



AMERICAN JURISPRUDENCE

A COMPREHENSIVE TEXT STATEMENT OF AMERICAN CASE
LAW, AS DEVELOPED IN THE CASES AND ANNOTATIONS
IN THE ANNOTATED REPORTS SYSTEM, BEING A RE-
WRITING OF *Ruling Case Law* TO REFLECT THE
MODERN DEVELOPMENTS OF THE LAW

*By the Editorial Staff
of the Publishers*

Volume II

COMMERCE
TO
CONSTITUTIONAL LAW, §§ 1-382

BANCROFT-WHITNEY COMPANY • SAN FRANCISCO • CALIFORNIA
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER • NEW YORK

2. LIBERTY

§ 329. **Generally.**—It is a fundamental guaranty of American constitutional government that no person shall be deprived of his liberty without due process of law.¹² The liberty thus guaranteed by the Federal and state Constitutions is a very broad and extensive concept. Judicial interpretation has given to this word as so used its most comprehensive signification; it has been said to embrace every form and phase of individual right that is not necessarily taken away by some valid law for the common good.¹³ In each of its phases it has its history and connotations.¹⁴ Although the liberty protected by the Fourteenth Amendment consists mainly of the vital rights of a citizen as asserted at common law when the Constitution was adopted,¹⁵ it is settled that the "liberty" safeguarded by the due process clause includes protection from violation for any of the fundamental conceptions of justice which lie at the base of our civil and political institutions. This concept of liberty contained in the Fourteenth Amendment is constantly enveloping the protection of more and more fundamental rights.¹⁶ The right to liberty guaranteed by a Constitution includes the right to exist¹⁷ and the right to the enjoyment of life while existing, and is invaded not only by a deprivation of life, but also by a deprivation of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual.¹⁸ Moreover, the principles that embody the essence of constitutional liberty and security forbid all invasions, on the part of the government and its employees, of the sanctity of a man's home and the privacies of his life.¹⁹

In the consideration of the "liberty" guaranteed by the Fourteenth Amendment, one very important exception to usual doctrines must be kept in mind. Although the rule is well settled that a corporation is, generally speaking, a person within the meaning of the due process clause of the Amendment,²⁰ it is equally well settled that the liberty guaranteed under this amendment against deprivation without due process of law is a liberty of natural, and not artificial, persons.¹

Liberty consists partially of the right to be free from arbitrary personal restraint or servitude.² In this sense it consists largely of freedom from arbi-

¹² See supra, § 328.

¹³ *Wright v. Hart*, 182 N. Y. 330, 75 N. E. 404, 2 L.R.A.(N.S.) 338, 3 Ann. Cas. 263.

The word "liberty," as used in the Constitution of the United States and the several states, means the right to do such acts as one may judge best for his interest, not inconsistent with the rights of others. *Ex parte Drexel*, 147 Cal. 763, 82 P. 429, 2 L.R.A.(N.S.) 538, 3 Ann. Cas. 878.

The refusal to permit one to bury the dead body of his relative or friend, except under an unreasonable limitation, unconstitutionally interferes with his private rights. *Wyeth v. Board of Health (Wyeth v. Thomas)* 200 Mass. 474, 86 N. E. 925, 23 L.R.A.(N.S.) 147, 128 Am. St. Rep. 439.

¹⁴ *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 81 L. ed. 703, 57 S. Ct. 578, 108 A.L.R. 1330.

¹⁵ *Sinclair v. State*, 161 Miss. 142, 132 So. 581, 74 A.L.R. 241.

¹⁶ See supra, § 311.

¹⁷ *Pavesich v. New England Mut. L. Ins. Co.* 122 Ga. 190, 50 S. E. 68, 69 L.R.A. 101, 106 Am. St. Rep. 104, 2 Ann. Cas. 561.

¹⁸ *Ibid.*

Personal liberty includes the right "to be let alone" to determine one's mode of life—whether it shall be a life of publicity or of privacy—and to order one's life and manage one's affairs in a manner that may be most agreeable to him, so long as he does not violate the rights of others or of the public. *Ibid.*

In other jurisdictions it has been held that the publication of one's photograph without his consent does not interfere with his constitutional right to liberty. *Henry v. Cherry*, 30 R. I. 13, 73 A. 97, 24 L.R.A.(N.S.) 991, 136 Am. St. Rep. 928, 18 Ann. Cas. 1006.

¹⁹ *Interstate Commerce Commission v. Brimmon*, 154 U. S. 447, 38 L. ed. 1047, 14 S. Ct. 1125, later report in 155 U. S. 3, 39 L. ed. 49, 15 S. Ct. 19.

²⁰ See CORPORATIONS.

¹ *Western Turf Asso. v. Greenberg*, 204 U. S. 359, 51 L. ed. 520, 27 S. Ct. 384; *Northwestern Nat. L. Ins. Co. v. Riggs*, 203 U. S. 243, 51 L. ed. 168, 27 S. Ct. 126, 7 Ann. Cas. 1104.

² *Smith v. Texas*, 233 U. S. 630, 53 L. ed. 1129, 34 S. Ct. 681, L.R.A.1915D, 677, Ann.

trary physical restraint.³ Hence, the detaining by local health authorities, without clear and definite legislative authority, of a person suspected of having a venereal disease, for the purpose of forcing the exposure of his body to visual examination and compelling the extraction of blood from his veins in search of evidence of such disease, which may or may not exist, is a deprivation of liberty without due process of law.⁴ Certain services, however, may be demanded of the individual by society without unconstitutionally depriving him of liberty. He may be required to do certain labors or to furnish a substitute to see that they are done.⁵

Personal liberty largely consists of the right of locomotion—to go where and when one pleases—only so far restrained as the rights of others may make it necessary for the welfare of all other citizens.⁶ The right of a citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness.⁷ Under this constitutional guaranty one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's rights, he will be protected, not only in his person, but in his safe conduct.⁸

The term "liberty," as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare.⁹ As the Supreme Court has stated, it

Cas. 1915D, 420; *Watertown v. Christnacht*, 39 S. D. 290, 164 N. W. 62, L.R.A.1917F, 903; *Block v. Schwartz*, 27 Utah, 387, 76 P. 22, 65 L.R.A. 308, 101 Am. St. Rep. 971, 1 Ann. Cas. 550.

³ *Moyers v. Memphis*, 135 Tenn. 263, 186 S. W. 105, Ann. Cas. 1918C, 854; *Ex parte Hudgins*, 86 W. Va. 526, 103 S. E. 327, 9 A.L.R. 1361.

⁴ *Wragg v. Griffin*, 185 Iowa, 243, 170 N. W. 400, 2 A.L.R. 1327.

Annotation: 2 A.L.R. 1333.

⁵ *Butler v. Perry*, 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258. See *Henley v. State*, 98 Tenn. 665, 41 S. W. 352, 1104, 39 L.R.A. 126.

Liberty is not taken without due process of law, contrary to the Fourteenth Amendment, by laws making it a misdemeanor punishable by fine or imprisonment for any able-bodied male person between the ages of twenty-one and forty-five years to fail in any year to perform six days' labor on the highways of his county, when summoned, or to provide an able-bodied substitute or, in lieu thereof, pay \$3 to the road overseer. *Butler v. Perry*, 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258.

See HIGHWAYS, SIDEWALKS, AND SIDEWALKS [Also 13 R. C. L. p. 161, § 141].

⁶ *Williams v. Fears*, 179 U. S. 270, 45 L. ed. 186, 21 S. Ct. 128; *Pinkerton v. Verberg*, 78 Mich. 573, 44 N. W. 579, 7 L.R.A. 507, 18 Am. St. Rep. 473; *Watertown v. Christnacht*, 39 S. D. 290, 164 N. W. 62, L.R.A. 1917F, 903.

⁷ *Slusher v. Safety Coach Transit Co.* 229 Ky. 731, 17 S. W. (2d) 1012, 66 A.L.R.

1378; *Thompson v. Smith*, 155 Va. 367, 154 S. E. 579, 71 A.L.R. 604.

⁸ *Pinkerton v. Verberg*, 78 Mich. 573, 44 N. W. 579, 7 L.R.A. 507, 18 Am. St. Rep. 473. See *St. Louis v. Gloner*, 210 Mo. 502, 109 S. W. 30, 15 L.R.A. (N.S.) 973, 124 Am. St. Rep. 750 (loitering on the street).

⁹ *Grosjean v. American Press Co.* 297 U. S. 233, 80 L. ed. 660, 56 S. Ct. 444; *Pierce v. Society of Sisters*, 268 U. S. 510, 69 L. ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468; *Meyer v. Nebraska*, 262 U. S. 390, 67 L. ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446; *Adams v. Tanner*, 244 U. S. 590, 61 L. ed. 1336, 37 S. Ct. 662, L.R.A.1917F, 1163, Ann. Cas. 1917D, 973; *Hall v. Geiger-Jones Co.* 242 U. S. 539, 61 L. ed. 480, 37 S. Ct. 217, L.R.A.1917F, 514, Ann. Cas. 1917C, 643; *Smith v. Texas*, 233 U. S. 630, 58 L. ed. 1129, 34 S. Ct. 681, L.R.A.1915D, 677, Ann. Cas. 1915D, 420; *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 55 L. ed. 328, 31 S. Ct. 259; *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 S. Ct. 427; *Toney v. State*, 141 Ala. 120, 37 So. 332, 67 L.R.A. 286, 109 Am. St. Rep. 23, 3 Ann. Cas. 319; *Pavesich v. New England Mut. L. Ins. Co.* 122 Ga. 190, 50 S. E. 68, 69 L.R.A. 101, 106 Am. St. Rep. 104, 2 Ann. Cas. 561; *Hyatt v. Blackwell Lumber Co.* 31 Idaho, 452, 173 P. 1083, 1 A.L.R. 1663; *McKinster v. Sager*, 163 Ind. 671, 72 N. E. 854, 63 L.R.A. 273, 106 Am. St. Rep. 268; *State v. Old Tavern Farm*, 133 Me. 468, 180 A. 473, 101 A.L.R. 810; *Sinquefeld v. Valentine*, 159 Miss. 144, 132 So. 81, 76 A.L.R. 238; *State v. Armstead*, 103 Miss. 790, 60 So. 778, Ann. Cas. 1915E, 495; *Re Boyce*, 27 Nev. 299, 75 P. 1, 65

therefore includes among others the right to entertain the belief and to teach the doctrine that war, training for war, and military training are immoral, wrong, and contrary to the precepts of Christianity,¹⁰ the right to worship God according to the dictates of one's own conscience,¹¹ and the right to acquire useful knowledge, to marry, to establish a home and bring up children, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.¹² It includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion.¹³ Within the meaning of the term "liberty"

L.R.A. 47, 1 Ann. Cas. 66; Frank L. Fisher Co. v. Woods, 187 N. Y. 90, 79 N. E. 836, 12 L.R.A.(N.S.) 707; Wright v. Hart, 182 N. Y. 330, 75 N. E. 404, 2 L.R.A.(N.S.) 338, 3 Ann. Cas. 263; People v. Gillson, 109 N. Y. 389, 17 N. E. 343, 4 Am. St. Rep. 465; Celina & M. County Teleph. Co. v. Union-Center Mut. County Assn. 102 Ohio St. 487, 133 N. E. 540, 21 A.L.R. 1145; Hibbard v. State, 65 Ohio St. 574, 64 N. E. 109, 58 L.R.A. 654; Crouch v. Central Labor Council, 134 Or. 612, 293 P. 729, 83 A.L.R. 193; State v. Dalton, 22 R. I. 77, 46 A. 234, 48 L.R.A. 775, 84 Am. St. Rep. 818; Ex parte Tillman, 84 S. C. 552, 66 S. E. 1049, 26 L.R.A.(N.S.) 781; Moyers v. Memphis, 135 Tenn. 263, 186 S. W. 105, Ann. Cas. 1918C, 854; Block v. Schwartz, 27 Utah, 387, 76 P. 22, 65 L.R.A. 308, 101 Am. St. Rep. 971, 1 Ann. Cas. 550; Ex parte Hudgins, 86 W. Va. 526, 103 S. E. 327, 9 A.L.R. 1361; State v. Goodwill, 33 W. Va. 179, 10 S. E. 285, 6 L.R.A. 621, 25 Am. St. Rep. 863.

¹⁰ Hamilton v. University of California, 293 U. S. 245, 79 L. ed. 343, 55 S. Ct. 197, rehearing denied in 293 U. S. 633, 79 L. ed. 717, 55 S. Ct. 345.

The enforcement of an order of the board of regents of a state university prescribing instruction in military science and tactics as a required course does not unconstitutionally deprive any person of liberty without due process of law in violation of the Fourteenth Amendment to the Federal Constitution. *Ibid.*

¹¹ See supra, § 312.

¹² Pierce v. Society of Sisters, 268 U. S. 510, 69 L. ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468; Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446; Sinquefield v. Valentine, 159 Miss. 144, 132 So. 81, 76 A.L.R. 238.

Forbidding the teaching in school of any other than the English language until the pupil has passed the eighth grade violates the constitutional guaranty of liberty in the absence of sudden emergency rendering knowledge of the foreign language clearly harmful. *Bartels v. Iowa*, 262 U. S. 404, 67 L. ed. 1047, 43 S. Ct. 628; *Meyer v. Nebraska*, 262 U. S. 390, 67 L. ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446.

¹³ *United States*.—*Adams v. Tanner*, 244 U. S. 590, 61 L. ed. 1336, 37 S. Ct. 662, L.R.A. 1917F, 1163, Ann. Cas. 1917D, 973; *Smith v. Texas*, 233 U. S. 630, 58 L. ed. 1129, 34 S. Ct. 621, L.R.A.1915D, 677, Ann. Cas. 1915D, 420; *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 55 L. ed. 328, 31 S. Ct. 259; *Muller v. Oregon*, 208 U. S. 412, 52 L.

ed. 551, 28 S. Ct. 324, 13 Ann. Cas. 957; *Northwestern Nat. L. Ins. Co. v. Riggs*, 203 U. S. 243, 51 L. ed. 168, 27 S. Ct. 126, 7 Ann. Cas. 1104 (recognizing rule); *Lochner v. New York*, 198 U. S. 45, 49 L. ed. 937, 25 S. Ct. 539, 3 Ann. Cas. 1133; *Patterson v. The Eudora*, 190 U. S. 169, 47 L. ed. 1002, 23 S. Ct. 821; *Booth v. Illinois*, 184 U. S. 425, 46 L. ed. 623, 22 S. Ct. 425; *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452, 45 L. ed. 619, 21 S. Ct. 423; *Williams v. Fears*, 179 U. S. 270, 45 L. ed. 186, 21 S. Ct. 128; *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 44 L. ed. 136, 20 S. Ct. 96; *United States v. Joint Traffic Assn.* 171 U. S. 505, 43 L. ed. 259, 19 S. Ct. 25; *Holden v. Hardy*, 169 U. S. 366, 42 L. ed. 780, 18 S. Ct. 383, affirming 14 Utah, 71, 46 P. 756, 37 L.R.A. 103; *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 S. Ct. 427; *Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co.* 111 U. S. 746, 28 L. ed. 585, 4 S. Ct. 652.

Alabama.—*Toney v. State*, 141 Ala. 120, 37 So. 332, 67 L.R.A. 286, 109 Am. St. Rep. 23, 3 Ann. Cas. 319.

Arkansas.—*Arkansas Stave Co. v. State*, 94 Ark. 27, 125 S. W. 1001, 27 L.R.A.(N.S.) 255, 140 Am. St. Rep. 103.

California.—*Ex parte Drexel*, 147 Cal. 763, 82 P. 429, 2 L.R.A.(N.S.) 588, 3 Ann. Cas. 878.

Colorado.—*Re Morgan*, 26 Colo. 415, 58 P. 1071, 47 L.R.A. 52, 77 Am. St. Rep. 269.

Georgia.—*Brown v. Jacobs' Pharmacy Co.* 115 Ga. 429, 41 S. E. 553, 57 L.R.A. 547, 90 Am. St. Rep. 126.

Idaho.—*Hyatt v. Blackwell Lumber Co.* 31 Idaho, 452, 173 P. 1083, 1 A.L.R. 1663.

Illinois.—*People v. Steele*, 231 Ill. 340, 83 N. E. 236, 14 L.R.A.(N.S.) 361, 121 Am. St. Rep. 321; *O'Brien v. People*, 216 Ill. 354, 75 N. E. 108, 108 Am. St. Rep. 219, 3 Ann. Cas. 966; *Mathews v. People*, 202 Ill. 389, 67 N. E. 28, 63 L.R.A. 73, 95 Am. St. Rep. 241; *Bessette v. People*, 193 Ill. 334, 62 N. E. 215, 56 L.R.A. 558; *Gillespie v. People*, 188 Ill. 176, 58 N. E. 1007, 52 L.R.A. 283, 80 Am. St. Rep. 176; *Booth v. People*, 186 Ill. 43, 57 N. E. 798, 50 L.R.A. 762, 78 Am. St. Rep. 229, affirmed in 184 U. S. 425, 46 L. ed. 623, 22 S. Ct. 425; *Ruhstrat v. People*, 185 Ill. 133, 57 N. E. 41, 49 L.R.A. 181, 76 Am. St. Rep. 30; *Chicago v. Netcher*, 183 Ill. 104, 55 N. E. 707, 48 L.R.A. 261, 75 Am. St. Rep. 93; *Ritchie v. People*, 155 Ill. 98, 40 N. E. 464, 29 L.R.A. 79, 46 Am. St. Rep. 315; *Braceville Coal Co. v. People*, 147 Ill. 66, 35 N. E. 62, 22 L.R.A. 340, 37 Am. St. Rep. 206.

Indiana. — *Republic Iron & Steel Co. v.*

is also included the right to buy and sell,¹⁴ to select freely such tradesmen as the citizen himself may desire to patronize,¹⁵ to manufacture,¹⁶ to acquire property,¹⁷ to live in a community,¹⁸ to have a free and open market, the right of free speech, of self-defense against unlawful violence,¹⁹ and, in general, the opportunity to do those things which are ordinarily done by free men.²⁰

Many questions concerning the scope of the guaranty of liberty have risen in connection with regulations or litigation pertaining to children. Thus, it

State, 160 Ind. 379, 66 N. E. 1005, 62 L.R.A. 136; Russell v. Pittsburgh, C. C. & St. L. R. Co. 157 Ind. 305, 61 N. E. 678, 55 L.R.A. 253, 87 Am. St. Rep. 214.

Kansas. — Ex parte Irish, 121 Kan. 72, 122 Kan. 33, 250 P. 1056, 1057, 61 A.L.R. 332; State v. Wilson, 101 Kan. 789, 168 P. 679, L.R.A.1918B, 374; State v. Haun, 61 Kan. 146, 59 P. 340, 47 L.R.A. 369.

Kentucky. — Rawles v. Jenkins, 212 Ky. 287, 279 S. W. 350, citing R. C. L.

Louisiana. — State ex rel. Galle v. New Orleans, 113 La. 371, 36 So. 999, 67 L.R.A. 70, 2 Ann. Cas. 92.

Massachusetts.—Opinion of Justices, 271 Mass. 582, 171 N. E. 294, 69 A.L.R. 388; Opinion of Justices, 267 Mass. 607, 166 N. E. 401, 63 A.L.R. 838.

Minnesota. — State v. Fairmont Creamery Co. 162 Minn. 146, 202 N. W. 714, 42 A.L.R. 548.

Mississippi. — State v. Armstead, 103 Miss. 790, 60 So. 778, Ann. Cas. 1915B, 495.

Missouri. — State v. Loomis, 115 Mo. 307, 22 S. W. 350, 21 L.R.A. 789.

Nebraska. — Hall v. State, 100 Neb. 84, 158 N. W. 362, L.R.A.1916F, 136.

Nevada. — Marymont v. Nevada State Bkg. Bd. 33 Nev. 333, 111 P. 295, 32 L.R.A. (N.S.) 477, Ann. Cas. 1914A, 162; Re Boyce, 27 Nev. 299, 75 P. 1, 65 L.R.A. 47, 1 Ann. Cas. 66.

New York. — Ives v. South Buffalo R. Co. 201 N. Y. 271, 94 N. E. 431, 34 L.R.A. (N.S.) 162, Ann. Cas. 1912B, 156; People v. Metz, 193 N. Y. 148, 85 N. E. 1070, 24 L.R.A.(N.S.) 201; Frank L. Fisher Co. v. Woods, 187 N. Y. 90, 79 N. E. 836, 12 L.R.A.(N.S.) 707; People v. Marcus, 185 N. Y. 257, 77 N. E. 1073, 7 L.R.A.(N.S.) 282, 113 Am. St. Rep. 902, 7 Ann. Cas. 118; Wright v. Hart, 182 N. Y. 330, 75 N.E. 404, 2 L.R.A.(N.S.) 338, 3 Ann. Cas. 263; Schnaier v. Navarre Hotel & Impor-tation Co. 182 N. Y. 83, 74 N. E. 561, 70 L.R.A. 722, 108 Am. St. Rep. 790; People ex rel. Tyroler v. Warden, 157 N. Y. 116, 51 N. E. 1006, 43 L.R.A. 264, 68 Am. St. Rep. 763; People v. Gillson, 109 N. Y. 389, 17 N. E. 343, 4 Am. St. Rep. 465; People v. Marx, 99 N. Y. 377, 2 N. E. 29, 52 Am. Rep. 34; Re Jacobs, 98 N. Y. 98, 50 Am. Rep. 636; Bertholf v. O'Reilly, 74 N. Y. 509, 30 Am. Rep. 323.

North Carolina. — State v. Moore, 113 N. C. 697, 18 S. E. 342, 22 L.R.A. 472.

Oregon. — Crouch v. Central Labor Council, 134 Or. 612, 293 P. 729, 83 A.L.R. 193.

Rhode Island. — Prata Undertaking Co. v. State Bd. of Embalming, 55 R. I. 454, 182 A. 808, 104 A.L.R. 389; O'Neil v. Providence Amusement Co. 42 R. I. 479, 108 A. 887, 8 A.L.R. 1590.

South Carolina. — Ex parte Tillman, 84 S. C. 552, 66 S. E. 1049, 26 L.R.A.(N.S.) 781; McCullough v. Brown, 41 S. C. 220, 19

S. E. 458, 23 L.R.A. 410, overruled on another point in State ex rel. George v. Aiken, 42 S. C. 222, 20 S. E. 221, 26 L.R.A. 345.

South Dakota. — State v. Scougal, 3 S. D. 55, 51 N. W. 858, 15 L.R.A. 477, 44 Am. St. Rep. 756.

Tennessee. — Harbison v. Knoxville Iron Co. 103 Tenn. 421, 53 S. W. 955, 56 L.R.A. 316, 76 Am. St. Rep. 682.

Utah. — State v. Holtgreve, 58 Utah, 563, 200 P. 894, 26 A.L.R. 696.

Vermont. — State v. International Paper Co. 96 Vt. 506, 120 A. 900, 32 A.L.R. 632.

Washington. — State v. Clausen, 65 Wash. 156, 117 P. 1101, 37 L.R.A.(N.S.) 466; State v. Smith, 42 Wash. 237, 84 P. 851, 5 L.R.A.(N.S.) 674, 114 Am. St. Rep. 114, 7 Ann. Cas. 577; State v. Brown, 37 Wash. 97, 79 P. 635, 68 L.R.A. 889, 107 Am. St. Rep. 798; Re Aubrey, 36 Wash. 308, 78 P. 900, 104 Am. St. Rep. 952, 1 Ann. Cas. 927.

West Virginia. — Ex parte Hudgins, 86 W. Va. 526, 103 S. E. 327, 9 A.L.R. 1361; State v. Goodwill, 33 W. Va. 179, 10 S. E. 285, 6 L.R.A. 621, 25 Am. St. Rep. 863.

Wisconsin. — State v. Kreutzberg, 114 Wis. 530, 90 N. W. 1098, 58 L.R.A. 748, 91 Am. St. Rep. 934.

Annotation: 76 Am. St. Rep. 39; 86 Am. St. Rep. 375.

As to the right to a livelihood or vocation, see *infra*, § 336.

As to the right to contract, see *infra*, § 339.

¹⁴ State v. Loomis, 115 Mo. 307, 22 S. W. 350, 21 L.R.A. 789.

¹⁵ New Method Laundry Co. v. McCann, 174 Cal. 26, 161 P. 990, Ann. Cas. 1918C, 1022.

¹⁶ New Orleans v. Toca, 141 La. 551, 75 So. 238, L.R.A.1917E, 761, Ann. Cas. 1918B, 1032.

¹⁷ Republic Iron & Steel Co. v. State, 160 Ind. 379, 66 N. E. 1005, 62 L.R.A. 136.

¹⁸ New Orleans v. Miller, 142 La. 163, 76 So. 596, L.R.A.1918B, 331.

Each person in a community has the essential right to live there in such place as he may choose provided he lives there in conformity with the laws of the land and does not engage in any occupation in his domicile which is prohibited by law. *Ibid*.

¹⁹ State v. Missouri Tie & Timber Co. 181 Mo. 536, 80 S. W. 933, 65 L.R.A. 588, 103 Am. St. Rep. 614, 2 Ann. Cas. 119; State v. Loomis, 115 Mo. 307, 22 S. W. 350, 21 L.R.A. 789.

As to free speech, see *supra*, §§ 319 et seq.

²⁰ State v. Kreutzberg, 114 Wis. 530, 90 N. W. 1098, 58 L.R.A. 748, 91 Am. St. Rep. 934.

has been held that a statutory attempt to confer upon a father the right to grant the custody of his minor children, to the exclusion of the supervision of the mother over them, violates the constitutional right of mother and child to liberty.¹ Liberty also includes not only the right to establish a home and bring up children² but also the right of the parent to educate his children in such manner as he deems best to secure their happiness and welfare, so long as such training or education does not result in, or tend to develop, tendencies or traits dangerous to society.³ Therefore, requiring all children between the ages of eight and sixteen years to attend the public schools unconstitutionally interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.⁴ Nevertheless, there is no unconstitutional restraint upon liberty or infringement upon happiness in depriving a child of the mere privilege of securing an education at the expense of the state until he is willing to submit to all reasonable regulations enacted for the purpose of permitting efficiency and maintaining discipline.⁵ Forbidding pupils in a public school to affiliate with a fraternal society without the sanction of the school authorities does not unconstitutionally interfere with their personal rights.⁶ If the parents fail to perform their natural duty to rear and educate the child so that it may be useful, intelligent, and moral, but permit it to become vicious and a menace to the rest of society, the state may assert its power as *parens patriæ* and apply curative measures in order to attempt to rectify such a condition.⁷ It is well settled that to submit a delinquent child to proper restraint and guardianship does not deprive him of his liberty without due process of law.⁸

§ 330. **Limitations.**—In spite of the broad scope of the fundamental right of liberty⁹ and the jealous protection by the Constitution of the rights of the individual,¹⁰ liberty is not a right which is uncontrollable¹¹ or which is absolute under all circumstances and conditions.¹² It is liberty in a social organiza-

¹ *Ex parte Tillman*, 84 S. C. 552, 66 S. E. 1049, 26 L.R.A.(N.S.) 781.

² See *supra*, note 12, this section.

³ *Pierce v. Society of Sisters*, 268 U. S. 510, 69 L. ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468; *Sinquefield v. Valentine*, 159 Miss. 144, 132 So. 81, 76 A.L.R. 238; *Bryant v. Brown*, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325.

⁴ *Pierce v. Society of Sisters*, 268 U. S. 510, 69 L. ed. 1070, 45 S. Ct. 571, 39 A.L.R. 468.

⁵ *Flory v. Smith*, 145 Va. 164, 134 S. E. 360, 48 A.L.R. 654.

⁶ *Lee v. Hoffman*, 182 Iowa, 1216, 166 N. W. 565, L.R.A.1918C, 933. See also *Waugh v. University of Mississippi*, 237 U. S. 539, 59 L. ed. 1131, 35 S. Ct. 720, affirming 105 Miss. 623, 62 So. 827, L.R.A.1915D, 588, Ann. Cas. 1916E, 522.

⁷ See JUVENILE COURTS AND OFFENDERS [Also PARENT AND CHILD, 20 R. C. L. p. 600. § 14].

⁸ *Re Sharp*, 15 Idaho, 120, 96 P. 563, 18 L.R.A.(N.S.) 886; *Lindsay v. Lindsay*, 257 Ill. 328, 100 N. E. 892, 45 L.R.A.(N.S.) 908, Ann. Cas. 1914A, 1222; *Wissenburg v. Bradley*, 209 Iowa, 813, 229 N. W. 205, 67 A.L.R. 1075; *Bryant v. Brown*, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325; *Ex parte Naccarat*, 328 Mo. 722, 41 S. W. (2d) 176, 76 A.L.R. 654.

⁹ See *supra*, § 329.

¹⁰ *State v. Brown*, 37 Wash. 97, 79 P. 635, 68 L.R.A. 889, 107 Am. St. Rep. 798.

¹¹ *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 81 L. ed. 703, 57 S.Ct. 578, 108 A.L.R. 1330.

¹² *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 81 L. ed. 703, 57 S. Ct. 578, 108 A.L.R. 1330; *Jacobson v. Massachusetts*, 197 U. S. 11, 49 L. ed. 643, 25 S. Ct. 358, 3 Ann. Cas. 765; *Sheppard v. Dowling*, 127 Ala. 1, 28 So. 791, 85 Am. St. Rep. 68; *Lindsay v. Lindsay*, 257 Ill. 328, 100 N. E. 892, 45 L.R.A.(N.S.) 908, Ann. Cas. 1914A, 1222; *Wight v. Baltimore & O. R. Co.* 146 Md. 66, 125 A. 881, 37 A.L.R. 864; *State v. Loomis*, 115 Mo. 307, 22 S. W. 350, 21 L.R.A. 789; *Cameron v. International Alliance, T. S. E.* 118 N. J. Eq. 11, 176 A. 692, 97 A.L.R. 594; *People v. Lochner*, 177 N. Y. 145, 69 N. E. 373, 101 Am. St. Rep. 773, reversed on other grounds in 198 U. S. 45, 49 L. ed. 937, 25 S. Ct. 539, 3 Ann. Cas. 1133; *State v. Sopher*, 25 Utah, 318, 71 P. 482, 60 L.R.A. 468, 95 Am. St. Rep. 845; *State Bd. of Health v. St. Johnsbury*, 82 Vt. 276, 73 A. 581, 23 L.R.A.(N.S.) 766, 18 Ann. Cas. 496.

Annotation: 6 L.R.A. 621.

Individual liberty secured by the Federal Constitution does not import an absolute right in each person to be at all times and under all circumstances wholly freed from restraint. *Cameron v. International Alliance, T. S. E.* 118 N. J. Eq. 11, 176 A. 692, 97 A.L.R. 594.

1962
CUMULATIVE SUPPLEMENT
TO
VOLUME 11



For Use July 1962 — July 1963

New Developments in the Law

New Analytical Text—Hundreds of New
Sections—New Factual Footnotes

References to New Cases and Annotations

★ ★ ★

*New Material is Completely Indexed in
Supplement to General Index Volumes*

KEYED TO

AM JUR

LEGAL FORMS ANNOTATED
PLEADING AND PRACTICE FORMS ANNOTATED
PROOF OF FACTS ANNOTATED

BANCROFT-WHITNEY COMPANY · SAN FRANCISCO · CALIFORNIA
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER · NEW YORK

1962

Page 1123. *Add new paragraph following note 13:* It has been held that the word "person" in a constitutional declaration that one injured in his "lands, person or reputation shall have remedy, by due course of law," should not be confined in its meaning to the physical body alone, but must be construed as inclusive of one's personality;^{13.5} that the words "shall have remedy," in such a constitutional declaration have reference to such remedy as may be provided by statute or common law, and do not constitute a delegation to the courts of the power to legislate in order to provide a remedy;^{13.51} that the word "injury," as employed in such a constitutional declaration implies the doing of some act which constitutes an invasion of a legal right, and cannot be considered as referring to all evils which may afflict mankind.^{13.52}

13.5-13.52 *Cason v. Baskin*, 155 Fla 198, 20 So2d 243, 168 ALR 430.

p. 1124, n. 6. *Russell v. Industrial Transp. Co.*, 113 Tex 441, 251 S. W. 1034, 51 A.L.R. 1.
p. 1126, notes 7, 8. Anno: 158 ALR 618; 167 ALR 235.

The court of one jurisdiction has expressed serious doubts as to the constitutionality of a statute abolishing actions for alienation of affections and breach of contract to marry. Anno: 158 ALR 621.

A statute prohibiting the bringing of actions for alienation of affections, criminal conversation, or breach of contract to marry violates a constitutional provision that every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property, or reputation. See 8 Am Jur, BREACH OF PROMISE OF MARRIAGE. § 14 (Supp.).

§ 327. Freedom from Imprisonment for Debt.

Am Jur quoted in *Bradley v. Superior Court*, 48 Cal2d 509, 310 P2d 634; *People v. Power*, 159 Cal App 2d Supp 869, 324 P2d 113.

Am Jur cited in *Davis v. State*, 237 Ala 143, 185 So 774.

p. 1129, n. 14. *Ex parte Small*, 92 Okla Crim 101, 221 P2d 669.

Page 1130. *Add, following note 17:* But a city ordinance providing for a fine upon a failure to pay a fee assessed for handling and treating garbage and trash and further providing for imprisonment for the nonpayment of the fine assessed was not violative of the constitutional prohibition where the punishment was directed to the neglect or refusal to comply with a public duty imposed by law.^{17.5}

17.5 *Ex parte Small*, 92 Okla Crim 101, 221 P2d 669.

§ 328. Fundamental Principles.

Am Jur Cited in *Thiede v. Scandia Valley*, 217 Minn 218, 14 NW2d 400.

§ 329. Generally.

Am Jur quoted in *State v. Ballance*, 229 NC 764, 51 SE2d 731, 7 ALR2d 407

Am Jur cited in *Alabama State Federation of Labor v. McAdory*, 246 Ala 1, 18 So2d 810, writ of certiorari dismissed in 325 US 450, 89 L ed 1725, 65 S Ct 1384.

Thiede v. Scandia Valley, 217 Minn 218, 14 NW2d 400.

Re Faust's Guardianship, 239 Miss 209, 123 So 2d 218; *Teche Lines v. Danforth*, 195 Miss 226, 12 So 2d 784; *Continental Southern Lines, Inc. v. Klaas*, 217 Miss 705, 65 So 2d 575 (dissent op).

p. 1134, n. 13.

Liberty, as the term is used in the Constitution, means not only freedom from servitude and restraint, but is deemed to embrace the right of every man to be free in the use of his powers, faculties, and property and to adopt

and pursue and employ these things in such lawful way as he may choose, subject only to such restraints as are necessary to secure the common welfare. *Mt. Vernon v. Julian*, 369 Ill 447, 17 NE(2d) 52, 119 ALR 747.

p. 1134, n. 1. *Hague v. Committee for Industrial Organization*, 307 US 496, 83 L ed 1423, 59 S Ct 954.

But compare *Bowe v. Secretary of Commonwealth*, 320 Mass 230, 69 NE2d 115, 167 ALR 1447, supra, § 320, n. 1 (Supp.).

p. 1135, n. 9. *Bolling v. Sharpe*, 347 US 497, 98 L ed 584, 74 S Ct 693; *State v. Ballance*, 229 NC 764, 51 SE2d 731, 7 ALR2d 407.

Page 1137. *Add following note 19:* the right to travel,^{19.5}

19.5 *Kent v. Dulles*, 357 US 116, 2 L ed 2d 1204, 78 S Ct 1113.

Page 1138. *Add, following note 8:* And it has been held that religious freedom is not unconstitutionally abridged,^{8.5} or the equal protection of the laws unconstitutionally denied, by the application, in the case of a child who in the company of her legal custodian engaged in the sale of religious publications on the street in the belief that she was discharging a religious duty, of a statute prohibiting boys under 12 and girls under 18 from selling newspapers, periodicals, or other articles of merchandise or exercising any trade in any street or public place, and imposing penalties upon anyone furnishing any article to a minor with the knowledge that the minor intends to sell such article in violation of the statute, or knowingly procuring or encouraging any minor to violate the statute, and upon any person having a minor under his control who compels or permits such child to work in violation of such statute.^{8.51}

8.5 See supra, § 312 (Supp.).

8.51 *Prince v. Massachusetts*, 321 US 158, 88 L ed 645, 64 S Ct 433, rehearing denied in 321 US 804, 88 L ed 1090, 64 S Ct 784.

§ 330. Limitations.

Am Jur quoted in *Shavers v. Duval County (Fla)*, 73 So2d 684.

Am Jur cited in *Alabama State Federation of Labor v. McAdory*, 246 Ala 1, 18 So2d 810, writ of certiorari dismissed in 325 US 450, 89 L ed 1725, 65 S Ct 1384.

p. 1139, n. 1. *Nelson v. Tilley*, 137 Neb 327, 289 NW 388, 126 ALR 729.

§ 331. — Under Police Power.

p. 1141, n. 18. *Reno v. Second Judicial Dist. Ct.* 59 Nev 416, 95 P(2d) 994, 125 ALR 948.

§ 334. Generally.

Am Jur quoted in *Wissner v. Wissner*, 89 Cal App2d 759, 201 P2d 937.

p. 1145, n. 10.

Parents have no right of property in their minor children, of which they cannot be deprived without their consent. *Purinton v. Jamrock*, 195 Mass 187, 80 NE 802, 18 LRA(NS) 926.

p. 1145, n. 13.

A corporation has the same right as an individual to go into a court of equity to enjoin enforcement of an illegal tax exaction in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Federal Constitution, since a corporation is a person within the meaning of these provisions. *McCarrill v. Gregory-Robinson-Speas*, 198 Ark 235, 129 SW(2d) 254, 122 ALR 977.

§ 335. Nature of Right Guaranteed.

Am Jur quoted in *State v. Avent*, 253 NC 580, 118 SE2d 47.

State ex rel. Pan American Production Co. v. Texas City (Tex Civ App) 295 SW2d 697, affd 157 Tex 450, 303 SW2d 780, app dismd 355 US 603, 2 L ed 2d 523, 78 S Ct 533.