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Book Reviews

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> Without a complete delivery during the lifetime of the donor, there can be no valid gift *inter vivos*. "Though every other step be taken that is essential to the validity of the gift, if there is no delivery, the gift must fail. Intention cannot supply it; words cannot supply it; actions cannot supply it. It is an indispensable requisite, without which the gift fails, regardless of consequence." Thornt. Gifts, p. 105.

For the New York court to use the gift *inter vivos* as the sole basis for approving delivery of Roosevelt's last papers to the library does not seem in keeping with the above doctrine, which is explicit that gifts *inter vivos* are between living persons and must be completed during the lifetime of the donor. (2) To make an effective gift *inter vivos* of personal property, a donor must deliver the possession and surrender all present and future dominion over it. *Reeves v. Reeves, et al.,* 102 N. J. Eq. 436, 141 Atl. 175 (1928); *Shafer v. Manning,* 132 Ill. App. 570 (1907). It must be absolute and irrevocable, not taking effect sometime in the future; the gift will fail without such clear and explicit proof; a promise or declaration, no matter how clearly established, will not suffice; the delivery must be complete and unconditional to constitute a valid gift. *Bowen v. Kutzner et ux,* 93 C. C. A. 33, 167 F. 281 (1908). It seems then that as long as Roosevelt had some control over the undelivered papers there remained to him a *locus poenitentiae* and he was not prevented from changing his mind and making other disposition of those papers. However, the court was satisfied with the evidence to support the theory of constructive delivery of the papers he retained at the time of his death. In this regard it is interesting to note that the New York court previously said that the property must be definitely ascertained at the time of donation and that there can never be included within the gift additions of separate property. The additions must be part of other proof and "cannot pass under the words of the prior donation of other property." In re *Delapenha's Estate,* 176 Misc. 732, 28 N. Y. Supp. (2d) 975 (1941).

It is apparent in this case that the court followed a liberal construction of the essential elements of gifts *inter vivos,* conformed to Roosevelt's desires, satisfied the government's possession of the papers, and judicially approved the removal of his final papers to the library for historical study and research for all time.

Robert R. Uhl

BOOK REVIEWS

SOCIAL JUSTICE IN THE MODERN WORLD—ON RECONSTRUCTING THE SOCIAL ORDER—ENCYCLICAL LETTER OF POPE PIUS XI. By Dr. Francis Joseph Brown.[1] Chicago: Outline Press, 1947. 84 pages. 50c—If a Gallup poll representative approached the average citizen, Catholic, as well as non-Catholic, and inquired: "What is an encyclical?" "Have you ever read one?" "What significance, if any, do they have today?" I am quite sure that the percentage giving correct answers would be surprisingly small.

Dr. Brown has attempted to remedy this situation by making available to the general public inexpensive editions of the principal papal encyclicals, to help spread correct reading on social, political and economic matters. He realized, as early as ten years ago, that the reason the encyclicals were not as widely known and read as they should be was the unavailability of an inexpensive edition broken down in-

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to sections in outline form and completely indexed to enable the reader to refer to particular topics and phrases without re-reading the whole encyclical. He therefore devised a simple effective plan of presentation. On pages 1-10, there is a detailed outline of the encyclicals. This outline has four levels, the first designated by I, II, III, the second by A, B, C, etc., the third by 1, 2, 3, etc., and the fourth by a, b, c, etc. Commencing on page 11, there follows the text of the encyclical with the editor's outline incorporated therein. The paragraphs of the encyclical are consecutively numbered, and at the end of each outline heading there is a numerical notation indicating the particular paragraphs covered by that heading.

It is of interest to note that Dr. Brown was compelled to establish his own publishing house, Outline Press, Inc., when book publishers placed too many obstacles in the path of his project of publishing the encyclicals. To do so, he, his brother and his sister-in-law each put up a proportionate share of $25,000.[2]

In the preface the editor states:

> The purpose of this edition is to open up the encyclical, to make it better understood. It is in no sense intended to be a commentary or critical edition . . . While it is the desire of the editor that this edition will enable the general reading public to become familiar with the encyclical, it is his special hope that it will advance the cause of teaching the encyclicals in the high schools, colleges and universities of America.

Now to get back to our questions. An encyclical letter has been defined as a papal letter addressed to the bishops of the world on matters of interest to the Universal Church. Since it is addressed to the whole world, it must of necessity be stated in general terms. In it the Pope may condemn errors prevalent among the populace or point out dangers to faith or morals or prescribe remedies for forces that have a subversive and undermining influence. As has been pointed out by the National Catholic Welfare Conference: [3]

> First, let it be made clear that the Church is concerned only with the moral aspects of trade and industry and does not enter the field of business in matters that are purely material or technical. The Church is not concerned with the accuracy of economic surveys or the resultant data, nor with the problems of scientific organizations, production, cost accounting, transportation, marketing and a multitude of similar activities. To pass judgment on their aptitude and merits is a technical problem proper to economic science and business administration. For such the Church has neither the equipment nor the authorization. We frankly declare that it would be unwise on her part to discuss their operations except insofar as a moral interest might be involved.
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> The Church does not prescribe any particular form of technical economic organization of society just as she does not prescribe any particular political organization of the state.

In my opinion it is regrettable that Dr. Brown did not see fit to publish the Rerum Novarum, that immortal encyclical of Pope Leo XIII, first.[4] I believe a study of the Rerum Novarum is necessary for a proper understanding of the Quadragesimo Anno. The Rerum Novarum sets forth the rights of the working

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2 See NEWSWEEK, Dec. 8, 1947.

3 THE CHURCH AND SOCIAL ORDER, National Catholic Welfare Conference. Cf. DIVINI REDEMPTORIS, N.C.W.C. Ed. pg. 24, par. 32

4 Dr. Brown has informed me that it will be published in the very near future.

classes and has been described as the workingman's Bill of Rights. This is an apt description, for *the encyclical has had a profound influence on labor and modern social legislation.* Pope Pius XI described it as the Magna Charta of the social order and spent almost the first half of the Quadragesimo Anno in reaffirming and reemphasizing the principles of the Rerum Novarum.[5] The keynote of the Rerum Novarum is justice for the worker as an individual and a human being.

When we read in the encyclical that the worker has a right to proper working conditions, that the labor of women and children should be safeguarded, that the worker should receive a just wage and work only a fair number of hours, that the workers have a right to organize for mutual help, the reasons for strikes and the dangers of corrupt labor leaders, the stature and prophetic vision of Pope Leo XIII become increasingly apparent. Let me quote a few pertinent passages from these encyclicals to illustrate these points.

> If we turn now to things exterior and corporal, the first concern of all is to save the poor workers from the cruelty of grasping speculators, who use human beings as mere instruments for making money. It is neither justice nor humanity so to grind men down with excessive labor as to stupify their minds and wear out their bodies . . . Those who labor in mines and quarries, and in work within the bowels of the earth should have shorter hours in proportion, as their labor is more severe and more trying to health.[6]
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> With the rulers of economic life abandoning the right road, it was easy for the rank and file of workers everywhere to rush headlong also into the same chasm; and all the more so, because very many managements treated their workers like mere tools, with no concern at all for their souls, without indeed even the least thought of spiritual things . . . And thus bodily labor, which Divine Providence decreed to be performed, even after original sin, for the good at once of man's body and soul, is being everywhere changed into an instrument of perversion; for *dead matter comes forth from the factory ennobled, while men there are corrupted and degraded.*[7]
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> In the first place, the worker must be paid a wage sufficient to support him and his family . . . It is an intolerable abuse, and to be abolished at all cost, for mothers on account of the father's low wage to be forced to engage in gainful occupations outside the home to the neglect of their proper cares and duties, especially the training of children. Every effort must therefore be made that fathers of families receive a wage large enough to meet ordinary family needs adequately. But if this cannot always be done under existing circumstances, *social justice demands that changes be introduced as soon as possible whereby such a wage will be assured to every adult workingman.*[8] (italics supplied).

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5 QUADRAGESIMO ANNO, May 15, 1931. Pope Pius states: "Yet since in the course of these same years, certain doubts have arisen concerning either the correct meaning of some parts of Leo's Encyclical or conclusions to be deduced therefrom which doubts in turn have even among Catholics given rise to controversies that are not always peaceful; and since, furthermore, new needs and changed conditions of our age have made necessary a more precise application of Leo's teaching or even certain additions thereto. We most gladly seize this fitting occasion, in accord with Our Apostolic Office through which We are debtors to all to answer, so far as in us lies, these doubts and these demands of the present day."

6 RERUM NOVARUM, Pope Leo XIII, May 15, 1931.

7 QUADRAGESIMO ANNO, Pope Pius XI, May 15, 1931.

8 QUADRAGESIMO ANNO, Pope Pius XI, May 15, 1931.

Pope Pius XI goes farther than Pope Leo XIII on the question of wages and suggests that good wages alone are not sufficient and that the work-contract should be modified by a partnership-contract whereby the workers become sharers in ownership and participate in the profits received.[9]

The social and religious principles expressed in the Rerum Novarum in 1891 and endorsed in the Quadragesimo Anno forty years later have been enacted into laws by the various states and by the federal government.[10] The various State Workmen's Compensation Acts, laws regulating the wages and hours of employment of women and children in factories, the National Recovery Act which was declared unconstitutional by the Supreme Court,[11] the Fair Labor Standards Act, the Social Security Act, the National Labor Relations Act of 1935, and the Securities Exchange Act, are typical.

It is claimed that these encyclicals furnished the blueprint for the social legislation of the New Deal as initiated by the late President Roosevelt. That there is merit to the claim is evidenced by a study of the encyclicals and particularly the provisions of the Fair Labor Standards Act of 1938, popularly known as the Wages and Hour Law. This law has as its principle objective, the elimination of ". . . labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and well-being of workers . . ." of "oppressive" child labor, and of unfair competition based thereon. The declared policy of the act is to eliminate such conditions without substantially curtailing employment or earning power.[12] However, strange as it may seem, a study of the legislative history of this act fails to disclose any reference to these great encyclicals in either the committee hearings or congressional debates.

The forceful and prophetic words of Pope Pius XI in the Quadragesimo Anno in condemnation of communism are as pertinent and vibrant as this morning's newspaper headlines or radio news broadcast. The Pontiff states:

> Communism teaches and seeks two objectives: unrelenting class warfare and absolute extermination of private ownership. Not secretly or by

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9 QUADRAGESIMO ANNO, May 15, 1931, Pope Pius XI states: "Yet while it is true that the status of non-owning worker is to be carefully distinguished from pauperism, nevertheless the immense multitude of the non-owning workers on the one hand and the enormous riches of certain very wealthy men on the other establish an unanswerable argument that the riches which are so abundantly produced in our age of "industrialism," as it is called, are not rightly distributed and equitably made available to the various classes of the people."

"We consider it more advisable, however, in the present condition of human society that, so far as it is possible, the work-contract be somewhat modified by a partnership-contract, as is already being done in various ways and with no small advantage to workers and owners. Workers and other employees thus become sharers in ownership or management or participate in some fashion in the profits received."

10 The National Labor Relations Act of 1935 (49 Stat. 449), popularly known as the Wagner Act, was passed to insure American workers the right to organize and bargain collectively. The Securities Act of 1933 was passed to regulate and supervise the nations' securities markets in order to protect the interests of the investors and the public.

11. The National Recovery Act was declared unconstitutional May 27, 1935 in the case of Schechter Corp. v. U. S., 295 U. S. 495. Nevertheless it had an important influence on the provisions of the National Labor Relations Act and the Fair Labor Standards Act.

12 Fair Labor Standards Act, 52 Stat. 1060, 29 U.S.C.A. Sec. 1 et. seq. (1938), see also WORLD ALMANAC, 1947.

hidden methods does it do this, but publicly, openly, and by employing every and all means, even the most violent. To achieve these objectives there is nothing which it does not dare, nothing for which it has respect or reverence; and when it has come to power, it is incredible and portent-like in its cruelty and inhumanity. The horrible slaughter and destruction through which it has laid waste vast regions of eastern Europe and Asia are the evidence; how much an enemy and how openly hostile it is to Holy Church and to God Himself is, alas, too well proved by facts and fully known to all. Although We, therefore, deem it superfluous to warn upright and faithful children of the Church regarding the impious and iniquitous character of Communism yet, we cannot without deep sorrow, contemplate the heedlessness of those who apparently make light of these impending dangers, and with sluggish inertia allow the widespread propagation of doctrine which seeks by violence and slaughter to destroy society altogether. All the more gravely to be condemned is the folly of those who neglect to remove or change the conditions that inflame the minds of peoples, and pave the way for the overthrow and destruction of society.[13]

A comparison of the foregoing with a recent statement by Dorothy Thompson illustrates the modern significance of the Pontiff's words: [14]

The truth is that the Communist revolution in Russia and everywhere systematically persecutes the Christian Church, systematically brings up school children in mocking atheism; encourages contempt for all religious symbols Christian or Jewish—and only revives the Church, after it has been thoroughly cowed, as an instrument of an expanding State. Since the French Revolution, the State, it is true, has steadily become more powerful; increasingly, and in all countries, it has usurped rights and powers that once belonged to society. It has taken from the Church and the family, to greater or lesser degree, the judgment of morals and, not only control, but even influence upon the education of children. To a shocking degree, the organized churches have accepted and supported any social order that allowed them to exist and flourish as institutions. It is true that from time to time the Church has issued criticisms of the social order that are both lofty and trenchant, including criticisms of the capitalist social order. One such was the Quadragesimo Anno encyclical of Pope Pius XI.

To sum up—the antithesis between Christianity and Communism has been affirmed from the Communist Manifesto, to the present day. Communism sees men only in their class relationships, and sees those class relationships only in terms of a struggle for power to end only in "unconditional surrender." Christianity, on the contrary preaches that all men are children of God and brothers in Christ, whether they be rich or poor, that they are mutually beholden to each other, mutually responsible for each other.

While it is true that a comprehensive understanding of the full import of the Rerum Novarum and the Quadragesimo Anno requires an extensive knowledge of economic principles and Christian social concepts, nevertheless, Dr. Brown by publishing this inexpensive edition with its detailed outline and index has enabled the

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13 QUADRAGESIMO ANNO, Pope Pius XI, May 15, 1931. See also DIVINI REDEMPTORIS, ATHEISTIC COMMUNISM, Pope Pius XI, March 19, 1937.

14 Dorothy Thompson, *Does Communism Threaten Christianity?*, LOOK MAGAZINE, Jan. 20, 1948, p.40.

general reading public to become familiar with these encyclicals. With the world in its present condition, it is not only desirable that the encyclicals should be read and discussed, it is a necessity. Dr. Brown is to be commended for giving his time, money and efforts to such an important undertaking.

*John J. Broderick, Jr.**

CASES AND MATERIALS ON ADMINISTRATIVE LAW. By Carl McFarland and Arthur T. Vanderbilt.[1] Albany, New York: Matthew Bender & Company, 1947. 1048 pages. $8.50—This book appeared for the first time in 1947, the same year as one other new casebook and two new editions of earlier casebooks on administrative law. This book, however, has a special significance in the field of administrative law since one of the distinguished co-editors, Arthur T. Vanderbilt, played a large role in the formulation and legislative adoption of the Administrative Procedure Act of 1946 while the other co-editor, Carl McFarland, has been for many years a leader of the American Bar in arousing and molding professional opinion on the subject of administrative procedures.

The book offers certain challenging features to this reviewer both in his former capacity as casebook editor in the administrative law field and in his capacity as a teacher with over a decade of experience in the field. The classic "case method" which has been subject to many innovations in other fields is here also found admittedly inadequate as the primary educational medium. The book, however, departs from the earlier "functional approach" of public law which developed into more detailed studies of individual fields of governmental regulation. In accordance with one of the purposes of the Administrative Procedure Act of 1946 the editors attempt to bring the whole field of administrative law and procedure into a systematic organization based on general principles.

Although lacking the experience of teaching a class from this book, the reviewer has many reservations as to the practical utility of the book from the student's point of view. The frequent use of short excerpts from learned articles and government and professional reports along with short passages from court opinions, even when tied together by introductory, and transitional passages written by the editors, have generally proved discouraging to students starting in this new field of administrative law. The introductory and background material is admittedly extremely relevant and will be helpful to experienced graduate students and lawyers with practice before administrative agencies. However, it is very difficult in practice, when teaching, to interpret this material for students even when the professor has much experience in the field himself. It takes more time and deliberation for the student to evaluate this material than its inclusion in a course of a general nature justifies. The technique of starting with a practical problem in one of the great basic fields of administrative regulation or with the problem of the legislation which creates the administrative agencies has been found by this reviewer to be a much more stimulating and fruitful form of introduction to the subject. The editors realize the difficulties in adapting their book to different types of courses but seem to have met it only in part by suggesting wholesale omissions

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1 Carl McFarland, of Washington, D. C., has been an outstanding member of the American bar for many years. Arthur T. Vanderbilt was recently appointed Chief Justice of the Supreme Court of New Jersey; he also holds the position of Dean of the New York University Law School.

from the individual subdivisions rather than by having the subdivisions themselves so arranged as to make adaptation simple.

As the book develops, the basic cases new and old are presented in more complete texts and are allowed to speak for themselves, although now and then they are interlarded with the extracts from reports, articles or the Administrative Procedure Act. The attempt to place all the material under such general headings as Agency Functions, Constitutional Procedures, Statutes and Administration, Administrative Procedures, Agency Hearings and Decisions, with subheadings of the same general abstract style of classification, creates a system which is difficult to follow in view of the extraordinary fluidity of the subject. This difficulty is not unique with this casebook on administrative law, but does not seem to be overcome as well as it should be. Only in the chapter on Judicial Control do the familiar court problems emerge in clear lines.

The coverage of material both in the governmental reports and private articles on the one hand and in the cases on the other, include a list of very interesting state materials including references to state statutes and British materials as well as the basic federal materials. The size of the volume both in number and dimensions of pages makes it difficult to include all this material in detail. Thus the old problem of the casebook editor is presented whether to include a great volume in a brief style with many annotated references, or to carry fewer items but in a more complete survey of each field. This volume has followed the first alternative and therefore, as already noted, appears to be more useful to practitioners seeking appropriate brief making material, than it is to teachers seeking to get from it and give to the students the basic working of the administrative process and its relation to courts and legislature. While it is assumed that the teacher must have had practical experience in the administrative law field, nevertheless there is no substitute for the exploration by student and teacher in a field where most of the material can be examined in a class. That approach will give a much deeper understanding of the problem than a survey of the field with the ideas in capsule form. A teacher's manual has, however, been supplied with this book, but only experience in using it would justify an attempt to evaluate it. This reviewer has not had such experience.

No doubt the time has come when the "realistic" approach and the "functional approach" should be subordinated to a system of general concepts set forth in the Administrative Procedure Act of 1946. Yet the courts do not seem to be ready to abandon their function of extraordinary relief in the form of novel judicial interpretations in this field. Perhaps in time with experience under the Act and, following study of casebooks such as this one, justices will practice the judicial self-limitation of following established principles and rules instead of devoting themselves to pure or emotional justice. And administrative agencies or administrators may yet be found who are willing to admit that the problems of their agency are not unique. Until that time arrives this reviewer, who teaches classes in a large part made up from the governmental community, expects to find it necessary to use the functional approach in order to understand how and why administrative agency opinions and court decisions, particularly in the Supreme Court of the United States, are reached.

The opinions of a critical nature which this review contains are given not without an understanding of the manifold difficulties in the compilation of this type of book, and the author wants to express admiration for the very complete survey of the field that is achieved in the relatively small compass of this one book.

*J. Forrester Davison.**

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A DECLARATION OF LEGAL FAITH. By Wiley Rutledge.[1] Lawrence, Kansas: University of Kansas Press, 1947. 82 pages. $2.00—If The Federal Constitution is what Supreme Court judges say it is, this little volume by Mr. Justice Rutledge should not be overlooked.

It purports to be a declaration of legal faith but in sum, it is the application of the author's undisguised political philosophy to an important segment of public law. The title of the book is actually the subject of the first of a series of lectures all of which are contained in this volume. The lectureship which Justice Rutledge inaugurated at the University of Kansas was established to honor Judge Nelson T. Stephens, founder of that University's School of Law. In endowing the lectureship, Miss Kate Stephens, Judge Stephens' daughter, expressed the hope that the lectures would "stimulate such independnt thought and human action" as distinguishd her father and that they would make clear "the great truth that civilized life arose as the result of law."

The author's declaration of legal faith is short and to his point: "I believe in law. At the same I believe in freedom. And I know that each of these things may destroy the other. But I know too that, without both, neither can long endure." ". . . ideas of justice", he says, "must grow and change . . ." ". . . justice too is a part of life, of evolution, of man's spiritual growth . . ." "Justice therefore cannot be embalmed in the mores of any day or age. Nor can the law."

From his "Declaration" it is difficult to escape the conclusion that the author is a confessed relativist whose "faith" is implanted in the nervous and jumpy anchorage of "progress" toward the general welfare. Such a faith contains few, if any, guiding principles. In this book it takes the form of a confidence in the ultimate "perfectability" of society through a progressive and continuing distaste for the "status quo".

"Not the perfection of our scheme therefore", he says, "but the knowledge that it may be made more perfect is what makes it worth fighting for" and, "the judge who can catch the vision of what has come or will come and sense the moment of its common acceptance . . . is worthy to give his people their laws or judgments." Harrassed constitutional lawyers will be unable to resist a paraphrase of the last sentence, to wit: "The *lawyer* who can catch the vision of what has come or will come (from the present Supreme Court) is worthy to give his clients a rare and exceptional service." It is conceivable that contempt for the "status quo" may go to a point where it destroys the practical utility of stare decisis.

In his discussion of the Commerce Clause to which most of the book is devoted, Justice Rutledge is more concrete. He believes that the Commerce Clause has contributed mightily to the maintenance of the federal principle, but at the same time, it is observed that the swing of the pendulum from state to national power has now come to rest in the unchallenged power of Congress to do practically anything with commerce consistent with "due process". It is difficult to reconcile this extreme centralization of power with the maintenance of federalism, and unfortunately Justice Rutledge is unspecific in all of his many references to the federal principle.

We do find a direct answer to the mooted question: If the Commerce Clause itself forbids state action "by its own force," how is it that Congress by expressly consenting can give that action validity? Justice Rutledge believes that since the power of Congress is supreme and can therefore override inconsistent state action, that power is likewise competent to positively enable the state to act where

[1] Associate Justice, Supreme Court of the United States.

it would not otherwise be able to do so. The Commerce Clause is a grant of power to Congress therefore, and under no reasonable construction of any circumstance, can it be held to be a restriction upon Congress. While the book is inadequate as "A Declaration of Legal Faith"; it is a valuable and informative insight into the manner in which at least one of our Supreme Court Justices approaches the American institution of Constitutional limitations. Justice Rutledge believes that our federal system must quickly be applied throughout the world in the best and most practical interest of mankind. In his conception of federalism, the pendulum of power swinging between world government and the government of the constituent nations would doubtless come to rest in the seat of the international order. At a time when some sort of international accord is demanded by all the instincts of our better natures, the logic of the author's conception may have the unfortunate tendency to make two isolationists grow where one grew before.

*Clarence Manion.**

GOVERNMENT AND MASS COMMUNICATIONS. By Zechariah Chafee, Jr.[1] Chicago: The University of Chicago Press, 1947. 830 pages. 2 vols. $7.50—Mr. Chafee, Professor of Law at Harvard University and Vice-chairman of the Commission on Freedom of the Press, undertakes in the two volumes that bear the above title to answer several questions with respect to the relations between government and press, radio and screen. Principal among these problems are the following: What part does government play in freedom of press? What are the tendencies to suppress free speech by law? How can government wisely strengthen mass communications and their freedom? The word, *press,* is not confined to newspapers or printed matter generally; the inquiry includes other means of communicating news and opinions such as films and radio broadcasting of news and comment. And *freedom* means more here than the traditional conception of immunity from government control. It refers also to other forces that can hamper the legitimate exercise of press, radio and screen.

Mr. Chafee and the other members of the Commission on Freedom of the Press did not receive their so-called commission from any governmental agency. The personnel of the group of scholars, mostly educators, numbers less than twenty-five private individuals, most of whose previous labors in outstanding universities have merited for them the highest recommendation for disinterested devotion to ideals of adult education.

The commission operates under a grant of funds made by Time, Inc., and Encyclopedia Britannica, Inc., to the University of Chicago. This university administers the funds provided, but neither it nor the donors have any jurisdiction over the commission, which is a non-governmental, independent group containing no member of the press, radio, or motion picture industries. The commission was created to consider the freedom, functions, and responsibilities of the major agencies of mass communications in our times: newspapers, radio, motion pictures, news-gathering media, magazines and books.

Describing the part played by zealous agents of government in restricting or "strengthening" the activities of the press, Mr. Chafee, with advice from the other members of the commission, addresses his statements to "citizens who are

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1 Langdell Professor of Law, Harvard University

interested in the press" and not solely to lawyers. He says in his preface that "this is not a legal treatise to help lawyers write briefs but a series of sketches of various ways in which the law operates upon newspapers and other agencies of communication."

The material in the two volumes is organized under three heads; these three divisions being suggested by three ways in which the government acts in regard to mass communication.

Part one explains the use of governmental powers to limit or suppress discussion. The law of libel, group libel, other statements injurious to individuals, and compulsory correction of errors, are described in chapters in division A of the first part. This division or section is restricted to a study of the protection afforded by law to individual interests against untruthful and unjustifiable publications.

In the second division there is given an explanation of the legal treatment of obscenity and other objectionable matter in printed form, radio and motion pictures. In the third division discussion centers around methods of protection against internal disorder in the state and interferences with the operation of governmental agencies as well as treason, sedition and contempt of court.

The second and third main parts are treated in the second volume. The second part of the total work is concerned with affirmative governmental activities for encouraging the communication of news and ideas. In this part, sections are devoted to: A. the provision of essential physical facilities accessible to all persons; B. traffic regulations; C. application to the press of general legislation; and D. legislation specifically designed to promote the economic freedom or quality of communications.

The third part of the work is spent in a study of the government as a party to communications. Herein are chapters entitled, The Government Talks to the People, and The People Talk to the Government.

The appendix adds the "recommendations of the Commission on the Freedom of the Press." These recommendations contain among others the following:

> We recommend the repeal of legislation prohibiting expressions in favor of revolutionary changes in our institutions where there is no clear and present danger that violence will result from the expressions.
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> We recommend that the government, through the media of mass communication, inform the public of the facts with respect to its policies and of the purposes underlying those policies and that, to the extent that private agencies of mass communication are unable or unwilling to supply such media to the government, the government itself may employ media of its own.
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> We also recommend that, where the private agencies of mass communication are unable or unwilling to supply information about this country to a particular foreign country or countries, the government employ mass communication media of its own to supplement this deficiency.

Perhaps the greatest value of this report by Mr. Chafee consists in its provocative challenge to thoughtful reflection on the cardinal freedom of man to express his considered opinions for the betterment of his immediate society. If political society is to attain its natural end in temporal happiness, the press and the several means of mass communication must remain unhampered by self-seeking politicians and government employees as well as by financial giants armed with huge sums of money expendable in advertising or propaganda of one kind or other as long as these media engage in furnishing the public with the news, information

and educational data needed to form intelligent conclusions relative to the conduct of a representative form of government.

If in our time, the middle of the twentieth century, and in our place in the world, the forces of government and the powers of monopolistic capitalism threaten to drive free speech out of the arenas of public debate, then modern systems of mass communication will become a curse and scourge of a servile populace.

The First Amendment to the Federal Constitution is "a gun behind the door which must never be allowed to rust," says Mr. Chafee. "Unwise state activity must be steadily resisted, because otherwise it is likely to come to pass in response to numerous conditions in the United States today" that democracy will be obliterated. "This does not mean that all state activity in the field of communications is necessarily bad. The rest of this book will be largely devoted to determining what governmental participation is wise, and what is unwise so that the evils ought to be remedied in other ways," Mr. Chafee says.

What government activity is wise? This is a big question and to answer it there is required a foundation of principles that lie at the heart of the soundest philosophy of law. Mr. Chafee attempts to deal with concrete participation of government in the supply of information without explaining the nature of the wisdom dictating the extent to which government has a right to usurp the free exercise of individuals to gain access to information and freely communicate it to others. Here is the chief adverse criticism that is to be offered to Mr. Chafee as he wends his labyrinthic way into so many byways of mass communication and emerges at a point very near that from which he entered. For, when he is done with eight hundred pages, he leaves his readers in doubt about the rule which would measure the correctness of his statements that government is strengthening the "freedom of the press" when it censors the press and justifies itself in building its own system of communications to compete with and perchance smother private organs of communication.

There is a confusion of freedom with authority; a confusion of the state with government implicit in much of what Mr. Chafee has to say about the role of government in following the policies of a particular time and political group despite the judgment of all or many private agents in the professional work of press, radio and other information gathering vocations.

If the executive branch of government in such a system as is envisaged by the American form, finding its policies challenged by zealous champions of truth, sets out to intimidate and to nullify the efforts of the free press by utilizing vast potentialities for the propagation of its own "information", freedom of press becomes less meaningful, retaining its past glorious history but losing its life in the present.

The case history of fascist and communist "democracy" should have taught all of us, even those of us who sit in ivory towers, the value of extreme care in discriminating between counterfeit and real freedom coined in government hand-outs of information sifted free of all dross that smacks of criticism of those who have been appointed to bureaus, and the real freedom of the individual which is rooted in human nature itself.

Mr. Chafee seems to be more suspicious of unholy advertisers who act as demons to put across their private opinions in suing for patronage over the airways and in the press than he is of government which must "be trusted" to refrain from "muscling in on" private agencies of communication, flounting the strength of government when official censors feel that news should be suppressed—news "which must remain secret in the vital interests of the state." If the people

must not be allowed to know that of which the government wants them to be ignorant, can we call ours' a representative form of government? Only the cynic would say, "Yes."

Mr. Chafee has marked out several fields for serious criticism of the press and here he has done both the press and the public a great service. In too reverent a mood for government, he fails to find government at fault when men in government have identified their own wills with that of the state, regardless of the will and reason of the people who can articulate opinion persuasively. The objective in the two volume study which we are studying was to find ways "to strengthen freedom of press," and the ways suggested are, all in all, fitted just as well into the pattern of those who have little faith in a press that is free and who would find ways for ambitious politicians to tailor information to suit the "servants (?) of the people" in high places. It is hoped that these stimulating volumes will arouse intelligent readers to suggest new ways to strengthen the freedom of communications so that we will need to rely less on the panacea of government censorship in critical times.

*William F. Roemer.**

TO SECURE THESE RIGHTS: THE REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS. New York: Simon and Schuster, 1947. 178 pages. $1.00—In December, 1945, President Truman appointed a Committee "to inquire into and determine whether and in what respect current law enforcement measures and the authority and means possessed by the Federal, State and local governments may be strengthened and imposed to safeguard the civil rights of the people." The Committee, serving without compensation, consisted of Charles E. Wilson, President of General Electric Company as Chairman, Sadie T. Alexander, Assistant City Solicitor of Philadelphia, James B. Carey, CIO Secretary-Treasurer, President John S. Dickey of Dartmouth University, Morris L. Ernst, New York attorney, Rabbi Roland B. Gittelsohn of New York, President Frank P. Graham of North Carolina University, Bishop Francis J. Haas, of Grand Rapids, Charles Luckman, President of Lever Bros., Francis P. Matthews, former Supreme Grand Knight of the Knights of Columbus, Franklin D. Roosevelt, Jr., Chairman of the Housing Committee of the American Veterans Committee, Bishop Henry K. Sherrill of the Protestant Episcopal Church, Boris Shishkin, AFL economist, Dorothy Tilly of the Methodist Church Women's Service Society, and Channing Tobias, former Senior Secretary of the National YMCA Council.

The Committee held ten meetings last year and heard about forty witnesses. Some of the hearings were open to the public. Some were private. Spokesmen for interested groups appeared before the Committee and nearly two hundred and fifty organizations corresponded with it. Additional information was provided by some twenty-five existing federal agencies and numerous state bodies.

The present volume of one hundred and seventy-eight pages contains the final report. The publishers have issued it in an inexpensive edition and it is thus readily accessible to the general public. It deserves calm and serious consideration not only by Congress but by every citizen. We may differ as to the best and wisest means of preserving and protecting Civil Rights; we cannot deny their ultimate value and remain Americans.

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The Committee has made its "findings of fact" and concludes that we are far short of our American goal of freedom, equality and justice for all. On the basis of these findings the Committee makes specific recommendations for action. At least thirty measures are called for. Some of these are now embodied in bills pending in Congress and a bitter political controversy has been provoked. It may be that this fact has given the Committee Report a greater currency than some of its findings alone deserved, for the data and documentation used were already known to the country at large, or were quite readily available in the federal agencies upon which the Committee relied. The report has, however, brought this material into sharper focus.

One must not be captious in estimating the value of this report. The Committee worked with patriotic unselfishness at a task of great magnitude and one of exceeding delicacy, as the events of the past few months have shown. Fair criticism may be directed to the questions whether the Committee proceeded in a way likely to win wide support for its proposals and whether the proposals are in fact the right or the wrong way to do the right thing. Thus it might be said in retrospect that a broader representation of the South in the Committee membership would have been wiser in view of the fact that much of the Report takes on the appearance of an indictment of the Southern States. Perhaps this was deserved, perhaps inevitable. Yet, if more southern members had appeared on the Committee, their viewpoints, if they disagreed with the majority, could then have appeared in the report and the country could then decide. The Report as it stands does not give any strong indication that "both sides were heard," if indeed the Committee felt that there were two sides. In some instances, there was disagreement in the Committee, but the members who so disagreed have not identified themselves and the grounds of their dissents are not adequately presented.

Taking the Report as it stands, it seems weakened in effectiveness, at least in the portions dealing with the findings of fact, by failure to indicate more extensively the sources of the Committee's information. Presumably, the testimony of the various witnesses was transcribed and we may assume that Congress will have this at hand during its debates. It would appear to this reviewer that an appendix might easily have been included containing the names of the witnesses or the organizations which were heard. At times, the Report contains assertions beginning "one witness stated." Without the identity of the witness and without his testimony as transcribed before us, it is difficult to pass judgment on the findings based upon it.

The Committee gave a strict construction to the mandate of the President. Hence its Report is necessarily devoted to the sad and distressing record of American failures in securing civil rights to all. At a time when totalitarian enemies abroad eagerly embrace official or semi-official statements of American "failures" to aid their propagandizing among peoples who have long admired us, it is not merely petty criticism if we suggest that the Committee might well have given a fuller statement of American "successes" in the field of preserving civil rights at a time when so many nations are fast losing almost their last memories of them. The brief statement of the Chairman and various scattered sentences attesting to the pride we have as Americans in what we have thus far accomplished may today be not enough. Let us not become so engrossed in telling the world what's wrong with America that we forget to spread upon the record the many things which are so gloriously and eternally right with her, after all. Moreover, it might be said that if, as is pointed out, we have thus far gone beyond any other nation in many respects towards the achieving of civil rights for all, the roads by which we have come hither may contain some useful suggestions for those intent on constructing new and broader avenues for the future.

Limitations of space forbid here a detailed discussion or even the mere enumeration of all the recommendations the Committee has made. Some of them are long overdue and will probably excite little opposition. Others will require close and critical scrutiny. It must be remembered that we are not here concerned with the ultimate value of the goals sought, but with the wisdom of the means sought to achieve them. Again, we must bear in mind that the Committee's proposals are couched in broad language. One may well agree with these as far as they go and yet refuse to approve the Congressional measures designed to carry them out.

Perhaps it was not possible, but it would have helped if the Committee had attempted first a definition of a "right" at the outset. All of the "rights" it has considered are regarded as of equal value. In concluding its Report, the Committee states that "Democracy, brotherhood, human rights are practical expressions of the eternal worth of every child of God." This is beautifully stated and many will receive it with considerable satisfaction, but it is still a long way from giving us any basic philosophy of "right." The Declaration of Independence does much better. Perhaps the Committee might well have restated the concise, yet adequate expression of the American philosophy of "right" as given in the Declaration. This reviewer feels that any statement about the protection of "rights" to be invulnerable, must proceed from a correct analysis of what a "right" is. Especially is this true today when in American schools of law and from the lips of men regarded as our leading jurists, it is confidently stated that a "right" has no objective validity at all, or that, in the words of Justice Holmes, "a right is an empty substratum," and "nothing but confusion of thought can result from assuming that the rights of men in a moral sense are equally rights in the sense of the Constitution and the law."

Many students of government will not be surprised to find that the Committee begins its long list of proposals by recommending that more committees and commissions be set up. Thus, a permanent commission on Civil Rights would be established in the Executive Department along with similar bodies in the states. The Civil Rights Section of the Department of Justice would be expanded and regional offices for it created throughout the country. The reason for this seems to be a desire to make the section less dependent upon local United States attorneys and FBI agents in the field. These, as well as other recommendations suggest the Committee's conviction that leaving protection of civil rights to the states alone is not sufficient. The arm of the Federal Government is to be strengthened and lengthened, although at times some of the proposals indicate that resort to federal power is to be used when the states fail to remedy the evils the Committee finds existing.

We are thus brought face to face once more with the old American controversy over "States Rights." It is to be expected that in the months to come, the cry of "States Rights" will be heard once more throughout the land. It will be shouted down by some as an "old, forgotten, far-off thing" of sentimental interest now. It has, however, deeper implications than noisy orators give it and these must be re-examined in the light of the Committee proposals. Many of these appear to some to do violence to traditional concepts regarding the proper role of the states in our Federal Union. Traditionally, and perhaps constitutionally (to speak brashly in a day when old landmarks are falling fast), the enforcement of the ordinary penal law is a matter of state or local control. Underlying this is the belief that for us local self-government through agencies close at hand and under our immediate control is best. When the Committee advocates, as it does, a Federal anti-lynching law, the question arises fairly whether circumstances today warrant so marked a departure from old and accepted principles of governmental organization. The Committee itself found that lynching had been steadily decreasing in the last two

decades from a high of 64 in 1921 to 6 in 1946. Indeed, a single lynching is "one too many." The question remains whether we should now by federal law further contract the domain of local self-government. The Committee seems to place strong faith in the efficacy of legislation to remove the evils out of which such ghastly phenomena as lynching arise. But can law rise higher than its source? Has the passing of a statute, like the incantation of a sorcerer, some magic power to exorcise an evil? Many will think that something must be allowed to time and education, to that long and, albeit, painful process by which a community's moral consciousness is lifted to levels where existing law will have the sanctions without which true law cannot be.

In the minds of some members of the Committee who apparently dissented without identifying themselves, from other recommendations, traces of this lingering doubt are discernible. Thus, the Committee has condemned segregation in all its forms. It feels that the "equal but separate" concept is a demonstrated failure in actual operation. To achieve the abolition of segregation it recommends new laws. Feeling that constitutional difficulties might stand in the way, it advocates a use of the federal spending power as a sort of "in terrorem" device to force adherence by the states to the standards it accepts. Thus, federal funds would be held back from states continuing segregation practices. It is at this point that the unidentified members draw back in some alarm. According to the Report, they fear the device suggested might lead to federal control of education, and therefore seem to feel that the segregation evil must be cured by the educative process. The difficulty here seems to be that if state control, based upon traditional principles of local self-government has already gone by the board in so many of the other recommendations of the Committee on which the dissenters are silent, how can they any longer object in the name of "state control" as against "federal control" when it comes to education? So long as the American system of Federal Government continues, there will be those who wish to have their cake of "States Rights" and eat it too. That task still remains impossible even in these days of shifting constitutional interpretation.

The Committee asks for national legislation, or, if necessary, for a Constitutional Amendment ending the poll tax as a voting pre-requisite. These measures, however, would be resorted to only when the states still retaining poll taxes fail to abolish them promptly. Again, the "in terrorem" device is to be employed. Some will deplore the suggestion. Still others the means proposed for carrying it out.

So far as religious liberty and freedom of speech and the press are concerned, the Committee recommends that all groups "seeking to influence public opinion" be compelled by a registration process "to make known the pertinent facts about themselves." Of course, it might be said that to question the constitutionality of such a recommendation is premature. The proof of the pudding here will come with the eating—when the statute embodying the Committee's proposal is drafted. Certainly inasmuch as few public groups do not "seek to influence public opinion," a statute such as the Committee suggests would run grave risks. Would churches be included, or religious groups? If they were not, would their exemption and the exemption of similar bodies with equal claims to privacy, violate the equal protection of the laws clause of the Fourteenth Amendment or the provisions of the First Amendment?

The Committee has made many other recommendations beyond the scope of this review. They merit serious and unprejudiced examination by every American who loves his country and wants to see her every year advancing further on the way to full achievement of the ideals which gave her birth. It is suggested that old federal statutes be strengthened and new ones enacted to protect a citizen's right to the safety and security of his person. In view of our war time experience with

the evacuation and detention of Japanese from the West Coast area, the Committee favors legislation which, while taking due account of military needs, will protect against "the evacuation and detention of such groups because of their descent." The Committee also recommends legislation if necessary to end discrimination and segregation in the armed forces based upon color, race or religion.

Finally, having found from apparently reliable reports that "only one out of five Americans had a reasonably accurate knowledge" of the Bill of Rights, that "more than one third had heard of it but could not identify it in any way," and that "over one third had not even heard of it," the Committee urges a long-time program of education of the people in the knowledge of the rights which are theirs.

This final recommendation, in a very proper sense, throws light on the basic problem confronting the Committee and indeed confronting all who are asked to pass judgment on its work. Is the solution of the problem of securing and protecting civil rights fundamentally one for the educative process and the raising of the standards of public and private morality, or is it one which can be obtained or even accelerated by trusting to the efficacy of new statutes, some of which, at least, involve the continuing inversion of the American Federal System, by substituting the Federal Government for the States in spheres heretofore regarded as peculiarly theirs.

No American can dismiss lightly the shameful facts the Committee has again brought to light. The Report, however, will not end the controversy as to the wisdom and expediency of the specific recommendations made. As the debate continues, it is to be hoped that those who disagree with the Committee on such grounds, will not be accused of possessing any less sincerity or courage than the Committee has itself unquestionably shown in the heavy task it has performed.

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