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THE FUNDAMENTAL RIGHTS OF MAN*

MR. BOYLE: I read in the newspapers, and I hear over the radio much about the loss of our rights as citizens. Only last night, I heard a forceful address over the radio which was a very passionate appeal to our citizens to oppose encroachments on our rights. Dean, would you tell me where I can find out something about what rights I have and the sources of these rights?

MR. KONOP: Well, for the sources of our rights we must, of course, go to history. Many pages of history are devoted to accounts of the struggle for the recognition of rights of man. Tradition and laws of all the western civilized world recognize the existence of human rights.

In our country we derive our law from the common law of England, and we find our rights expressed in the common law and the Constitution of England. Therefore, we must go to England to look for the basis of our rights. In England our rights find recognition in four great documents of the English Constitution: the Magna Charta, the English Bill of Rights, the Petition of Right and the Habeas Corpus Acts.

*This discourse, between Dean Thomas F. Konop of the College of Law, University of Notre Dame, and Mr. James J. Boyle of the senior law class, was broadcast over radio station WFAM, from the University of Notre Dame Studio, on April 15, 1935.

The Magna Charta contains 63 articles. In the 29th and 40th articles, in brief and pointed language, are recognized the fundamental rights of Englishmen. Let me quote: *Article 39*, "No freeman shall be taken or imprisoned or disseized or outlawed or banished or any ways destroyed, nor will we pass upon him, nor will we send upon him unless by the lawful judgment of his peers, or by the law of the land." *Article 40*, "We will sell to no man, we will not deny or delay to any man, either justice or right."

It is by these two articles that rights of life, liberty and property are recognized and protected.

The settlers in the English colonies in America possessed the same fundamental rights as English Freemen, and it was the denial of these fundamental rights by the Crown that led to the Declaration of Independence, Revolution and gave birth to a new nation and our constitution.

In our country the briefest and the best statement of our fundamental rights is in the Declaration of Independence. Let me quote: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; and that to secure these rights, governments are instituted among men deriving their just powers from the consent of the governed."

MR. BOYLE: Dean, I hear a great deal about constitutional rights. Are these so-called "fundamental rights" mentioned in the Constitution and secured to us?

MR. KONOP: Yes, they are not only mentioned but given in detail in our federal and state constitutions.

The body of our Federal Constitution is merely a framework of government. Very few matters pertaining to individual rights are found in the body of that instrument. Let me mention a few: The provisions against suspending of the writ of habeas corpus, against enacting bills of attainder and ex post facto laws, and laws impairing the obligation of contracts. It is, however, to the Amendments of our Federal Con-

stitution and to our State Constitution that we must go for detailed information about our rights.

The first ten Amendments of our Federal Constitution are commonly referred to as our "Bill of Rights." These amendments are restrictions on the Federal Government. They protect us from a denial of our rights by Federal Government conduct.

In the First Article of the Federal Bill of Rights, we find provisions for protection of religious liberty, freedom of speech and press, right of peaceable assembly and right of petition. The fourth Article protects our homes from unlawful searches and seizures. The fifth Article guarantees indictment by a grand jury, protects us from double jeopardy, self-incrimination and from deprivation of our life, liberty and property without due process of law. The sixth Article secures us a speedy trial by a jury, compels confrontation by our accusers, and gives us compulsory process and counsel. And, Article VIII protects us from excessive bail, excessive fines and cruel and unusual punishment.

MR. BOYLE: Do these articles, Dean, keep only the Federal Government from interfering with our rights?

MR. KONOP: Yes, these articles merely protect our rights from Federal Government interference. We must go to Section 10 of Article I of the United States Constitution and to our State Constitution for protection of our rights from interference by the State Government.

There are four Amendments to our Federal Constitution ratified since the Civil War which also protect our rights against encroachment by states, namely: the 13th, 14th, 15th and the 19th Amendments. The 13th Amendment abolished slavery; the 14th defines citizenship and provides that no state shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The 15th secures the right to vote irrespective of race and the 19th secures the right to vote irrespective of sex.

Answering your first question by way of summary: To find out what your rights are and how they are secured, I would say, read and study the Declaration of Independence, the 1st, 4th, 5th, 6th, 8th, 13th, 14th, 15th and 19th Amendments to the Constitution of the United States, and then read and study your State Bill of Rights, wherein you will find the same rights recognized and protected. The provisions are brief and simple and it is the duty of every American to read them and study them.

MR. BOYLE: Many popular orators tell us that times have changed since our Constitution was adopted; that our rights have changed; and, that we have outgrown the Constitution. Is that really true, Dean?

MR. KONOP: People say "times have changed." Yes, times change and have changed. With the growth of our country and the progress in science, invention and education, with the expansion in our industry and advance in commerce, changes take place; but, the fundamental principles and basic laws do not change.

The law as it was handed to the people of Israel through Moses thousands of years ago has not changed. So too, the basic principles of the common law have not changed. The fundamental rights of man are the same as they always were. They are the same today as when so tersely reasserted in the Magna Charta, the Declaration of Independence and the Bill of Rights.

To the question "Haven't we outgrown our Constitution?" my answer is "decidedly no"! The Constitution was not written for a decade or a century. Properly and reasonably construed it adapts itself to our progress. On the matter of construing and interpreting the Constitution let me quote that great jurist Chief Justice Winslow, in the case of *Borgnis v. Falk Company*:¹

"... but the difficulty is that, while the Constitution is fixed or very hard to change, the conditions and problems surrounding the people,

¹ 147 Wis. 327, 133 N. W. 209, 215, 216 (1911).

as well as their ideals, are constantly changing. The political or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third. The race moves forward constantly, and no Canute can stay its progress. . . . By what standards is this general language or general policy to be interpreted and applied to present day people and conditions? When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes. . . . the changed social, economic, and governmental conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter into the consideration, and become influential factors in the settlement of problems of construction and interpretation."

As times change, the application of fundamental laws and rights and the Constitution is different, but, the fundamental laws, rights and the Constitution remain the same.

In pioneer days, when communities were sparsely settled and when our cities were small, the problems were few and simple. In times when our industries were small, when they were owned by individuals and the owner knew his workers, the relations between capital and labor were personal and human. Strife between capital and labor was easily and readily adjusted upon principles of justice and right between man and man. But today, with our congested populations, problems of health, safety, morals and welfare of the community require a different application of our individual rights. Today, with our organized industry, with industries owned and controlled by large corporations organized chiefly for profit, with countless human beings employed: without the human relationship, should not human beings be protected from oppression by these soulless entities? Should we not consider man above profits? The powers of these soulless entities must be regulated and controlled under the police power for the welfare of the individual citizens. Everyone must concede that the application of our fundamental rights and our Constitution must be different under present industrial conditions.

The trouble with many of our citizens who think their rights are being invaded is that they think their rights are absolute. They are not absolute but relative.

MR. BOYLE: Well, what do you mean by rights being relative?

MR. KONOP: Let me explain and give you some pointed cases which will show you that rights are relative.

All rights are subject to three governmental powers. These powers are taxation, police power and the power of eminent domain. No organized society, no government could exist without these powers.

With our rights, there is the corresponding duty to support the government. That is done by taxation.

With our rights and in order that we may peaceably live and enjoy them in organized society, there is the corresponding duty to subject these rights for the common good of others as well as ourselves. All rights are subject to the police power.

MR. BOYLE: Might I inquire just what do you mean by police power?

MR. KONOP: The police power is the power of a government to provide for the health, safety, morals and welfare of the people: While the police power of the Federal Government is limited to its granted powers, the reasonable exercise of this power by the state is practically unlimited. All the criminal laws on our statute books, all the police ordinances were enacted under this power.

Let me give you a few examples of laws passed under the police power. Our quarantine and vaccination laws, traffic laws, safety laws, lighting laws, fire prevention laws, building regulations, zoning ordinances; laws regulating hotels, dance halls, sale of drugs and intoxicating liquors; our child labor laws, minimum wage laws, compensation laws, laws regulating public utilities; our insurance and banking laws; our laws licensing doctors, dentists, lawyers, accountants, and other

professions. These are but a few of hundreds of examples of laws to which our rights must yield. As I said before, rights in organized society are not absolute. They are relative.

MR. BOYLE: Why, Dean, I always thought that we had an absolute right to life.

MR. KONOP: No,—the fundamental rights to life, liberty and property are not absolute. The right to life is not an absolute right. Does not a man forfeit life if he is convicted of a capital offense? If a man commits murder he may be executed for this crime. So, too, the right of liberty is not a license to do as a person pleases. In organized society, a person must so conduct himself as not to injure the rights of others or interfere with the property or conduct of others. This right of liberty may also be forfeited and often is forfeited. If a person assaults another, if he steals, if he robs, if he commits any crime, he is imprisoned and thus denied his liberty.

Take the right to own and enjoy property. That, too, is a relative right. One cannot so use his property as to invade the rights of others. He cannot use his property to violate the health, safety, morals and general welfare of the community.

MR. BOYLE: Could you give me some examples of what you mean?

MR. KONOP: Why, yes, a man cannot build a gas station anywhere he pleases. He cannot rent his house for immoral purposes; he cannot store gasoline in his basement; he cannot throw garbage and rubbish around as he pleases; he cannot carry concealed weapons. Many other examples could be given.

MR. BOYLE: Now, Dean, what about the right of free speech and press and the campaign of Chief Lane of South Bend against immoral magazines and pamphlets? What right has he to suppress them? Many people think that he is interfering with freedom of the press.

MR. KONOP: Chief Lane is enforcing three criminal statutes of Indiana. They are Sections 2569, 2570 and 2571 of Burns' Annotated Statutes. These statutes are constitutional. The right of free speech and free press, secured to us by both the State and Federal Bills of Rights, is not an absolute right. It is a relative right. Under this right a person cannot slander others, cannot blaspheme, cannot offend morals of the community. Newspapers cannot libel citizens, nor print immoral articles or pictures. If they do they subject themselves to prosecution for libel and prosecution for publishing immoral articles or pictures; and they are also liable in a civil action for damages.

Now take our most cherished right, the right to worship God according to the dictates of our conscience. Under this right a man cannot practice polygamy; cannot through neglect let those under his custody die; cannot commit assault and disturb the public peace. In Chicago recently certain Hindu healers tried to practice the art of healing without a license, claiming to do so on religious grounds.

Religious practices that offend the morals, interfere with traffic, disturb the public peace and order, must give way to regulation or even suppression under the police power. Thus we see that even the right to religious liberty is relative.

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