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The Inquiring Mind

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THE INQUIRING MIND. By Zechariah Chafee, Jr. New York. Harcourt, Brace and Company. pp. x, 276 (1928).

The familiar argument against the suppression of speech we regard as dangerous is that it is short-sighted. In the arena where truth and error are engaged in struggle, we should not seek to shackle error lest the very shackles should prove additional weapons. Our reason tells us that is sound, yet it is difficult to act upon it. Our first impulse is to throttle the voices that speak out against the things we deem essential. We know that by speech causes are frequently carried forward successfully. Apparently it is the simplest course to suppress dangerous expressions. It requires something of a philosopher to see the light that Mr. Justice Brandeis says our forefathers saw when they wrote the First Amendment into the Constitution. "They knew * * * that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."¹

The value of such free discussion is the central theme of this collection of essays. The first two papers are addressed to college undergraduates with a view to stimulating their enthusiasm for the task of solving human problems. They contain many acute observations on educational matters. Instruction should not foreclose controversy but should open up problems.

The remaining essays deal with aspects of the question of individual liberty. The author continues the work he began in "Freedom of Speech" of giving a revealing account of what is going on in this country in the way of suppressing the expression of thought. The story told is not an encouraging one for the believer in free speech. Legislatures and courts have dealt harshly with language which they consider harmful to the well being of the nation. The comparatively trifling character of most of the utterances for which the speakers were convicted gives one the impression of much wasted energy on the part of these bodies.

The articles printed in this book were written at different times and unless cases happened to come close together they are treated separately. The author gives his reactions to each case as it appeared. After the *Gitlow Case*² he is perhaps unduly pessimistic. He doubts if the constitutional guarantee of free speech has any real meaning. Yet the way was left open there for the protection

¹ Concurring Opinion in *Whitney v. California*, 274 U. S. 357, 375 (1927).

² 268 U. S. 652 (1924).

of the expression of novel and unpopular ideas short of advocating violence. In *Fiske v. Kansas*³ the Court does protect such utterances and Professor Chafee is encouraged. He even believes there is a possibility that the Supreme Court may eventually re-establish the present danger test enunciated in the Schenck Case and discarded in the Gitlow Case. In view of the flexibility of language technique in constitutional cases, it would not be surprising if this test should some day be resurrected by a court that believes in the futility of suppression. Justices Holmes and Brandeis continue to refer to it. When a majority of the members of the Court come to take a different view of what is best for the nation, they will probably have little difficulty in brushing aside the Gitlow Case.

As the author says, the victories of liberty of speech must be won in the minds before they are won in the courts. It may be hoped that this book with its careful presentation of facts and its obvious enthusiasm for the cause will play some part in winning the victory there.

A number of essays are devoted to industrial problems and the control of the activities of strikers by the government and the courts. Of course no attempt is made to cover this tremendous field of problems so pressing in the modern world, but certain phases are touched upon. The article, "Company Towns in the Soft Coal Fields", does not give an altogether correct idea of the conditions that prevail, at least in West Virginia. The author is careful to confine his statements in regard to leases to certain Pennsylvania leases he has seen. But the impression is given that they are typical of all leases in the soft coal fields. Whatever may have been the conditions when the article was originally written, it is now safe to say that in West Virginia, leases do not contain clauses excluding from the premises all persons except the miner and his immediate family, deputy sheriffs are not paid by the mine owners, the salaries of ministers and school teachers are not paid by them, except as they pay taxes for school purposes. In mines near established communities many miners live in homes not owned by the company, and that seems to be preferred by the companies where it is possible.

The summary ejection provisions in leases do exist and would seem to be necessary unless the company is willing to build a surplus of houses, letting a number stand idle part of the time. This necessity is of course unfortunate. It places the men too completely at the mercy of the company. The solution must

³ 274 U. S. 380 (1927).

⁴ 249 U. S. 47 (1919).

eventually be to get rid of the company town. That can come, however, only as communities in the mining regions are more developed and other enterprise comes in to supply the needs of the miners.

This book may be read by laymen, but it is of peculiar interest to lawyers. The use of the injunction in controlling the activities of miners is discussed with comments on many cases. This is a matter that will have to be worked out by the courts. The problem of free speech is one which the courts must also play a large part in solving. They are probably to be more depended upon than legislatures to resist the demand for the suppression of liberty.

—HAROLD C. HAVIGHURST.

