

1953

Review of “Political and Civil Rights in the United States,” By Thomas I. Emerson & David Haber

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Recommended Citation

John R. Stockham, *Review of “Political and Civil Rights in the United States,” By Thomas I. Emerson & David Haber*, 1953 WASH. U. L. Q. 363 (1953).

Available at: http://openscholarship.wustl.edu/law_lawreview/vol1953/iss3/13

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needs of national security there are ever-widening and lengthening avenues of knowledge that require research and study of the type and kind best furnished or assisted by foundations. The foundation, once considered a boon to society, now seems to be a vital and essential factor in our progress.¹²

John R. Stockham†

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.

Political and Civil Rights in the United States is a unique and invaluable textbook. The present and continued vitality of our democratic way of life is dependent upon our concepts of individual and civil rights and upon the application of these concepts. One can find little disagreement about the necessity of such rights as freedom of speech and religion or the right to fair trial so long as the discussion is limited to a statement of principles. It is the application of these principles to particular situations that gives rise to vast differences of opinion. The difficulties of application are well demonstrated by the decisions of the Supreme Court. In his foreword to this text, Robert M. Hutchins observes:

The number and vigor of opinions concurring in the result, to say nothing of the number and vigor of dissents, suggest that anything may happen when a case involving civil liberties gets before the Supreme Court. Five-to-four decisions, with the majority splitting on the reasons, are the order of the day; and some of the most important cases have been 'decided,' when one justice was absent or disqualified, by a court that was equally divided and that could only affirm the holding of the court below.¹

We must, of course, recognize that our principles of civil liberties take on real meaning as they are applied to individual situations. The development of applied interpretation or meaning becomes basically the responsibility of lawyers—either as counsel for the various parties or as judges. The reason obviously is that under our system the courts ultimately determine the meaning of civil liberties. Even during the preliminary stages when the issues are being drawn lawyers (frequently without knowledge of the real underlying issues) play a significant role as legislators or as executive or administrative officers of various political units. Notwithstanding the necessity of lawyers having a sound knowledge of civil liberties and notwithstanding the critical importance of civil liberties to our political system, most law schools have relegated civil liberties to an insignificant position in their curriculum. The average law student gets a slight acquaintance with civil liberties in a constitutional law course, and perhaps in an administrative law course. He may pick up a smattering of knowledge of some issues in a criminal law or tort class. For the most part, the average law student is not given the opportunity to wrestle with some of our most funda-

12. H.R. REP. No. 2514, 82 Cong., 2d Sess. 4 (1953).

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1. p. iii.

mental legal and political problems. The problems are not matters of mere craftsmanship or rhetorical skill; they are problems that require hard thinking in order to determine basic issues of policy. Moreover, in our dynamic society, new situations, new questions, new applications of principle will be presenting themselves constantly. Is not the first responsibility of the legal profession to see that our system works as effectively as possible? In order to meet this responsibility, isn't it necessary for lawyers to become steeped in our tradition, to become aware of the many facets of our civil liberties, and to be prepared to help solve new questions in a manner that will constructively perpetuate and expand our basic concepts?

It is high time that our law schools recognize in their curriculum the prime importance of civil liberties. Such a course was developed at the Yale University Law School and out of the course came the text, *Political and Civil Rights in the United States*. This is no ordinary case book. To be sure, the big cases are there. These cases have been selected with care, and portions unnecessary to a clear understanding of the facts and issues have been omitted. In presenting the cases, the authors present not only the opinions of the courts, but include such portions of dissenting and concurring opinions as are necessary to present the fundamental issues. The emphasis is not on holdings, but on the issues and the processes of meeting those issues. The word "think" is not printed at the top of every page, but one cannot read much of this text without being forced to think and to think searchingly. Aside from the cases from which substantial extracts are printed, Professors Emerson and Haber present succinct summaries of literally hundreds of other cases. But cases are not all that is found in this 1209 page volume. Portions of many law review articles are included. There are many excerpts from various non-legal articles and books which present various viewpoints and concepts. In addition there are numerous analytical notes by the authors themselves.

As to the subject matter, the text is divided into nine chapters under the following headings: The Right to Security of the Person, Fairness in Governmental Procedures, The Right of Franchise, Freedom of Speech: Right of Political Organization and Political Expression, Freedom of Speech: Untruthful and Harmful Communication, Freedom of Speech: Control Over the Specific Media of Communication, Academic Freedom, Freedom of Religion and Discrimination. Some issues were intentionally not included, *e.g.*, those relating to aliens or to political and civil rights in periods of emergency.

In preparing the text, Professors Emerson and Haber were, in addition to classroom use of the book, ". . . motivated by another consideration, that of making the book useful to the growing number of lawyers who deal with matters involving political and civil rights, or who have an interest in that field. . ."² In this respect, the book has a considerable "bread-and-butter" value to any lawyer. The authors' analysis, the copious notes and the extensive bibliographic references will save many lawyers untold hours of research. There is no doubt that numerous briefs which will be written

2. p. xiii.

in the future will be of better quality than they would otherwise be because of the aid which this book provides.

The law does not operate in a vacuum and it must draw from the knowledge of other fields of human endeavor. This is especially true in those areas of the law where we are still in the process of formulating policy. The authors have done a superb job of collecting the literature in other fields which has significance in determining public policy. Examples are a general bibliography³ on the control of the media of communication and a bibliographical note⁴ on discrimination in employment.

The authors make it perfectly clear where they stand on civil liberties issues—they are ardent believers in civil liberties. Nevertheless, they achieve an amazing objectivity in presenting the numerous issues. One example is the difficult problem of determining the proper balance between individual liberties and any action the Government must take in the interests of national security. There is a bibliography⁵ which first lists publications “in support of severe restrictive measures,” e.g., the reports of the House Committee on Un-American Activities; Ober, “Communism vs. the Constitution,” 34 *American Bar Association Journal* 645 (1948). The bibliography then lists those publications which contain “expressions of concern over the restrictions on political freedom,” e.g., Barth, *The Loyalty of Free Men* and Gellhorn, *Security, Loyalty, and Science*. The bibliography continues with references to studies which present somewhat different approaches, e.g., Lasswell, *National Security and Individual Freedom*.

No doubt, others who might have undertaken to compile such a book as this would have included or excluded questions or materials on a somewhat different basis from that used by the authors. This reviewer, for instance, feels that one of our greatest grass roots questions of civil liberties is that of democracy within labor unions. Today unions, under the doctrine of a sole collective bargaining agency, have obtained a status of a quasi-public agency. This, coupled with economic power, has enabled some unions to violate the civil rights of individuals without any effective recourse being available to the individuals. Any such omissions are, however, completely beside the point. The fact is that nobody, except Emerson and Haber, has undertaken the arduous task of compiling such a book as *Political and Civil Rights in the United States*. In preparing the book the authors have made a great contribution.

We vigorous Americans are generally proud of our physical fitness. We keep fit by indulging in sports requiring varying degrees of physical exertion. We practice and play at tennis, swimming, gardening or golf to keep us in shape. Sometimes we play or practice until we are almost exhausted —“it keeps the muscles toned up.” Do we begin to exercise our mental faculties to the same degree? Do we test our thinking processes as much as we do our muscular skills? Perhaps, and completely aside from our workaday routine, we should regularly test our thinking about our basic concepts. Anyone who might be prone to do some mental exercising will

3. pp. 790-4.

4. pp. 1170-2.

5. pp. 429-30.

find this book a challenging piece of equipment. It is a good cogitator. A superb method of getting the maximum value out of *Political and Civil Rights in the United States* is to keep a copy where one keeps his leisure reading material and then read various portions from time to time. As one will read, he will ponder. He will have an adventure with ideas.

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