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Political and Civil Rights in the United States. By Thomas I. Emerson and David Haber.

John Clarke Adams
University at Buffalo

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BUFFALO LAW REVIEW

POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES. By Thomas I. Emerson and David Haber. Buffalo: Dennis & Co. 1952. Pp. xx, 1209. \$7.50.

“This is the only comprehensive collection of cases and materials on the most important subject in the world today.”

With these words Robert Hutchins begins his foreword to the book in hand. No more need be said to establish that the book should be read by all who are interested in the preservation and welfare of our present society.

The book's merits, however, do not rest solely on its quality of uniqueness. The authors have assembled well selected and well organized material, arranged in nine chapters averaging over one hundred pages each. The book contains many of the major cases in the field of political and civil rights, often in abridged form, and supplements them with excerpts from laws, articles, and government reports. The format is that of a typical law school case book.

The authors have also had the courage and candor to admit they have personal feelings on the subject they are treating. For too long the tenet that scientific impartiality requires political agnosticism has led scholars to turn out sterile books on matters of vital concern. Responsible scholarship makes irresponsible citizens when the cult of scientific objectivity kills the desire to influence the world about us. Professors Emerson and Haber do not make the mistake of addressing the impassive observer in us; rather they attempt to engage our passionate interest in a problem of far more than “academic” concern. The writers' prejudice in favor of political rights, stated in the introduction and in the preface, does not impair the objectivity of their presentation, but it draws the reader's attention to the necessity not only of being informed on matters of public concern but also of reaching decisions and embracing principles.

Considering the vast scope to which the authors have committed themselves, both as to subject matter and as to the reading public they seek to reach, it is inevitable that they should succeed in wholly satisfying only a few of their prospective readers. In a book of this type problems of organizing are great, and it is inevitable that significant aspects of the field be given secondary consideration or be omitted altogether. In this respect Professors Emerson and Haber have succumbed to the inevitable. They have devoted much space to freedom of speech, freedom of religion, the right of franchise, and discrimination; they have devoted less attention to protection against unreasonable searches and seizures, double jeopardy, self-incrimination, and the civil rights aspects

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of labor law. Other, possibly periferal, questions such as habeas corpus and protection against *ex post facto* laws and bills of attainder are dealt with only incidentally. The term *ex post facto* law, for instance, does not appear in the index or in the table of contents.

This emphasis on contemporary problems gives the book a slant that may prejudice its overall effectiveness. It seems to direct the book particularly to persons already concerned with the protection of civil and political liberties. For these people it is an invaluable source of factual information of a type that has never before been collected, much of which was not readily available. In placing this stress on contemporary problems, however, the authors may have to some extent sacrificed the lasting value of the book. As soon as the present emphasis on freedom of speech, where ground is being lost, and freedom of religion and anti-discrimination, where ground is being gained, is superseded, the book is likely to appear out of focus and somewhat out of date. This reviewer would have preferred a somewhat better balanced survey of the whole field of civil liberties that would not have so greatly underplayed the victories of the past. The liberties that we still enjoy in comparative security may be as valuable as those we are now striving to protect. It is perhaps unwise to underestimate the importance of past victories even for the noble purpose of concentrating on present problems. Battle lines change quickly, and for this reason the long is to be preferred.

The authors are aware of this limitation. In their preface they write: "We particularly regret the lack of space to deal adequately with issues relating to aliens, political and civil rights in periods of emergency, problems of military law and human rights in a world community." Thus the problems relating to the treatment of Japanese-Americans during World War II and the cases involving the legality of the martial law declared in Hawaii are discussed jointly in a single paragraph, and the *Yamashita* case¹ with its impassioned dissenting opinion by Justices Rutledge and Murphy seems not to be mentioned at all.

The present reviewer also regrets that procedural rights are relegated to a position of secondary importance. The law on searches and seizures, for instance, is treated in a sub-section of a chapter. The law of double jeopardy is dismissed with a single page. At least a note with respect to the protection of these procedural rights under state law would have been of value. Certainly the right to bear arms is of little moment, but a twelve hundred page book on political and civil rights in the United States

1. In re *Yamashita*, 327 U. S. 1 (1946).

might be expected to do more than mention it *passim* in the reporting of a case (*United States v. Cruikshank*²), where its relevancy is immediately dismissed.

Although these omissions can in part be explained by lack of space and the consequent necessity of eliminating or of treating summarily certain aspects of this vast field, they cannot be entirely so explained. Four pages of precious space are consumed in an interesting survey of the law of slander and libel, a branch of the law that appears to be only indirectly concerned with the problem of civil liberties.

In its present form the book appears to be well suited to a considerably more restricted reading public than that to which the authors hoped to appeal. The book contains a mine of information for the lawyer or the law student who seeks to know the present status of the law with respect to the phases of civil liberties that the authors treat in detail. Its size, its weight, its method of presentation, and its incompleteness, however, detract from its appeal for either the lay reader or the undergraduate. Such persons would probably benefit more from reading the various publications of the American Civil Liberties Union or the thoughtful and thought-provoking chapters dealing with civil liberties in Robert Cushman's remarkable textbook *Leading Constitutional Decisions*, a book to which political scientists may well take pride in directing lawyers' attention.

The overall merits of the book in hand, however, so far outweigh its for the most part inevitable imperfections that the present reviewer is rather ashamed of the number of words he has used in pointing out all those places where the book varies from his unattainable ideal "comprehensive collection of cases and materials" on the subject of civil and political liberties. It is nobly conceived and nobly executed. It is a much needed book and goes far toward filling the need it sets out to fill. Its authors deserve our gratitude for breaking ground in this new and important field; they deserve our congratulations for the successful conclusion to which they brought their labors. Their book merits the careful consideration of all those who are proud of the American tradition and who would like to contribute to the fulfilment and the realization of the ideals on which the American state was founded.

John Clarke Adams

Associate Professor of Government
University of Buffalo

2. 92 U. S. 542 (1876).