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Review of “Outdoor Advertising: History and Regulation,” By John W. Houck

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BOOK REVIEWS

OUTDOOR ADVERTISING: HISTORY AND REGULATION. Edited by John W. Houck. South Bend: University of Notre Dame Press, 1969. Pp. v, 250. \$15.00.

One critical observer has commented of the contemporary American scene that the present concern about the environment is nothing but a modern Childrens' Crusade, that we have not the political strength to provide the necessary billions to correct the worst corruptions of the environment, and that much of the present sound and fury will take us nowhere. While certainly a sobering thought, the recent history of the abortive federal Highway Beautification Act of 1965 lends some credence to this evaluation, for Congress has not had the political will to appropriate even the modest millions needed to clean up the billboard mess on our major highways. If we cannot successfully cope with what appears to be a small-time billboard industry, how can we expect to tackle the giants?

An awakened interest in the environment and the important lessons to be learned from the billboard regulation experience makes a volume on advertising control welcome. This one, however, disappoints the reader, especially considering its price. While two chapters provide valuable history on the origins and recent enforcement of the federal act, most of the discussion is very general and does not escape the obvious. This comment especially holds for the short chapter on "The Use of Eminent Domain and Police Power to Accomplish Aesthetic Goals", in which the author misstates an important New York higher court case.¹

Indeed, the book is not about outdoor advertising at all, except for a very simplified chapter on the history of outdoor advertising and its regulation, but focuses on billboard control alone, and most especially on billboard control along the highway network. Even here we are not given the proper legal, economic, and aesthetic framework in which to

1. *Schulman v. People*, 10 N.Y.2d 249, 176 N.E.2d 817, 219 N.Y.S.2d 241 (1961). The state sought to condemn negative easements to prevent the erection of billboards adjacent to the highway, and the author states that the state's "regulations were based on a state law which gave him a general power of eminent domain." Strictly speaking, this was not so. The state had sought to impose restrictions on the land through the easement device, and not to regulate. Furthermore, the statute was not "general" but authorized the condemnation of interests in property, including easements, "for other purposes to improve safety conditions on the state highway system." It was this provision which was held not to confer the statutory authority to condemn negative easements and not, as the author states, to "prohibit" billboards.

evaluate control systems. One chapter does report a study from Seattle, Washington, in which a selected panel was asked to evaluate various highway routes with and without billboards.² Reactions were not noticeably more positive when billboards were removed, a result not in the least unexpected when it is considered that one of the commercial streets selected for evaluation was Aurora Boulevard. This thoroughfare, the reviewer can attest, is a visual affront no matter what is done with the signs that line the way. For one thing, buildings along the street are out of scale with the street width. Given the circumstances, the panelists were right!

Besides the helpful reviews of the federal law, two other chapters do provide valuable insight and discussion. Fred Bosselman of the Ross, Hardies and O'Keefe firm in Chicago gives a penetrating analysis of trends in billboard regulation; it lacks punch only because we are not given enough background material to evaluate his comments. In a concluding and carefully reasoned chapter, Ross Netherton, who now deals with environmental problems of highway route locations in the United States Department of Interior,³ analyzes some of the difficult problems of balancing conflicting governmental and private interests in billboard regulation. One of Netherton's comments demands careful reflection. He notes that "the limits of the police power are being interpreted broadly enough to allow state or local governments to go as far in restriction of roadside advertising by regulatory means as any responsible proposal is likely to require."⁴ If so, it is a matter for serious conjecture why Congress then demanded that compensation be paid for the removal of most nonconforming billboards, for it is the compensation requirement and the failure of Congress to appropriate the necessary funds to implement it that has so far provided the stumbling block to effective administration of the federal law.

Since the state courts have increasingly sanctioned the removal of existing and nonconforming billboards under reasonable amortization provisions, it is a mystery why Congress did not sanction this or a similar device. The answer, of course, is political, and it is in an analysis of the competing techniques for billboard control that a real contribution can be made. Netherton makes a very useful start in this direction.

2. The final report of this study is available in ARTHUR D. LITTLE, INC., RESPONSE TO THE ROADSIDE ENVIRONMENT (1968).

3. See also, by the same author, Netherton, *Transportation Planning and the Environment*, 1970 URBAN L. ANN. 65.

4. OUTDOOR ADVERTISING: HISTORY AND REGULATION 240 (J. Houck ed. 1969).

Events have already dated some of the discussion in this volume. Amendments to the federal law are pending which will extend the federal prohibition against billboards to all signs "visible" from the highway, and the amount of the federal financial penalty for noncompliance is to be considerably reduced. To the reviewer's knowledge, the present statutory penalty—ten percent of a state's federal highway allocation—has never been invoked. Studies are also under way which will fill prominent gaps in another vital area of advertising control: the regulation of on-premise advertising signs. And the Highway Research Board has sponsored detailed studies of the legal problems in compensating for the removal of advertising signs, which are soon to be released. Hopefully, accumulating experience and renewed interest will yet bring us the definitive treatment of advertising regulation which the subject clearly deserves.

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MILITARY JUSTICE IS TO JUSTICE AS MILITARY MUSIC IS TO MUSIC. By Robert Sherrill. New York: Harper & Row, 1970. Pp. 225. \$6.95.

There are certain difficulties which beset a lawyer and apparently do not beset some journalists or authors. Few lawyers have been commercially successful even when they have desired to write for profit. Lawyers seem to bore the normal book reading audiences with their attention to detail and tiresome attempts to see both sides of an issue. Even the most strenuous *avocat* tempers his written criticisms and comments in a brief directed to his adversary, out of respect for the opponent's skill and the reviewing judge's keenness. Unfortunately, Mr. Sherrill's attention to being a commercially successful author wins out over objectivity, fairness and accuracy.

Military Justice Is To Justice As Military Music Is To Music could have been a fine book, which put forth some weighty theses and offered some solutions, but, as is, it is unpalatable. The book is written in a tabloid style with shocking statements and generalities liberally sprinkled through its pages. Mr. Sherrill takes a position that because we have a citizen's army, which in turn subjects millions of men to military justice, we are destroying the fabric of our democracy by the inadequacies of the military's system of justice. He never attempts to

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