

FREE GOVERNMENT NEEDS FREE PRESS

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Free press gives people and government heads access to facts, Justice Jackson tells 15 editors & publishers here from Western Germany



Addresses group at Washington meeting

Gentlemen of the German Press: In undertaking to tell you something of the peculiar legal position of your profession in the United States I do not want to be understood as suggesting that our ideas are appropriate to be adopted in Germany, and much less that they be imposed upon that country. Our system is the product of different legal philosophy, adapted to wholly different conditions of a new world, far from potential enemies and with different economic and foreign problems. Whether and to what extent it can be useful in your conditions is not the question that I am dealing with.

Freedom of the press in the U. S. has different legal basis than it had in Germany under the Weimar Republic, and different than it generally has had in Europe. The Weimar Constitution, of course, contained articles which protected press freedom, along with other civil rights, from official invasion, but with this fatal exception: Under Article 48 of the Weimar instrument, all of these rights could be suspended by the government in emergency.

However urgent may be the need at times for emergency powers, the presence of a constitutional provision such as that in the Weimar Constitution, like emergency powers everywhere, tends to invite emergencies. The provision for emergency suspension of civil rights in the short life of the Republic was invoked as many as 250 times by different governments and for different kinds of emergencies, and became the only basis for the claim of the Hitler dictatorship to legitimacy.

Our Constitution makes no such provision for crisis suspension of freedoms of speech or press. Except for the writ of habeas corpus, which may be suspended in certain circumstances, and for declaration of martial law, which has only limited application as our counterpart of civil law "state of siege," the same law applies in crisis as in calm—although it may be more relaxed in application during a period of excitement. While our press and other freedoms are not perfectly secured, the Government has no ready weapon for their overthrow, such as the Weimar Constitution provided. Freedom of the press here is a legal right, enforceable in court, and is not a mere privilege possessed at sufferance of the existing government.

You will notice another important difference between our law and that of many other countries. We do not have and never have had such an "official secrets act" as prevails in Europe to keep intelligence of the government from the press. You have already seen how the press probes openly in press conferences for official acts and views. Except as to the armed services, there is little restraint on publication of any news a paper can get.

The general attitude of the American official, contrary to the European, is to seek publicity for his acts and views. There are, of course, occasional complaints that the press is barred from some news which it thinks it should have. There is also at times grave concern whether "leaks," "planted" stories, traffic in "secrets," "tips," and confidences by officials and ex-officials may not lead to some legal regulations. But as to ordinary acts of government, the American press is legally free to get any information it can and to publish anything it can get.

A factor which has contributed to the great latitude allowed to the press of the U. S. is the American attitude toward opposition to constituted authority. Treason even is very narrowly defined in the U. S. Constitution and great difficulty is placed in the way of proving it by overt acts. It may interest you to know that in the 160 years of our history, which includes a civil war, no man has ever been executed by the Federal Government for treason. Some have been convicted and a few have served imprisonment. Even during the last war one German, convicted of treason, had his conviction reversed by the Supreme Court, and another's death sentence was commuted by the President.

Sedition laws have not been popular and administrations which have invoked them too freely have usually come to grief. That is not to deny that there have been times in our history, usually during or following wars, when there have been waves of sedition prosecutions.

We have always regarded opposition to the policies of the Government as the legitimate right of the citizen, so long as it is pursued without attempt or purpose violently to overthrow the Government, and the only thing we have regarded as basically criminal is betrayal. I need not tell you how this attitude contrasts with many of the older states of

