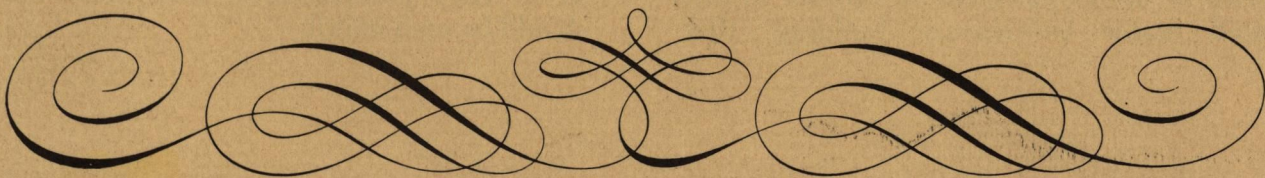




THE BILL OF RIGHTS AND THE CONSTITUTION

AN ADDRESS BY ASSOCIATE JUSTICE JOHN M. HARLAN OF THE SUPREME COURT
OF THE UNITED STATES, AT THE DEDICATION OF THE BILL OF RIGHTS ROOM, U. S.
SUBTREASURY BUILDING, NEW YORK CITY, ON AUGUST 9, 1964. * * * * *



These exercises dedicate the Bill of Rights Room which will be a part of the memorial museum established by the National Parks Service of the Department of Interior in this United States Subtreasury building; that

We should surely begin by recalling the specific provisions of the Bill of Rights. They speak with such eloquent simplicity and clarity as to defy paraphrasing, and their words should be read in full.

"The powers not delegated to the United States by the Constitution, nor prohibited by

it to the States, are reserved to the States respectively, or to the people."

For the most part the Rights assured by these first ten Amendments against federal invasion were simply those enjoyed by Englishmen under the institutions of the mother country, having their origins in the provisions of Magna Carta, that famed fountainhead of individual liberty. There were, however, two notable extensions of those rights: freedom of religion and freedom of speech and press, the former stemming from what had been grow-

These doctrines lie at the root of our constitutional system. It is manifest that no view of the Bill of Rights or interpretation of any of its provisions which fails to take due account of them can be considered constitutionally sound. The same is true of the Due Process,

Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment, which, since their adoption following the Civil War, have afforded federal protection against limitation by state action of various basic individual rights. It is an accurate generalization to say that the effect of these two doctrines in combination is to put within the range of federal cognizance only those matters, whether or not denominated civil rights, for which a source of federal executive, legislative, or judicial competence can fairly be found in the Constitution or its Amendments. There is no such thing in our constitutional jurisprudence as a doctrine of civil rights at large, standing independent of other constitutional limitations or giving rise to rights born only out of the personal predilections of judges as to what is good. And it should further be observed that our federalism not only tolerates, but encourages, differences between federal and state protection of individual rights, so long as the differing policies alike are founded in reason and do not run afoul of dictates of fundamental fairness.

It does not derogate from steadfastness to

the concept of developing constitutionalism in the field of civil rights—even as we must solve by orderly constitutional processes alone the great question of racial equality before the law—to insist upon *principled* constitutionalism which does not proceed by eroding the true fundamentals of Federalism and the Separation of Powers. To assert the contrary is in effect to urge that the Bill of Rights and cognate Amendments to the Constitution be extended so as to become the masters, not the servants, of the principles of government that have served the cause of free society in this Country so well.

We cannot take these things for granted in an age when the validity of established processes of our system is increasingly being called into question. No higher duty rests upon lawyers—by their training made “ready to aid in the shaping and application of those wise restraints that make men free”^{*}—than to maintain unimpaired the firm foundations on which ordered liberty in this land has been built. The memorial we dedicate today will serve as a continuing reminder of that obligation.

^{*}The quoted language is that used by Harvard University in the conferring of law degrees.



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An address by
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