



The Taming of Free Speech: America's Civil Liberties Compromise

Laura Weinrib

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In the early decades of the twentieth century, business leaders condemned civil liberties as masks for subversive activity, while labor sympathizers denounced the courts as shells for industrial interests. But by the Second World War, prominent figures in both camps celebrated the judiciary for protecting freedom of speech. In this strikingly original history, Laura Weinrib illustrates how a surprising coalition of lawyers and activists made judicial enforcement of the Bill of Rights a defining feature of American democracy.

The Taming of Free Speech traces our understanding of civil liberties to conflict between 1910 and 1940 over workers' right to strike. As self-proclaimed partisans in the class war, the founders of the American Civil Liberties Union promoted a bold vision of free speech that encompassed unrestricted picketing and boycotts. Over time, however, they subdued their rhetoric to attract adherents and prevail in court. At the height of the New Deal, many liberals opposed the ACLU's litigation strategy, fearing it would legitimize a judiciary they deemed too friendly to corporations and too hostile to the administrative state. Conversely, conservatives eager to insulate industry from government regulation pivoted to embrace civil liberties, despite their radical roots. The resulting transformation in constitutional jurisprudence—often understood as a triumph for the Left—was in fact a calculated bargain.

America's civil liberties compromise saved the courts from New Deal attack and secured free speech for labor radicals and businesses alike. Ever since, competing groups have clashed in the arena of ideas, shielded by the First Amendment.

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