



CSU
College of Law Library

Cleveland State Law Review

Volume 20
Issue 3 *Symposium on School Law*

Book Review

1971

Book Review

Avery S. Friedman

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>

 Part of the [Civil Rights and Discrimination Commons](#)

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

Avery S. Friedman, *Book Review*, 20 Clev. St. L. Rev. 674 (1971)
available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol20/iss3/27>

This Book Review is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

'we've learned more during this week than in all our courses at Harvard' be viewed as anything but a pathetic admission of how little serious work or study one had previously done?"

Kelman's book provides a very useful follow-up to Kennan's book by providing insight into the workings of the student radicals in the period around the time of Kennan's book. Of even more interest on the issue of students and social change as discussed by Kennan and Kelman is the recently published *The Greening of America* by Charles A. Reich, a professor of law at Yale. There the author states flatly:

There is a revolution coming. It will not be like revolutions of the past. It will originate with the individual and with culture, and it will change the political structure only as its final act. It will not require violence to succeed, and it cannot be successfully resisted by violence. It is now spreading with amazing rapidity, and already our laws, institutions and social structure are changing in consequence. It promises a higher reason, a more human community, and a new and liberated individual. Its ultimate creation will be a new and enduring wholeness and beauty—a renewed relationship of man to himself, to other men, to society, to nature and to the land.

Each book deserves close reading and contrasting by the reader who wants to gain insight into the rapidly changing phenomenon of the late 60's and early 70's which is being called the "youth revolution."

*Reviewed by Avery S. Friedman**

WHITE RACISM AND THE LAW, by Lois B. Moreland (Charles E. Merrill Publishing Company, 1970), 230 pp.

The President's National Advisory Commission on Civil Disorders concluded its report by stating that what was most needed to prevent the splintering of this society into black and white is the elimination of white racism. The thesis of Ms. Moreland's work addresses itself to the question of finding a means by which racism and private discrimination may constitutionally be eliminated. Through interpretation of the equal protection clause of the fourteenth amendment as it applies to race relations, she asserts that there is no legal right of white Americans to discriminate against black Americans. The conclusion of her investigation is that the Supreme Court was and still is a decisive force in maintaining racism in this country.

Ms. Moreland observes that discrimination in America initially existed as a matter of custom and tradition. Although the freed slave was not by law denied access to places of public accommodations or to equal employment, his movements and opportunities were severely limited. Where the black man looked to the courts for relief, the court's regard for the sacrosanct principle of federalism, undergirded by white racist

* A.B., University of Louisville; Fourth-year student at Cleveland State University College of Law; Senior Investigator with the Cleveland offices of the State of Ohio's Civil Rights Commission; former Student Editor of the A.B.A. *Student Lawyer Journal*.

attitudes, effectively emasculated the protective legislation enacted during the Reconstruction Era. Congressional power to protect the black minority, said the Supreme Court, was limited under section five of the fourteenth amendment, to corrective action of the state. Following the historical trend of decisions leading into the twentieth century, the black community even lost protection from governmental discrimination when the court enunciated the racist "separate but equal" doctrine in *Plessy v. Ferguson*, which was the law of the land for almost sixty years.

The imperatives of the twentieth century, according to the author, forced the Supreme Court to look at the effects of racist behavior. With the enactment of the Civil Rights Act of 1964 and its test of constitutionality, the Court again refused to face the fundamental problem in race relations. Using the commerce clause in finding the public accommodations sections of the Act constitutional, Justice Douglas nevertheless wrote that the problem of race relations does not deal with the impact of cattle or production on commerce. The problem, as Justice John Harlan pointed out as the lone dissenter in the *Civil Rights Cases of 1883*, concerns the constitutional status of human beings.

The reader is given an excellent overview of the concepts of state action, federalism and property rights in relation to the direction of civil rights protection. The author analyzes decisions and dicta of cases as well as legislation. Her examination leads her to conclude that the court has a number of approaches through the fourteenth amendment whereby private discrimination may be more effectively reached. Her discussion of a state's responsibility through state action in balancing competing rights is based on her case analysis. However, the more imaginative suggested approach, that freedom from racial discrimination is found in the interstices of the Constitution, is conceded by the author as a "heady" interpretation. As she maintains throughout the book, the absence of an articulated, clear statement by the Supreme Court of the United States that black Americans have the right to equal treatment, regardless of race, has contributed to the perpetuation of racism in this country.