

The Blessings of Liberty (Book Review)

Brendan F. Brown

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

BOOK REVIEWS

THE BLESSINGS OF LIBERTY. By Zechariah Chafee, Jr. Philadelphia and New York: J. B. Lippincott Company, 1956. Pp. 350. \$5.00.

This is a notable and scholarly contribution to the subject of civil liberties. It is written by one of America's most distinguished champions of constitutional freedom. It contains a timely and challenging message for all. This is so even though some readers may disagree with the author concerning the nature, extent, and potential danger of communism to the economic and political institutions of this country. Unfortunately, this book will be the last to come from the pen of Professor Chafee whom death called away on February 8, 1957.¹

The contents of the book consist of an orderly arrangement under eleven chapter headings² of homogeneous materials selected from the prior writings of the author between 1944 and the close of 1955. Almost one half deals with the threat to political liberty resulting from the treatment of persons suspected of communism or communistic sympathies. This is the controversial part of the volume. The remainder is concerned with such matters as the long struggle for religious toleration and the future of civil liberty in other countries. This part will elicit general approval.

Professor Chafee published this book because he sought to make all Americans treasure their heritage of the Constitution. He was convinced that "the words of the Constitution need to be deeply felt by each one of us as ideals of fairness, sound government, and happiness for our own perplexing times."³ He explained that "this book is written because, so far as in me lies, I want to make my fellow-citizens care more about these ideals."⁴

¹ Professor Chafee died of a heart attack on Friday, February 8, 1957, in Boston, Mass., at the age of 71. He retired last summer from the Harvard Law School, where he had taught for forty years. See *The N.Y. Times*, Feb. 9, 1957, p. 19, col. 3.

² Namely, *Watchman, What of the Night?*; *Why I Like America: Forty Years with Freedom of Speech and of the Press*; *Does Freedom of Speech Really Tend to Produce Truth?*; *Freedom and Fear*; *Purges are for Russian Lawyers, Not American Lawyers*; *The Right Not to Speak*; *The Freedom to Think*; *With Full Liberty in Religious Concernments*; *Strengthening Liberty in All Countries*; and *Free Speech in the United Nations*.

³ P. 17.

⁴ *Ibid.*

Accordingly, Professor Chafee has traced the historical acceptance of the ideal of religious toleration, particularly in the colonial period. He has presented an inspiring picture of the growth of freedom of speech and of the press since 1917. He has made an eloquent and convincing plea for hope in an ultimate International Covenant on Human Rights which will bring the blessings of liberty to "countries which have too little now."⁵ He has strengthened the reader's faith in the proposition that "the tangible civil liberties will be better protected in 1970 than now."⁶ In so far as he has done these things, he has magnificently succeeded in his purpose.

All patriotic Americans will agree with the author's explanation why communism is a Russian institution, namely, because Russia did not participate in the common heritage of Western thought. They will hail his condemnation of communists, whom he detests,⁷ since they are opposed to his ideals. Indeed, he likens them to maggots.⁸

There will be no disagreement with the author's conclusion that the solution of the problem of determining the precise degree of civil liberty is to be sought in striking a balance, at a particular time and place, between the individual's right to think, speak, and act as he pleases and the social interest of the common good. All will agree that the best guide in striking this balance is reason. In this process of balancing, as Professor Chafee has correctly pointed out, it is sometimes necessary for the innocent to suffer for the common good, as soldiers drafted into battle.⁹ But there will be a considerable division of opinion as to the accuracy of his conclusion that this balance has been seriously disturbed in recent years, especially by the McCarran Act of 1950, the Communist Control Act of 1954, the Loyalty Oath recommended by the American Bar Association, and the congressional investigating committees which have endeavored to detect communists. There will be disagreement as to the number of persons falsely suspected of communism who have suffered unjustly.

It may well be that the author's distinctive philosophical starting point, especially his conception of truth, may have tended to influence his appraisal of the moral evil of communism in itself. It may have affected his evaluation of the extent of the present danger of communism to this country in the light of available statistics. It may have conditioned his appraisal of communist control legislation and of the benefits of such activities as those of congressional investigating committees.

It is significant that Professor Chafee dismissed natural law, apparently including the concept of the objective immutability of certain moral fundamentals, as "a highly controversial philosophical

⁵ P. 300.

⁶ P. 18.

⁷ P. 160.

⁸ P. 129.

⁹ P. 114.

doctrine."¹⁰ Hence it is understandable that he should regard truth as related to "*the ultimate good desired.*"¹¹ This is the concept of truth as approved by Mr. Justice Holmes.¹² It conflicts with that of St. Thomas Aquinas, who defined truth as "the equation of thought and thing,"¹³ and related the "good" to the will and the appetite.¹⁴ The proposition of natural law that the individual person has supreme worth and dignity is a "thing" or "fact," however metaphysical and supersensory it may be. The opposite proposition of communism is eternally false.

Since Professor Chafee apparently did not believe in absolute truth, it is doubtful if he could condemn the underlying philosophy of the international communist conspiracy as objectively false, and if he could hope that all Americans would do likewise. This philosophy postulates the worthlessness of human personality. His idea that all truth is relative and tentative in the final analysis may explain his dislike of such words as "subversive"¹⁵ "dangerous" or "bad idea"¹⁶ "disloyalty"¹⁷ and "atheistic communism."¹⁸ It may have predetermined his comparison of the Russian "iron curtain" with the "curtain of solid ivory"¹⁹ which the United States has built around itself to prevent the entrance of foreign scholars for limited periods of time. It may explain his consideration of the evil of communism in terms of its advocacy of violent methods to overthrow the government rather than from the point of view of its use of deceit and false propaganda to distort truth.

If the basic thesis of communism is only relatively or subjectively false, then a greater calculated risk is justified with regard to its threatened danger. Hence it is to be expected that the author would interpret present facts and statistics so as to minimize that danger. It may be that less than one-twentieth of one per cent of the population of this country is communist,²⁰ although this may be hardly more than conjecture due to the effective secrecy with which communists operate. There is abundant evidence in recent years, nevertheless, of what a determined, closely knit, conspiratorial minority can do if not checked adequately. Indeed the capture of one country after another by communists is common knowledge.

Communists are directed, financed, and supported by a militarily powerful foreign nation. From the experience of other nations which

¹⁰ P. 98.

¹¹ Pp. 104, 105.

¹² *Ibid.*

¹³ AQUINAS, *SUMMA THEOLOGICA*, I, q. 16, art. 1.

¹⁴ *Ibid.*

¹⁵ Pp. 20, 87.

¹⁶ P. 126.

¹⁷ P. 20.

¹⁸ P. 19.

¹⁹ P. 250.

²⁰ P. 126.

have been brought into the communist world, it does not appear that a foreign connection will make communism less attractive to American radicals. The danger does not lie in the free choice of communism by the American people, but rather in its adoption through deceit, or its imposition by physical force. Manifestly it is necessary to give "increased drawing-power to our great traditions of democracy and freedom,"²¹ but this is not enough to insure the survival of these traditions.

Professor Chafee has emphasized that intemperance in the administration of laws directed against communist suspects has resulted in hardships upon innocent persons. But it is questionable whether this intemperance is more destructive of the common good than the liberality of those who would risk the transformation of some of our institutions into weapons for the destruction of constitutional freedom. It is doubtful whether prior crises of liberty in American history in the fields of religion, politics, economics, philosophy or sociology, apart from crime itself, afford true analogies with regard to communism.

BRENDAN F. BROWN.*



PUBLIC UTILITY REGULATORY LAW. By Everett C. McKeage. New York: Vantage Press, 1956. Pp. 107. \$5.00.

This book is by Everett C. McKeage, who has served as Chief Counsel of the California Public Utilities Commission for seventeen years, after an outstanding career at the bar and on the bench of that state. It brings together addresses on public utility regulatory law delivered by him. The addresses, when first published, attracted wide and favorable notice. Their publication in book form will be welcomed by administrators and practitioners.

The scope of the addresses is broad. In one hundred and seven pages the author considers comprehensively the place and functions of regulatory commissions; Section 13 of the Interstate Commerce Act, its genesis and present impact upon state authority; the valuation of public utility property; the due process concept under administrative law; state regulation of air carriers; the repudiation of the rule in the *Ben Avon*¹ case; and utility regulation in California.

²¹ P. 62.

* Professor of Law, Loyola University School of Law, New Orleans, Louisiana.

¹ *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.S. 287 (1920).