

School. Regretfully declining Gross' invitation to visit there, Maitland wrote: "I feel as if I lived in the 12th century and was rejecting a 'call' to Bologna."<sup>10</sup>

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## Two Perspectives on Civil Rights

**The Negro and the First Amendment.** HARRY KALVEN, JR. Columbus: Ohio State University Press, 1965. Pp. ix, 190. \$4.75.

**A Manual for Direct Action: Strategy and Tactics for Civil Rights and All Other Non-violent Protest Movements.** MARTIN OPPENHEIMER & GEORGE LAKEY. Chicago: Quadrangle Books, Inc., 1965. Pp. xiii, 138. \$1.65 (paper).

It is always difficult to evaluate a revolution from the vantage point of the ramparts. I recall reading somewhere that one of King George's advisors dismissed the commencement of the American Revolution as primarily French fomented and completely lacking in support by the colonists. Of more recent vintage, Castro was considered a bearded clown not only by the inexpert but by our Curious Intelligence Agency as well. The current civil rights strife in this country is no exception to the rule. To a southern sheriff it is a bunch of New Yorkers getting their kicks. To an excitable eighteen year old Snicker, every sit-in is *the* confrontation between the forces of all good and the white power structure. To a certain California mayor, it is a big surprise.

In any event, it is hard to write about while it is happening. It is even harder to write something durable. Two current books pose the dilemma very nicely. One is a short do-it-yourself kit on how to start a civil rights movement entitled *A Manual for Direct Action: Strategy and Tactics for Civil Rights and All Other Non-violent Protest Movements* by Oppenheimer and Lakey. It is kind of a classified directory for anyone interested in getting into the agitation business. The other is a compilation of lectures by Professor Harry Kalven, Jr. entitled *The Negro and The First Amendment*. It does not even tell you *where* to sit, let alone *how*, but its impact on the never ending argument about the first amendment<sup>1</sup> is great. Using the current rash of civil rights cases as a take-off, the book does an excellent job of illustrating how our

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<sup>10</sup> Letter 222 to Charles Gross, Sept. 2, 1898, p. 179.

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<sup>1</sup> U.S. CONST. amend. I.

concept of free speech in this country has moved back and forth depending on who is winning which revolution.

Why talk about the two books in the same review? I have already indicated my suspicion that the *Manual* will not survive its current purposes, while Professor Kalven's book will quite likely serve long after the fact as one of the prime sources on the impact of the civil rights movement on our law. Nevertheless, they fit together. I have never seen the marching orders (or the boating orders) for George Washington's crossing of the Delaware. I think the reader must agree, however, that they were an important piece of writing, having no small impact on the ultimate course of history. And Lenin's voluminous writings from exile remained unpublished until after the Russian revolution was completed; however, they have been fertile fodder for the historians who have analyzed the events that occurred.

So it is with the two books at hand. They are the short and the long of what is happening—together they illustrate what this civil rights movement means right now, and what it will stand for in years to come.

The *Manual* is what it portends to be: a how-to-do-it for civil rights workers. It gives the nomenclature of the various groups involved and where and how they function; it describes the manner in which grass roots support is fomented. It virtually gives the dialogue on how to run a protest meeting. It explains the functions and malfunctions of human rights committees, sets metes and bounds for civil disobedience, and is a glossary for the people on the front line. In short, it is the order of march to Armageddon.

Its very specificity makes it unlikely that it can be used for future calls to battle. I tried, for example, to apply the various strategies and stratagems to what I know of the great union organizing drives of the 1930's. The results were ludicrous. One simply cannot picture a group of John L. Lewis' miners going to the foreman's house and kneeling down in silent prayer. Similarly, whatever and for whatever the next great movement in this country will be, it is doubtful that Oppenheimer and Lakey's book can be used as the bible. It is for the here and now, a black letter primer for all but the most initiated.

When the battle is over and won, the question of what was won, how it was won, and where it was won will charm future generations. *The Negro and the First Amendment* will shed more than a little light. The role of the United States Supreme Court and the strong, long line of cases pushed by the NAACP and others is at the fulcrum. Did the revolution start with *Brown v. Board of Educ.*<sup>2</sup> in 1954? There are those who will argue that *Brown* was the effect and not the cause.

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<sup>2</sup> 347 U.S. 483 (1954).

Probably so, but if one has to pick a time, certainly event followed on event swiftly after that date. More important, the book sheds and will continue to shed light on *what* is being won. To the Negro in Alabama this may be as simple and temporal as his right to vote against the incumbent Congressman in next year's election. To the country, however, rights are being won for all as a result of the cases analyzed by Professor Kalven.

In the Populist revolution, it was the legislative branch where the victories were secured, usually over the opposition and rear guard efforts of the judiciary; in this revolution the courts have been in front. In this role they have secured victories not only for Negro civil righters, but in large part have undone some of their prior restrictive handiwork.

Professor Kalven does a masterful job in correlating the cases dealing with the power of legislative inquiry. His analysis of *Gibson v. Florida Legislative Investigation Comm.*,<sup>3</sup> overruling the attempted inquisition of the NAACP in Florida and its interdiction of the McCarthy era progeny of cases on this same subject, is masterful.<sup>4</sup> The same is true of his analysis of the trespass cases<sup>5</sup> and the libel cases.<sup>6</sup>

Professor Kalven has bottled and diagnosed the unique thrust of the civil rights cases. The context in which the questions were raised *does* make a difference in the Court's decision. The Court was willing to tell city employees that they could not work in Los Angeles unless they signed non-Communist affidavits<sup>7</sup> but not to tell a teacher in Arkansas that she could not teach unless she listed the NAACP as one of the organizations to which she had contributed.<sup>8</sup>

*The Negro and the First Amendment* thus has at least two effects: it affords a good analysis of the role of the courts in the struggle at hand, and presents a marvelous documentary on the resiliency of the first amendment. If ever proof was needed that there are no absolutes, Professor Kalven's anthology of first amendment cases makes the point dramatically. The words of the amendment can be used to defend the very thunder and lightning of a fundamental rearrangement of society or they can be used to stifle the very ineffective dissents of a quibblesome few. The first amendment moves with the country, and we had all better know it.

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<sup>3</sup> 372 U.S. 539 (1963).

<sup>4</sup> Pp. 105-21.

<sup>5</sup> Pp. 123-72.

<sup>6</sup> Pp. 7-64.

<sup>7</sup> *Garner v. Board of Pub. Works*, 341 U.S. 716 (1951).

<sup>8</sup> *Bates v. City of Little Rock*, 361 U.S. 516 (1960).

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