

REVIEWS

THE WORK OF THE COMMISSION ON FREEDOM OF THE PRESS

A FREE AND RESPONSIBLE PRESS, A General Report on Mass Communication: Newspapers, Radio, Motion Pictures, Magazines and Books. By the Commission on Freedom of the Press. University of Chicago Press, 1947. Pp. xii, 133. \$2.00.

A FREE AND RESPONSIBLE PRESS appeared in March, 1947. Three years and \$215,000 earlier Chancellor Hutchins had selected the Commission, at the suggestion and with the support of Henry R. Luce. Five of its thirteen members had significant connections with the Chairman's University of Chicago; indeed, the flavor was dominantly academic. However, it included a poet turned administrator (MacLeish), and two men of affairs, albeit with scholarly backgrounds (Dickinson of the P.R.R., Ruml of Macy's). There was also a small expert staff. The results could have been sensational. To the Commission's eternal credit, they were not. They could have been, and were, careful and thoughtful. They could have provoked a great debate. They did not. The Luce press, naturally, gave the Report a big play. The rest of the press threw rocks at it. The rest of the literate public ignored it, except for the students of the various fields examined: newspapers, radio, motion pictures, magazines and books. They, and the critics in the working press, had a variety of complaints, some of which will be examined herein.

The occasion for this review and those that follow is the completed publication (save one) of a series of special studies which fill out the bare bones of the Report. The Report aimed at brevity, and was damned for achieving it. In the compass of a pamphlet it reviewed principles, standards, technology, controls, performance of the media of mass communication, and it made recommendations for their protection and improvement. Consequently anyone whose specialty was slighted was at liberty to cry "elliptical," "telegraphic," and to ask wistfully what they did with the \$215,000? (In the interests solely of complete disclosure of meaningful facts, I would like to know myself.)

The five monographs reviewed hereafter should subdue, though they will not silence, such complaints. Two studies by members of the Commission spell out the philosophic and the legal problems concealed in the easy phrase, "freedom of the press." The others, by staff members, deal with the special cases of international communication, radio, and movies. The Commission may well have thought that newspapers have already had more than their share of discussion, helpful or not; but the neglect of magazines is much to be regretted.¹ In any event, Chairman Hutchins disclaimed a program of

1. Still to be published is *The American Press and the San Francisco Conference*, a content study covering all mass media.

elaborate "research"—the quotation marks are his. And the Commission excluded the relation of the press to our culture generally, confining itself to its effect on "the education of the people in public affairs."

The Commission postulated certain requirements as ideal goals for the press in this limited but critical area of public enlightenment. They were:

"First, a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning; second, a forum for the exchange of comment and criticism; third, a means of projecting the opinions and attitudes of the groups in the society to one another; fourth, a method of presenting and clarifying the goals and values of the society; and, fifth, a way of reaching every member of the society by the currents of information, thought, and feeling which the press supplies."

The Report concluded that:

"These needs are not being met. The news is twisted by the emphasis on firstness, on the novel and sensational; by the personal interests of owners; and by pressure groups. Too much of the regular output of the press consists of a miscellaneous succession of stories and images which have no relation to the typical lives of real people anywhere. Too often the result is meaninglessness, flatness, distortion, and the perpetuation of misunderstanding among widely scattered groups whose only contact is through these media."

The Commission's recommendations exhorted everyone concerned—government, press, and public—to improve. They were chary of innovations and devoid of panaceas. Of the agencies of the public, the universities, properly, were singled out for attention. They should themselves utilize mass media, and they should develop centers of research in communications beyond the trade-school level of many schools of journalism. One significant recommendation was the "establishment of a new and independent agency to appraise and report annually upon the performance of the press." Of that, more later.

The press itself was urged in various ways to do better by doing better.

As for government, on the legal level the recommendations included explicit extension of constitutional freedom of the press to radio and movies, new remedies for defamation, and conformity of sedition statutes to the clear and present danger test. Should the government have its own press? The Commission asserted that it should, both for domestic and international dissemination of information and policies whenever "the private agencies of communication are unable or unwilling" to do the job. It should also "facilitate new ventures . . . foster the introduction of new techniques." The last proposals patently raise the specter of government competition in communication to a degree repressive of private speech. The demon vanishes when one Draws the Line at the right place. I produce such a painful truism because the Report and the pertinent studies do not worry much about the

limits of state participation in mass communication. They worry at least twice as much about state correction of monopoly situations, perhaps because there is at least twice as much experience to go by.

Whatever the context, the role of government dominates the discussion. All of us bristle when the State comes into a consideration of free speech or free press. It is the ancient enemy. The state and federal constitutions which guarantee the freedoms assert them against the government. Yet the forces of government and press interact in many ways. For one thing, we have learned from the enlightened interpretation of the First Amendment that freedom from government interference with what the press says, does not mean freedom from the equal application of taxes, child labor laws, wartime rationing, and the like.

It may well be that freedom from oppression was the only concern of the fathers of the Constitution. What the Report and the monographs illuminate is the question: what is freedom for? Does the press have any responsibilities? The Commissioners felt that surely it has; and Professor Hocking explored them in his *Freedom of the Press*. But suppose an important responsibility is not met voluntarily, will the enforcement of a standard by the powerful engines of the state destroy the cherished freedom? Let us consider a weighty problem which bothered the Commission, the application to the press of the antitrust laws.

One central issue which develops from the setting of twentieth-century problems against the aims of the First Amendment is the concentration of economic power which, inevitably or not, has in fact accompanied the flowering of mass media. The decline in the number of daily newspapers (and the attendant increase of one-publisher cities), the control of radio by advertising interests through four networks, the domination of the movies by five producer-exhibitor combinations, are the salient facts which the Report does not have to elaborate. That a few hundred men *can* control the content of the bulk of what Americans see, hear, and read is a factual conclusion. That such a situation falls far short of the ideal of a diversified, representative, comprehensive press, few will deny. That anything can be done about it without impairing such freedom as persists is a center of controversy.

It is easy—too easy—to demand that trusts be busted, and to assume that the antitrust laws stand ready for that purpose. I shall not stop to discuss legal tactics and difficulties. Let us assume that, so far as the wealth and power structure of the press industries are concerned, techniques and policies judicially blessed in the last decade could at least arrest, and possibly reverse, any further trend toward concentration. Within the precise ambit of decided cases, plus legislation similar to that directed at other industries, certain horizontal or conglomerate empires could be broken up; integrations which repress new competition, like the movies, could be disintegrated; and area monopolies by the combined ownership of papers, radio stations, and other media could be prohibited, just as railroads are forbidden to own steamship lines, and steamship lines airlines.

Why, then, did the Commission recommend that the antitrust laws be "sparingly used"? In the first place, Professor Chafee's book discloses serious doubts, in the absence of verified data, whether the diffusion of power among only a few hundred more men would materially broaden the market for ideas. To the extent that the new owners of communications still were oriented toward large-scale capitalistic enterprise, he thought it unlikely that they would exhibit any greater diversity of view on debated issues of political economy than their predecessors. Even publishers and editors have emphasized the probability that publishers and editors will run with the country-club set and share country-club biases. The whole problem of the reflection of economic and social bias in the content of mass communications cries for extensive investigation. At present we do not know what the effect of a wider diffusion of power would be. All we know is that the present pattern looks like one of irresponsibility and autocracy.

In any case this inconclusive question diverts us from the main purpose of raising the antitrust problem. To brandish the big stick at the lords of the press, the Commission felt, "can be very dangerous to the freedom and effectiveness of the press." Why should this be? Are press owners especially vulnerable to antitrust? Some of the discussion in Professor Chafee's book suggests that the mere threat of antitrust prosecutions may lead to subservience by press owners to government officials.² Is this plausible? Assume again that a significant series of civil cases could be brought. The Commission seems implicitly to share a common notion that the losing defendant has his property taken away from him. If he owns twenty newspapers, he might have to sell ten of them. He probably gets his money, but what he wanted was the power and prestige of owning twenty newspapers. Or suppose the decree makes further exclusion of competitors from a wire service unlawful. Then the franchise of the original members may be less valuable. Or a friendly agreement not to lower advertising rates may be enjoined. Then if some interloper cuts rates, revenues will be less.

Of course, if only a legally protected interest is property, none of the monopoly values suggested above is property. It is the business of the antitrust laws to deflate them. Their loss is nonetheless real to the monopolist. If he doubts his chances of defending an antitrust suit, and has a normal love of money and power, the intimidation which the Commission apparently feared may overtake him. Here, then, is a sorry conclusion: the press owner who has or can gain control of a market should be guaranteed freedom from legal proceedings brought by government officials to restore or maintain competition.

2. The fact that the Sherman Act can send a man to jail is, I suppose, its sharpest tooth. But it has never bitten anybody, except a few labor leaders and racketeers. Fines in civil cases are trivial. The criminal penalties are far more potent as a lever to exact consent decrees. The Commission properly describes the statutes as "vague," and uncertainty, to be sure, increases their dangers. All this, however, could be said of the Securities Act, the Fair Labor Standards Act, the Interstate Commerce Act, the general conspiracy statute and dozens more.

Why? Because freedom from competition pays large dividends in wealth and power. The risk of losing those dividends unless officials are placated will cause the publisher to forego his duty of criticising officials, and one of the prime functions of press freedom will fall into disuse.

For the sake of the shade of Peter Zenger, can no better case be made for treating major clusters of press power gently? The Commission feared that efficiency might be decreased by altering accustomed arrangements. They might have bolstered their case more by accepting an industry argument. Somewhat refined, it runs like this. Government encroachment is only one enemy of a free press. In a society that seems to be little more than a collection of pressure groups, the officers of pressure groups are likely to be more insistent than government officials that freedom of the press does not mean freedom to criticise them (if any reader doubts, let him consider the activities of groups to which he belongs: employer or employee, church member, veteran, anti-vivisectionist). The most effective pressures, admittedly, are economic pressures. Therefore, the only free press is a prosperous press. It is the layer of monopoly fat which keeps off the chill from offended D.A.R.s and Prohibitionists. Put it another way. Whether the press owner will knuckle under to pressures depends on his power and status in the community. An archbishop, a labor leader, a department store owner can crack a long whip. But can they cut down Mr. Scripps-Howard?

This formula raises many more questions than it answers, more than can even be stated here. They converge on an imponderable. Professor Hocking makes it clear that it is no more desirable for a press to be completely free of pressures, and thus completely irresponsible, than for it to be at the mercy of the most intolerant bloc, and thus completely unfree. As always, the question is one of degree. But it is by no means clear that the optimum degree of independence for a press is measured by its untrammelled ability to restrain competition.

What does emerge from the array of assumptions, guesses, and prejudices about the concentration problem is that fear of government tips the scales. Though dread of antitrust on analysis seems ignoble, the Commissioners shared a distrust of the state, as old as history and as new as Nazi Germany and Soviet Russia. Professor Smith in his review accuses Mr. Hocking of "softness" toward the state. One less flinty than Professor Smith mildly wonders. However, the point is that the Commission *en banc*, while recognizing that the two major issues before it were the trend toward concentrated power and the unsatisfactory level of performance, hesitated to invoke the only existing force, public or private, which might possibly check the monopoly trend.

The response of the Commission to the use of antitrust is at least a weighty hint that no corrective government action would receive wide support, except in such traditional channels as control of defamation and obscenity.³

3. It seems pardonable, in this climate of opinion, to dismiss to a footnote alternative proposals involving new and extensive government supervision. Professor Chafee discusses

Should we then relax in the comforting anodyne that, through the classic self-righting process, truth will prevail and excellence will be rewarded? An age which revered the self-regulating competitive market could be content with the clash of ideas and performance in a competitive press. Perhaps that age enjoyed a vigorous flow of criticism and correction. However, one of the by-products of modern concentration is the decline of disparagement. "Boost—Don't Knock" is more than a Chamber of Commerce banality; it is a motto for imperfect competition generally. Most segments of the press compete chiefly for the advertiser's dollar, which is won by volume of circulation weighted by subscribers' incomes. The consumer must also be won; but the courtship is genteel, the rival's existence (if there is a rival) is ignored. The Commission urged members of the press to criticise their fellows more, citing what is almost a conspiracy of silence with regard to libel suits, breaches of confidence, and the like. The press, one gathers, did not accept the invitation. It smacked of the bad manners of an earlier day, of washing dirty linen in public. Gentlemen in the same club do not wash their own linen at all, let alone in public.

That overburdened figure, the intelligent citizen, consequently has no practical way of testing accuracy, meaningfulness, fairness. The press may be too concentrated for effective diversity of view, but is still far too diverse numerically for an individual to make a reasoned appraisal of the alternatives open to him. As a partial remedy the Commission proposed "the establishment of a new and independent agency to appraise and report annually upon the performance of the press." This recommendation deserved more than the two brief pages of discussion it was given. Most of the findings and other recommendations are amplified, piecemeal to be sure, in the supporting studies. This one has to fend for itself.

The hardheaded citizen will scoff at the proposal of another Institute, another fact-finding body, producing words instead of deeds, too little and too late. If he is cynical to boot, he will impugn the whole idea by recalling the phony "Independent Committees" for this and that which a public relations man can create overnight. From the latter slur the proposed agency can escape only by being really independent. I suppose the price of independence would be something on the order of \$10,000,000. What kind of case can be made to a philanthropist or a foundation who asks why the agency is needed and whether it can succeed?

some of them. The Commission recommended that members of the press think of themselves as "common carriers of information and discussion." This is an attractive symbol; the Commission no doubt appreciated that its translation into policy might import extensive legal obligations. Cf. the latter of discussion about the "public utility" aspects of the Associated Press antitrust case. Another attractive symbol is evoked by arguing that, since competition in the press and elsewhere is obsolete, the press should be compelled to become "cooperative" by admitting various elements in the community to a formal share in control. See the remarkable review of ERNST, *THE FIRST FREEDOM* (1946) by Robert F. Brady, *Monopoly and the First Freedom*, 2 *HOLLYWOOD QUARTERLY* 225 (1947).

A suggestion of probable functions will facilitate replies to both questions. Broadly, the agency might attempt the following types of action:

- (1) fact-gathering, for example, using modern techniques of content analysis to detect suppression and distortion of news;
- (2) criticism, for example, of accuracy, minority representation, government publications;
- (3) advice, for example, to communities trying to augment inadequate press service;
- (4) evaluation, "efforts . . . to help the press define workable standards of performance;" and, in the light of agreed standards;
- (5) periodic appraisal of the performance, structure, and trends of the components of the communications industry.

This listing, even more summary than that in the Report, suggests the sort of rational review to which we want to see all our institutions exposed.⁴ Our chief agency for doing this, by collecting and disseminating facts, criticism, advice, appraisal about institutions at large, is the press. But who will watch the watchdog? We are apparently resolved on continued exemption of the press from governmental supervision, which leads as much to suppression as to improvement. So do the self-interested promptings of existing private groups. And one despairs of adequate self-regulation. The proposed agency, therefore, has a reason for existence, if only because no other will do a necessary job.

The chances of success depend partly on the agency's own level of performance (which poses the question, who will watch the watchdog's watchdog? I think we can count on a full measure of counter-criticism from the press). Results depend much more on the existence in the community of some of the following:

- (1) Citizens who want to know more about the reasons for, and conditions of, press freedom than they get from the perfervid rhetoric the press turns on, for example, to avoid social security taxes.
- (2) Citizens who want to know the news deficiencies, if any, of a community with only one newspaper. Does the radio do as well, or better, for information on local issues?
- (3) Citizens who want to know the bias of their news sources, say, their covert attitude toward minority racial groups.

The list could be considerably extended, coinciding with the faults and virtues of the press that need objective communication. The persons who want to know may be relatively few in number, but they would increase if the information was well-presented.

One illustration will have to suffice of the directions in which the agency, by skillful communication to an adequate audience, could work to the good

4. That is, all those which are believed to have a rational foundation.

of the press and its freedom. It might well persuade part of the public that passing a law is not the way to improve the press. It may be a way, and it is a way which too quickly commends itself to a disgruntled electorate. Evidence from the opinion polls suggests that an alarmingly large group of those professing to have opinions care little for traditional guarantees of speech and publication. If they are misled, it is because the schools and the press itself have failed to inform them. The opportunity still exists to promote some democratic self-help. We have seen that the press has no blanket immunity from pressures. Indeed, the exertion of pressure from all sides is the only way to insure that the press will reflect neither the unbridled whim of its owners nor the interests of narrow but organized groups. The displeasure of those who want to see the press approach ideals of fairness and fullness should be readily felt. So should their commendation. If neither is effective, local groups who want to start a new paper or radio station should have a source of advice and encouragement.

The notions that the public gets what it deserves, and that the papers, the radio, the movies, give it exactly the pap it wants because the Hooperatings and the opinion polls say so, are dangerous half-truths. The public, which is the human race, deserves the best any of us can give it; God knows it needs all the help it can get. The public, which in America is thousands of different groups and classes with innumerable wants, is confined by habit but still looks to the horizon for things new and better. If the prospect is bounded by cautious stereotypes designed not to offend the widest possible audience, and by a publicity apparatus designed to convince that nothing is more significant than yesterday's sex murder, only the most resolute explorers will know what is beyond the horizon, and want it.

The Commission is on the side of the angels, which is not the side of the status quo. Its recommendation for a new appraising agency, mousy as it may seem to a direct actionist, is an affirmation of belief that enough citizens care enough about the development of freedom and responsibility of the press to listen to talk about it. If they are wrong, and freedom of the press means only non-suppression of comic strips,⁵ then there is not much point in trying to get along with the Russians.

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5. I do not wish to be misinterpreted. I think L'il Abner has more to say than Arthur Krock, and that both are entitled not to be suppressed.

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