

Emerson & Haber: Political and Civil Rights in the United States

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Recommended Citation

Paul H. Vishny, *Emerson & Haber: Political and Civil Rights in the United States*, 3 DePaul L. Rev. 149 (1953)
Available at: <https://via.library.depaul.edu/law-review/vol3/iss1/18>

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blend and breadth of knowledge now required to treat with the transportation industries. It is a guide to the one who seeks to pick his way between naked domination and effective regulation.

MELVIN F. WINGERSKY*

Political and Civil Rights in the United States. By THOMAS I. EMERSON and DAVID HABER. Buffalo: Dennis & Co., Inc., 1952. Pp. xx, 1209. \$7.50.

A most creative epoch in American legal history has been the period since the turn of the century, which witnessed the rise of a vastly significant body of judicial literature in the field of civil rights. All of our law on free speech, for example, has been developed since 1917¹ and is in a present state of unforeseeable development. A casual reader in the field knows that the bulk of the important decisions are relatively recent. This development is a subject of concern to sociologists, psychologists, and economists alike—but it is primarily of interest to lawyers, for it is the courts that either, “stand against any winds that blow as havens of refuge for those who might . . . suffer because they are . . . weak . . . or . . . non-confirming . . .”² or fail to do so, to the consternation of the aggrieved.

Law schools, in adding courses on civil rights, have recognized that the lawyer cannot discharge his public duty or be true to his oath to support the Constitution without an adequate grasp of this phase of constitutional interpretation. And, as in the case of every era, a compiler is necessary to preserve the wisdom of creativeness for study and future expansion.

This collection of cases and materials on civil rights very adequately fulfills the purposes of the editors—“to throw light upon those institutions, rules and procedures of our society which keep the system functioning on a democratic level, which permit our people to solve their problems through the exercise of democratic choice, which, in short, form the ground rules for the practice of democracy.” The editors have wisely chosen the case book format to accomplish these goals. The story of the securing of constitutional liberties in the United States is largely the story of the efforts of individuals to restrain governmental impositions of one sort or another, through the medium of the courts acting within our own constitutional framework. A case book alone can serve to portray this story by readily making available to the student or reader the original materials in the field. Yet, a case book is not enough, since some critical approach to the cases is required for purposes of evaluation. Such a critical approach must be grounded, not only in logic or broad political philosophy, but in experience as well. This book can only be praised for the comprehensive selection of materials included in the textual sections. Law review articles, statistics, and quotations from such important works in the field as, *The Report of the President’s Committee on Civil Rights and Free Speech in the United States*, by Professor Chafee, make for interesting reading as well as critical commentary. Each section contains summaries of cases which could not have been treated in full form because of the inherent limitations of book making. But to the mind of this reviewer at least, the most outstanding feature of the book is the series of bibliographies in each chapter. Here is the springboard for important research in both the legal and “non-legal” facets of civil rights.

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¹ Chafee, *Thirty-Five Years with Freedom of Speech*, I (1952).

² *Chambers v. Florida*, 309 U.S. 227, 241 (1940).

Chapter 1, entitled "The Right to Security of the Person," concerns the extent and development of federal power in the field and a discussion of the control of state and individual action embodied in the Federal Civil Rights Acts. Conspicuously absent from the background material in the chapter, however, is an adequate treatment of the *Dred Scott* decision. What the Federal Civil Rights Acts and the Fourteenth Amendment have accomplished can best be discussed against the background of that decision, which would have denied to the Negro a position of human dignity.

Chapter 2, on "Fairness in Governmental Procedure" contains a fairly comprehensive selection of materials on the questions of forced confessions, the right to counsel, and searches and seizures, as well as textual summaries on the problems of wiretapping, fair trials, double jeopardy, self-incrimination, etc. Also in this chapter is the important *Adamson v. California* case which points up the conflicting philosophies of the members of the Supreme Court on the question of what is included in the Fourteenth Amendment.

Chapter 3, entitled "The Right of Franchise," is primarily concerned with the problem of Negro suffrage. After a consideration of federal power over the voting processes there is treated in succession the poll tax, white primary cases, and various other schemes invented for the purpose of denying the vote to the Negro. Also treated are the questions of apportionment, so pertinent here in Illinois, the rights of minority parties and the problems of electioneering under the Hatch and Taft-Hartley Acts.

No book review can even purport to comment on the voluminous materials in Chapters 4, 5 and 6. These are concerned with the various problems of free speech, press, and communications. After a section in Chapter 3, entitled "The Tradition," containing philosophic and judicial expressions on the traditional rights of free speech, there follows an excellent historical treatment of the subject in the United States. Arranged almost chronologically, the volume takes the readers from the earliest decisions on free speech, such as *Gitlow v. New York* and *Near v. Minnesota*, to the problems of present day legislative investigating committees, *Dennis v. U.S.*, and a consideration of the loyalty oath and program on both the federal and state levels. In all, this material accounts for about 250 pages of the book. This is probably the most interesting chapter in the book, not only because the selection of cases and materials has been done by the editors with such skill, but because the philosophic and practical nature of the subject matter is by its very nature so challenging.

Chapter 5 contains cases on questions of obscenity and libel, including the recent *Beauharnais* case, which arose in Illinois, upholding the constitutionality of the so-called Illinois "Group Libel" law. In Chapter 6, on problems of governmental control over various media of communications, there is the famous series of Witnesses cases on the rights to assemble, canvass, etc. Certainly one of the most sensitive areas treated in the volume is the question of balancing the power of the State as against that of an individual whose speech in public tends to incite his listeners.

Chapter 7, on "Academic Freedom," is primarily a textual discussion of academic tenure, loyalty oaths and legislative investigations in schools. It contains a number of "case histories" on the questions of loyalty investigations, and also, among the cases, *Adler v. Board of Education* upholding New York's Feinberg Law designed to remove subversives from the public school system.

A subject of perennial debate is "Freedom of Religion," analyzed by the case method in Chapter 8. After general discussions, pro and con, on questions of

Church and State, the editors consider aid to education, released time, Bible-reading, and other problems. One can readily appreciate the fact that the authors, in a volume of this sort, could not have treated all of the manifold aspects of this matter. However, it appears to the writer that there are not enough non-judicial writings included on this matter, and that the recent *Zorach* case should have been given fuller treatment.

The final chapter, 10, on "Discrimination" is, to say the least, comprehensive for a book of this sort. It contains the recent cases on segregation in education and the "separate but equal" doctrine, which is once again awaiting decision by the Supreme Court, and on segregation in transportation facilities. The rest of the chapter is given over to a discussion of discrimination in public accommodations and housing. Included, of course, is *Shelley v. Kramer* (and a discussion of the question of recovery of damages for breach of restrictive covenants which has since been decided by the Supreme Court).

This volume bears its own letter of introduction to every lawyer and layman who is concerned with the welfare of the individual, and the preservation of liberty and freedom. The difficulty for laymen, however, is that of a lack of familiarity with the case method. One might find it too laborious to extract from the vast amount of materials the basic problems of philosophy and practical politics which the courts are daily called upon to decide. It might be wise to include at the end of the volume some essays, perhaps written for just this sort of book, which would "tie in" some of the isolated materials, such as what constitutes State action within the meaning of the Fourteenth Amendment, and the judicial attempt to balance the relatively powerless individual against the sometimes overwhelmingly powerful State.

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