PLANNING, SUBDIVISION CONTROL, by Robert M. Anderson.

Jack Valenti

Chester James Antieau

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Book Reviews

CENSORSHIP OF THE MOVIES: THE SOCIAL AND POLITICAL CONTROL OF A MASS MEDIUM. By *Richard S. Randall*. Madison, Wisconsin: The University of Wisconsin Press, 1968. Pp. xvi, 280. Cloth: \$7.95.

Professor Richard S. Randall says more than the average layman would wish to know but no less than the expert should know in this comprehensive, scholarly, and thorough exploration into movies and censorship. The book should be welcomed by both.

The field he traverses is dotted with booby-traps. Few have managed to cross the hazardous and slippery ground without mishap. Professor Randall passes through the ordeal with a few scratches and bruises but with no disfiguring wounds. That deserves a medal, although in bestowing it I retain doubts and disagreements, some of them serious, as I shall mention later.

The perils confronting the author who seeks to dispel the clouds enveloping censorship are two-fold. First, censorship tends to stand still and look backward while everything around it is in change, often cataclysmic, and moving forward. What was considered obscene and censorable before, in the telescoped time of the era, becomes *comme il faut*. We have come from the one-piece bathing suit to the bikini (which some consider over-dressing); from *Ulysses* to *I Am Curious (Yellow)*, by edict of courts,¹ and this raises the question: are the courts ahead of or behind public opinion in the United States?

Courts may or may not follow the election returns but, perhaps as well as any of our democratic institutions, they are at least aware of the world outside the cloistered halls of government. I have often thought that a young candidate for top honors in the law could do a valuable treatise on the "whirling theory of judicial practice." For example, the motion picture was walled off from the First Amendment in 1915 by the Supreme Court in *Mutual Film Corp. v. Industrial Commission*,² but the walls were broken down and the film brought within guaranteed constitutional protection in censorship cases decided three and four decades later by the same Court.³ I do not denounce the theory; I doubt if our society could survive without orderly and permissive resiliency in our democratic institutions.

The second peril lies in the self-assumption on the part of most of us that we are experts, than whom there are no others, on censorship, obscenity, pornography, sex and violence. Perhaps each of us is, but the dogmatism leads to chaotic, disruptive, and hostile disagreements of inordinate magnitude in American society. Conflicts generate pressure and the media, notably films and television today, often feel the heat that arises outside the processes of the law and the legislative system.

It is to Professor Randall's great credit that he faces up to these perils with vigor and candor and deals with them in some of the most perceptive parts of the book.

1. *See, e.g.,* United States v. A Motion Picture Film Entitled "I Am Curious—Yellow," 404 F.2d 196 (2d Cir. 1968).

2. 236 U.S. 230 (1915).

3. *See, e.g.,* Freedman v. Maryland, 380 U.S. 51 (1965); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948).

Professor Randall sets his discussion in a broad perspective, whether he is tracing the judicial milestones which have diminished the censor's powers or telling of the social, religious, and political forces that have always beat against speech and expression, and still do. He wonders whether these forces aren't so insistent today that "[i]t is unlikely that any mass medium in the American mass democratic society today can be completely, or even nearly, free of control except at a tremendous potential cost to the political system itself." (p. 232) He argues that a denial of the values censorship defends could lead possibly to "a reaction of generalized intolerance," to "support for extremist politics . . . or to even a sense of alienation from the political system itself." (p. 232)

In the manner of members of courts, I dissent. If denial of freedom of expression could cause a social explosion over values "often of an emotionally elemental character," (p. 232) which I doubt, I would contend that censorship rather than freedom is far more likely and certain to destroy democratic values, elemental or otherwise. I call upon all the experience of man's history to sustain me. Why has man fought so valiantly and at such great peril always upward to liberty?

When Professor Randall goes on to say, at the book's end, that there is need to recognize that censorship is in large measure a social and political problem, and therefore only partially curable through legal action, I happily concur. In the industry and outside we need to keep this valid point uppermost in mind.

Professor Randall's assumptions and conclusions on the relationship of government censorship to freedom of speech and the effects of prior restraint as opposed to criminal proceedings are, I believe, based on doubtful or erroneous premises. First, he claims that motion pictures, although the only medium subject to prior restraint, enjoy a greater freedom because of the absence of "powerful internal restraints" which adjust "the free speech ethic . . . to the level of popular acceptability." (pp. 228-29) This premise completely ignores the fact that the content of motion pictures is also subject to "popular acceptability" since, as a commercial enterprise, it cannot exist without "popular acceptability."

I take exception to Professor Randall's criticism of the Production Code (pp. 198-214, 229). His conclusions differ substantially from my own close observations of its operation during the last three years. The testimony of producers in Hollywood would support my observations. His conclusions would differ from the views of the public who have seen on the screen the clear evidence of the Code's positive and beneficial influences.

The second premise is that in some way government censorship represents the *will* of the *majority*. Certainly from his own able research, he must be aware that government censorship more often reflects the narrowest views of the community.

Professor Randall directs several observations to the absence of "an established audience stratification." (p. 229) It is precisely because we had it in mind that the industry, on November 1, 1968, buttressed its Code with a film-rating system placing motion pictures in four categories to indicate audience suitability. This was our way of taking concrete steps to show our concern for children. It is a voluntary program supported by all elements in the industry, from the studios to the local theaters. It marked a sharp break with the attitude maintained by the industry in the past.

I am happy that the industry is now in agreement with Professor Randall although he did write that our opposition to such self-rating appeared "unshakable." He thought that the development of "a reliable stratification for the medium that would afford a more finely drawn audience-content balance" would be a measure of major importance possibly toward "an accommodation of opposing interests in the controversy over the movies." (p. 233)

The rating system now in effect had clearly not been initiated when Professor Randall wrote his book. I hope that its operation will justify his arguments on behalf of such a system. We shall certainly do our best to carry it forward in a manner to warrant the favor and the support of the public, movie-goers and non-movie-goers alike.

A new kind of film is being made today, in the United States and in all producing countries. It is a film with a new frankness, a new honesty, a new realism. Putting semantics aside and using the word in its generic sense, there is, truly, a new candor in films today. This was an inevitable evolution, stemming from the fact that what was available, desirable and seemed rational a decade or two ago in this country is no longer so. In consequence the industry came to understand and realize that a new approach to the public was needed; especially to let parents know, for the sake of children, what was in a film. Thus was born the rating system.

Often I am asked by lawyers outside the industry, by law students, by thesis-writing undergraduates and graduates for sources on films and censorship. If I have fumbled in responses before, I shall do so no longer. I shall mention *Censorship of the Movies*, whose peer I do not know.

JACK VALENTI*

*President, Motion Picture Association of America.

AMERICAN LAW OF ZONING: ZONING, PLANNING, SUBDIVISION CONTROL, by *Robert M. Anderson*. Rochester, New York: Lawyers Co-operative Publishing Company, 1968. Pp. 2919 (four volumes). Cloth: \$100.00.

This is a superlatively organized and informatively written work on all aspects of the American law of zoning. The author is Congdon Professor of Public Law and Legislation at the College of Law of Syracuse University and he brings to the work many years of experience in legislative and litigational aspects of zoning. He is also the well known author of an earlier work on New York zoning law which has been relied on constantly by members of the bench and bar of that state.¹

Appropriately, Professor Anderson begins with a thorough treatment of the power to zone, including constitutional limitations upon exercise of that power. He includes a full and lucid treatment of enactment and amendment procedures, followed by a discussion of substantive limitations upon zoning imposed by various legislatures, *e.g.*, the requirement that the zoning be in accordance with a comprehensive plan.

1. R. ANDERSON, *ZONING LAW AND PRACTICE IN NEW YORK STATE* (1963).

The first volume contains a remarkably full, scholarly and useful treatment of the nonconforming use and a timely treatment of aesthetic justification for zoning controls. Succeeding volumes treat the specific uses and structures subject to modern zoning controls. These sections are all well written, authoritative, contemporary and most useful to a practicing lawyer or judge.

Professor Anderson is certainly cognizant of the impact of administrative law in the area of zoning and includes a definitive chapter on the workings of modern zoning boards of appeal and adjustment.

The practicing bar spends much of its time endeavoring to persuade such boards and ultimately the judiciary of the desirability or undesirability of allowing variances, and Professor Anderson's treatment of this topic in volumes two and three is the most thorough exposition and useful text in the four volumes. It organizes the materials very ably, completely indicating the state of the present law, and is replete with suggestions for effective advocacy in the area.

Professor Anderson's text is not limited to zoning. Approximately half of the third volume is devoted to municipal planning, in a nonzoning sense. He introduces the reader to the newer forms of metropolitan and regional planning, and discusses with knowledge and insight the functioning of local government planning boards and commissions. There is today extensive practice revolving around local government control of subdivisions. The instant work contains all the relevant law in this area and should be of immense help to lawyers and members of local planning boards.

Volume three also contains a full treatment of judicial review of local government zoning and planning action, with emphasis properly placed upon the use of mandamus, injunctions and declaratory relief. The author has made available all the judicial precedent and he has been willing to share with us his reflections upon those rulings that do not fully satisfy the needs of the community and the profession.

Volume four contains a variety of provisions that can be included in zoning ordinances, as well as forms used before and by local administrative boards concerned with both zoning and planning. They should be of immense utility to local legislative bodies, members of zoning boards and the practicing bar. It also contains many pleadings that have been used in judicial proceedings affecting zoning. These materials could safely be used, one imagines, in New York practice, but inevitably some changes will be necessary for those practicing in other jurisdictions. The suggested clauses, provisions and forms to be used in zoning ordinances and in the internal functioning of zoning authorities, however, have a clear utility throughout the nation.

The American bar and bench are indebted to Professor Anderson for his scholarly research, his superlative organization of many diverse materials, his lucid exposition of the law and for his suggestions on the improvement of the law in this most significant area of local government law. It can safely be asserted that Anderson's *American Law of Zoning* will have a most important impact upon the administration and growth of the law in this area.

CHESTER JAMES ANTIEAU*

*Professor of Constitutional and Local Government Law, Georgetown University Law Center; Author, *ANTIEAU ON LOCAL GOVERNMENT LAW* (5 vols. 1958-68) and *MODERN CONSTITUTIONAL LAW* (2 vols. 1969).