

Letters to the Editor

To the Editor:

Max Kampelman's article in the Spring 1978 issue of *PS* well describes Hubert Humphrey's perception of the politician as educator. In the hope that it may contribute to the understanding of a complex issue, I should like to clarify Max's statement that I strongly supported "the philosophy and purpose of the Humphrey legislative effort" to outlaw the Communist Party.

In the law review article to which Max refers (*The Communist Control Act of 1954: A Proposed Legal-Political Theory of Free Speech*, 23, *The University of Chicago Law Review* 173 (1956)), I strongly supported the *constitutionality* of the Communist Control Act of 1954. In essence, I argued that the basic postulate which should limit and control the meaning and application of the First Amendment is that the Amendment is part of the framework for a constitutional democracy. It should not be used, therefore, to curb the power of Congress to exclude from the political struggle totalitarian groups which, if victorious, would suppress freedom of speech and crush democracy.

At the same time, I argued that the Act, as well as the Humphrey proposal, were *unwise* pieces of legislation. I thought that Communism was suffering its greatest defeats in open political debate and electoral struggle. Democracy, therefore, should not desert a field of battle in which it was so successful.

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To the Editor:

After reading a copy of my good friend Carl Auerbach's letter, I decided to read once again his most distinguished article in the Winter 1956 issue of the *University of Chicago Law Review*. Here is what I found:

"So, in suppressing totalitarian movements, a democratic society is not acting to protect the status quo, but the very same interests which freedom of speech itself seeks to secure—the possibility of peaceful progress under freedom. That suppression may some-

times have to be the means of securing and enlarging freedom is a paradox which is not unknown in other areas of the law of modern democratic states." (p. 188)

"Whether in any particular case and at any particular time, Congress should suppress a totalitarian movement should be regarded as a matter of wisdom for its sole determination. But a democracy should claim the moral and constitutional right to suppress these movements whenever it deems it advisable to do so." (p. 189)

"No democratic or constitutional principle is violated, therefore, when a democracy acts to exclude those groups from entering the struggle for political power which, if victorious, will not permit that struggle to continue in accordance with the democratic way." (p. 195)

"Therefore, because I agree with the legislative and judicial findings that the totalitarian Communist movement is committed to the use of force and violence, this fact alone, in my opinion, should support the congressional decision to outlaw the Communist Party." (p. 196)

"The principle of freedom, itself, therefore, requires that the Supreme Court uphold the judgment of Congress that totalitarian political organizations be proscribed." (p. 200)

"The Communist Control Act proceeds on the warranted assumption that whether an organization is totalitarian is relevant to its qualification to continue to participate in the electoral struggle in a democracy." (p. 209)

"In short, the Communist Control Act does not represent an abandonment of the liberal tradition. Men and women who call themselves liberals should be in the forefront of the fight against Communism, just as they were in the fight against Fascism." (p. 217)

In the light of the above perceptive statements by Professor Auerbach, I trust I will be forgiven my conclusion that the article strongly supported "the philosophy and purpose of the Humphrey legislative effort."

Max M. Kampelman

To the Editor:

The exchange of correspondence between Heinz Eulau and his erstwhile publisher in *PS*, Winter 1978, documents a situation that is becoming increasingly common, and printing it may be a service in alerting other unsuspecting authors to factors they should take into account in deciding where to publish their books. (I hope, however, that Professor Eulau took the precaution of securing the publisher's permission to have the exchange printed, for otherwise he would have no legal right to reproduce any but his own letters.)

I must say, however, that I sympathize with my publishing colleague's stance and find Professor Eulau's complaint unjustified, albeit understandable. If one publishes with a commercial house, then one should be willing to accept the risks involved, which include having one's book go out of print because of its proven lack of commercial viability. It is unreasonable to expect a profit-making firm not to measure the performance of its products by their sales as the *primary* criterion of success. Would Professor Eulau expect General Motors to keep a car on the market if it were not selling just because some experts felt it to be well engineered and designed, or Paramount Pictures to continue promoting a film that was losing money even though the critics raved about it?

Given his emphasis on the book's "scholarly merits" and its long-term value, one wonders why Professor Eulau did not think of publishing it in the first place with a university press, for which commercial considerations play an important but not primary role. University presses typically keep books in print longer than commercial publishers do, for the simple reason that continuing scholarly usefulness is a paramount factor in their decisions and they are willing to put up with a much lower annual volume of sales as a consequence of their different priorities. Indeed, some university presses (including mine) are now actively seeking to help keep valuable books in print that commercial publishers have decided to drop from their lists.

As far as I can ascertain, Professor Eulau has never published any book with a university press and evidently has no direct experience of the alternative non-profit publishing can offer. Perhaps, along with many other scholars, he has succumbed to the lure of "going commercial" on the (false) presumption that comparable rewards are not obtainable through publishing with university presses. I hope his sad experience will be a lesson both to him and to the profession generally that for "serious" scholarly publishing there is no better place to go than "serious" scholarly publishers!

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