

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

the world where treason and sedition charges are often and lightly made.

It may be appropriate to point out that the American press, better than the press of many countries, has been able to maintain in practice its theoretical rights because it has in a unique degree identified its own interests with those of the public. Our press, with negligible exceptions, does not consist of what are primarily party organs, subsidized by party treasuries. Our papers thrive by enterprise in supplying the public with news; news begets reader interest, that begets circulation, and circulation begets advertising.

I am not saying this system does not have shortcomings, but it does have greater public confidence than any subsidized party organs could have. Of course, many newspapers here are partisan—some in both editorial and news reporting—but with this important difference: it is the newspaper that supports the party, not the party that supports the newspaper. This character as an independent enterprise has an important effect on legislation, libel verdicts and public opinion, for readers regard any limitation on freedom of this kind of press as an infringement of their own right to get the news.

I hope you will not make the mistake that some American editors do—that of regarding press freedom as an isolated liberty which can survive the loss of the liberties of others. Our several liberties are not separate and independent phenomena; they bolster each other at the same time that they support the free structure of American life.

Only the shortsighted can believe that liberty of the press would long survive if other liberties perish. For example, the right of free press is not secure if the right to fair trial by courts and juries, uninflamed by appeals to passion and in an atmosphere not poisoned by false rumor, is lost. No American official in his right senses, no matter how much he desired to control the press, would resort to direct measures of suppression or control. This would enrage the American people. Instead, he would resort to indirect methods as to the meaning of which the people could be confused and misled. For instance, he might seize all newsprint and entrust its rationing to a partisan who would be made free of all judicial interference. I do not need to tell you Germans what a pervasive control is exercised by those who ration necessities of life for the individual or for business. So it is important that those who would preserve freedom of the press be equally vigilant to see that none of the fundamental freedoms are invaded.

While our scheme of liberty is a century and a half old, and has had surprisingly few periods of jeopardy, it is not self-perpetuating. The greatest menaces to liberty are war and economic collapse, either through inflation or depression. I doubt very much if our freedoms can go through another total war or serious economic collapse without serious impairment. We have avoided the most drastic measures of total war, partly because our participations have been brief, our resources great, our own danger remote, our society relatively united in support of the wars. But a war which would mean conscription, first of capital then of labor, and a fight against fifth column techniques, certainly means sharp curtailment of our customary liberties, including that of the press. Modern militarization, whether in Germany

or in America, is not and cannot be compatible with our type of free society.

It is for this reason that the maintenance of a people's liberty depends often on their external environment quite as much as internal policy. You know better than I how great a part external pressures played in defeating the efforts to maintain a free government in Germany. Our liberties owe more than a little to the amiability of our neighbors which has enabled us to live relatively free of the tensions that have plagued Europe.

You may wonder what effect such broad freedom of the press has upon the efficiency of government. I have, in the Executive branch of the Government, experienced all of the annoyances which the press can cause to officialdom. It undoubtedly forces premature disclosures and the publication of some things which might well prejudice our international relations.

Yet, on the whole, if I were an absolute dictator of the U. S., I would insist on respecting freedom of the press because it is the best insurance against being deceived about what is going on in the country and even in the Government itself. I know from testimony and documents that Hitler himself was sometimes deceived by suppression of information. Goering, for instance, again and again would forbid the passing up of information which might be regarded as "defeatist." I suspect other dictators are also deceived by their own bureaucracy.



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Of course, a regrettable volume of rumor and false report finds its way into our free press. But the residue of solid information which a press supplies to men at the head of state and heads of departments, seems to me indispensable to good administration. Except for the press and allied news services, the head of government would be in the hands of his own bureaucracy for information, far more than would be wholesome. I could give you many instances where sprouting abuses in government first came to attention of responsible heads because some courageous paper exposed them.

I do not know whether it will be possible to establish an independent and critical free press under conditions that prevail in Germany. But I am confident that the hope of really free government there depends on it.