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Individual Freedom and Governmental Restraints

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BOOK REVIEWS

INDIVIDUAL FREEDOM AND GOVERNMENTAL RESTRAINTS. By Walter Gellhorn. Baton Rouge: Louisiana State University Press, 1956. Pp. 215. \$3.75.

This most recent of Professor Gellhorn's books is significant for lawyers not only as lawyers, but also as citizens concerned about the protection of our traditional freedoms. The author teaches at Columbia Law School and is recognized as an authority in administrative law.

Based on a series of lectures given at Louisiana State University Law School in 1956, the book is carefully written and fully documented. Gellhorn's dry wit and his keen concern for civil liberties remind one of Elmer Davis. While Gellhorn is concerned with the administrative excesses which reached a high point during the recent period of McCarthyism, he also discusses restraints on book reading and on the right to make a living.

In considering the administrative process, Gellhorn points out that during the 1930's criticism of the federal agencies came mainly from businessmen subjected to regulation which they did not like, by such agencies as the NLRB, SEC, and FCC. Today, by contrast, criticism of the agencies comes from those who complain that some administrative procedures do not conform to traditional civil liberties. For example, in some deportation and job security cases, the government has acted on information which it refused to disclose to the accused and which later turned out to be unreliable. And surprisingly large numbers of permanent residents in the United States are being deported each year. Gellhorn also points out that while the cease and desist orders of the 1930's were annoying to the businessman and might require a change in his method of operation, such orders usually dealt only with what he must do in the future, and rarely did they put him out of business. By contrast, the administrative orders of recent years often punish past conduct such as prior membership in an organization *now* deemed subversive. Moreover, such rulings may entail drastic sanctions like deportation after many years of residence¹ or virtual denial of the right to work in one's chosen vocation.

¹ Compare the *Lias* case pending at Wheeling, W. Va. This began as a suit for collection of past-due income taxes from Lias, but the United States has sought to deport him as an undesirable alien on the theory that he was born in Greece and brought to this country as a very young child some fifty years ago. Lias contends that he was born in Wheeling.

Chapter Two, "Restraints on Book Reading", was to this reader the high point of the book. Censorship of books, says Gellhorn, is especially significant since books are the chief means by which new ideas are introduced and because "books remain the chief hope that diversity, and even elevation of taste may survive the standardizing, leveling down influences of mass communications" (p. 50). The rise in recent years of the paperbound books has called forth new efforts at censorship, after a period of relative freedom. However, such censorship is undesirable because it is so difficult to define obscenity and because it remains to be proven that bad reading causes bad conduct, even among adolescents. Gellhorn avers that it is better to persuade potential delinquents to read good books than to waste energy seeking to keep reading matter from them (p. 67). Another undesirable restraint is "private censorship" by such groups as the Minute Women and veterans' organizations, who seek to ban books they believe unpatriotic or whose authors they disapprove.

Another form of restraint on reading is the restriction on importation of foreign books and magazines. Gellhorn approves the fair procedure in Customs Bureau cases, where a judicial hearing is assured on the question of obscenity, as contrasted with the autocratic practices of the Post Office Department, which simply intercepts the publication and notifies the addressor that he may within fifteen days seek to show cause why it should not be destroyed. No formal hearing is granted in such cases.

Still other restraints on reading occur in the selection of books for governmental libraries and the selection of textbooks by school authorities. It is interesting to learn that in 1956 the West Virginia Textbook Advisory Committee found it necessary to call on the Americanization Committee of the American Legion to help select social science books for the elementary schools.² But unquestionably the most serious restraint on reading in West Virginia, as in many areas, is the lack of libraries. As Gellhorn says, "a more pressing danger than bad reading is no reading at all" (p. 103). West

² Censorship Bull., Amer. Pub. Coun., May 1956, cited in text, p. 185, n.72. In West Virginia a multiple list of elementary textbooks is selected by the State Board of Education with the aid of a committee of teachers, and the county superintendent with the aid of a local committee of teachers selects the books for the county from this list. W. VA. CODE c. 18, art. 2-a, §§ 2, 5 (Michie 1955). No provision is made for state-wide selection of high school textbooks.

Virginia has the disgraceful distinction of ranking last among the states in public library support.³

Chapter Three, "The Right to Make a Living" considers, *inter alia*, the recent trend toward licensing of many occupations not heretofore licensed. Gellhorn warns that sometimes the real purpose is not merely to protect the public, but to limit entry into the occupation and curtail competition, as with the medieval guild system. This is more likely when the licensing board is controlled by the occupation being licensed rather than by more disinterested persons. Moreover the members of such boards often lack administrative ability and know little of modern testing techniques. Gellhorn proposes as a less restrictive system a plan of certification within an occupation, *e.g.*, a "registered engineer", coupled with free entry into the field. This would inform the public about the more highly trained persons within the occupation, at the same time avoiding an artificial limitation on movement of people from state to state, providing more opportunity "for men who are occupationally gifted though not conventionally schooled" (p. 148). Gellhorn also proposes that a central licensing authority be created in each state for all occupations, with advisors from the various occupations. The administrator should have the authority to bring a judicial proceeding to revoke or suspend a license, upon a proper showing of bad conduct, incompetence, etc.

In a brief epilogue Gellhorn eloquently sums up his deep belief in preserving our traditional liberties. Freedom, he declares, is "a mosaic of many tiles, the whole effect of which may be lost if enough 'unimportant' pieces are pried loose" (p. 153). The blessings of liberty were hard won and should not be lost through "slothfulness, inattention, or doubt."

One cannot read this book without gaining a better understanding of some things which are happening quietly but which nonetheless greatly affect the lives and liberties of many of our fellow citizens, if not of lawyers themselves.

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Lee Silverstein.

³ The Charleston Gazette, Jan. 20, 1957, p. 18. The American Library Association reports that West Virginia spends only \$.26 per capita per year for local library service. The recommended minimum is \$1.50 per capita. There are only eight bookmobiles in the state as against a recommended number of twenty-four.