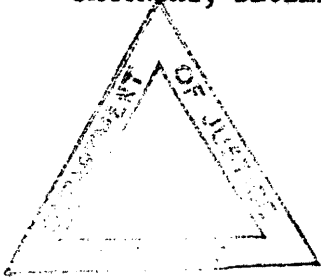


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ADDRESS

by

ATTORNEY GENERAL J. HOWARD McGRATH

before

SEVENTY-SECOND ANNUAL MEETING
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OUR CIVIL AND HUMAN RIGHTS

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OUR CIVIL AND HUMAN RIGHTS

With the discovery of the New World, there came to this continent droves of colonists, seeking release from physical and spiritual oppression. Europe was just awakening from the slumber and nightmare of the Dark Ages; and from it went forth the oppressed, searching for freedom from tyranny and freedom to make the best of themselves in a fresh world. On this continent, in 1776, "our forefathers brought forth . . . a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal." We have fought two world wars to defend our freedom so that we may live by that faith.

Now, on the continent where a light shone through the darkness to our colonists, America has herself become a light shining to all the world.

To millions of people everywhere, America is the source of new strength and new hope. We are giving our material aid through the European Recovery Program and in many other channels. We have given our promise of military support. We hold out to all the knowledge that America seeks no aggrandizement but rather the extension of human freedom everywhere.

Unfortunately, there are certain governments which hate the freedom we defend. They are dedicated to the proposition that a small ruling class knows what is best for all. They profess "democracy," but in the lands they rule there is no freedom of speech, no freedom of thought, no freedom of religion, no security of the person, no freedom to meet with one's neighbors, no freedom to leave the country and exchange ideas with others of different belief. These governments seek to extend their rule by a world-wide conspiracy against the good order and the institutions of the other countries of the world. They proffer false promises of human freedom. With well-practised lines, they are competing with us for the minds of men.

As lawyers, all of us here are sworn to defend our Constitution and the guaranties of liberty which it contains. It is therefore fitting that in this time of grave division in the world we should consider anew what our freedom means to us, how it has been preserved and some of the things we must do to preserve it for the future.

You will recall that when our Constitution emerged from the Constitutional Convention of 1787 it contained no bill of rights. It made no reference, for example, to freedom of religion, freedom of assembly, freedom of speech or of the press.

The brilliant Hamilton, who was as much responsible for the adoption and ultimate ratification of the Constitution as any man, pointed out that the proposed constitution guaranteed habeas corpus, and trial by jury in criminal cases, and prohibited ex post facto laws, bills of attainder and the grant of titles of nobility. A bill of rights, he went on to contend, was unnecessary, even dangerous. Said he, "Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?" Such a provision on liberty of the press, he argued, could afford a pretext for implying power to regulate the press. Moreover, he wrote, "What signifies a declaration that 'the liberty of the press shall be inviolably preserved'? What is liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights."

Nevertheless, the people were alarmed. Many feared that liberties won from the King by the Revolution would be lost to the new government. Thomas Jefferson wrote from Paris to his friend Madison --

"A bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inferences."

And again, on a later occasion --

"The declaration of rights is, like all other human blessings, alloyed with some inconveniences, and not accomplishing fully its objects. But the good in this instance vastly outweighs the evil."

This clash of views on an express bill of rights was to become a typical phenomenon in the struggle for liberty and equality. We should do well to remember this bit of history in viewing our present-day problems.

To achieve ratification of the Constitution its supporters promised the American people that the Congress at its first session would propose amendments for protecting the rights of the people against violation by the government. This promise was carried out. The first Congress proposed what became the first ten amendments to the Constitution, known ever since as our Bill of Rights. These amendments were promptly adopted by the people and became part of the Constitution on December 15, 1791--a day we have just commemorated, and which we mark each December 15th as Bill of Rights Day.

Thus, we have guaranties that Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging freedom of speech or freedom of the press; or the right of the people peaceably to assemble and to petition the government for a

redress of grievances. So also we have detailed guaranties that criminal trials conducted by the federal government shall be carried on in accordance with basic standards--publicly, speedily and fairly. There is affirmed the right of the people to be secure from unreasonable searches and seizures in their persons, houses, papers and effects. These and other rights are guaranteed to all of us by the Bill of Rights against infringements by our government. The Bill of Rights embodies, not by indirection, but in the explicit language of law, our belief in freedom, our belief that there are some things that the government may not do under any circumstances, our belief that an individual is an end in himself.

In the years that intervened after the establishment of the American Bill of Rights great changes took place. The original fears of tyranny from abroad, and from monarchical tendencies within, gradually disappeared. America settled down to an era of material growth, aided by the unprecedented advancement of science and invention, but complicated by such phenomena as slavery and emancipation, tremendous waves of free immigration and later restriction, unheard-of prosperity for many, economic misery for others in the shadow of plenty. The longing and striving for liberty did not change. Only the sources of potential oppression were different. Fear of private exploitation, backed by sometimes corrupt forces of law, replaced the early fear of our national government. In fact, the national government assumed the role of protector and mediator in the struggle to arrive at a balance between property and human rights.

This was particularly evident in post-Civil War days when the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution were adopted. The Thirteenth Amendment abolished slavery and involuntary servitude. The Fourteenth Amendment, conferring citizenship on the former slaves, prohibited the several states from making or enforcing laws "which shall abridge the privileges or immunities of citizens of the United States," from depriving "any person of life, liberty, or property, without due process of law," and from denying to any person "the equal protection of the laws." The Fifteenth Amendment forbade abridging the right of citizens to vote on account of race, color, or previous condition of servitude. All three Amendments empowered Congress to provide for enforcement by appropriate legislation. And Congress did. In a series of statutes known as the Civil Rights Acts, Congress in the years after 1865 sought to eliminate the practices and indicia of slavery which, if maintained, would defeat the purposes of the constitutional amendments. The statutes dealt with such things as peonage, and enticement into slavery; equality between blacks and whites in the right to own and transfer property, to make and enforce contracts, to sue, and to serve on juries; non-discrimination in public accommodations; and, in general, equality in the rights and privileges which all citizens should enjoy. The bitterness of the Reconstruction, and the action of subsequent Congresses and courts, particularly prior to the First World War, reduced or nullified much of this legislation, leaving a residue of a few sections of the original laws. These provided dull and difficult weapons to wield when, in 1939, former Attorney General Frank Murphy, the late Mr. Justice Murphy of the Supreme Court, embarked a group of lawyers in the Department of Justice upon a regular program for enforcing

civil rights, which incidentally has been continued by the succeeding Attorneys General in a unit of the Criminal Division known as the Civil Rights Section.

It remained for President Truman, in December 1946, to constitute the President's Committee on Civil Rights, a group of fifteen distinguished citizens. The Committee was asked to "determine whether and in what respect current law enforcement measures and the authority and means possessed by federal, state and local governments may be strengthened and improved to safeguard the civil rights of the people." The Committee engaged in extensive study and research. In October 1947 it handed up its report, containing findings and recommendations, now widely known under the title "To Secure These Rights." Out of further study of this report came the President's Message to Congress of February 2, 1948, and his program for action.

I think it important to reiterate, as did the President and his Committee, that although our basic human freedoms are better cared for and more vigilantly defended than ever before, there is a serious gap between our ideals and some of our practices. No thoughtful observer will deny that we have in practice achieved a great measure of the Bill of Rights. By the combined conduct of our legislative, executive and judicial branches of government--local, state and federal--and by the vigilance of private citizens, watchful of their own rights and the rights of others, we have built up and defended constitutional liberty to a place where it is, in this country, the rule and not the exception.

Yet we would not, we need not, pretend we are perfect. The Civil Rights Committee Report and the President's Message afforded us a looking glass. It reflects the imperfections ranging from deficiencies in education and social attitudes to the needs of formalizing certain public policies in legislative and other acts. Perhaps our principal weaknesses and difficulties are in unevenness of application of civil liberties. We are in constant danger of dividing our people, of weakening our unity, if we fail to ensure equality of treatment.

When I was a member of the United States Senate, I had the privilege of studying the President's Civil Rights Program as a basis for proposed legislation. As a result, I introduced four bills, still pending, designed to carry out the major parts of his legislative program in this field. The factor common to each of these bills is the purpose to eliminate, with regard to the subject matter, discrimination based on race, color, religion, or national origin.

The first of these measures--the proposed "Civil Rights Act of 1949"--has a number of objectives. It would set up a permanent Civil Rights Commission in the executive branch of the government continuously to survey the status of civil rights in this country and to advise the President of measures which might be taken to enhance the security of human rights. The bill would also set up a standing Joint Committee of Congress on Civil Rights, and a Civil Rights Division headed by an Assistant Attorney General in the Department of Justice. The bill would amend some of the few existing statutes in the civil rights field in an effort to strengthen protection of the individual's rights to liberty and to the privileges of citizenship. Thus, in the case of the existing

criminal statute protecting citizens in their rights under the Constitution and federal laws, it would extend protection to all inhabitants of the United States, whether or not they are citizens, and this protection would be afforded against infringement by persons acting alone as well as in conspiracy. Another amendment makes an enumeration of the principal rights protected against the misconduct of public officers, in order to make more definite and certain the protection which the existing law seeks to afford. The right to be free from intimidation and coercion in voting in an election for national offices would be extended to primary and special elections as well as to the general elections. The existing statutory protection of the right of citizens to vote at an election without distinction as to race, color or previous condition of servitude, would be more carefully drawn to ensure against discrimination by public officers in the cases of qualified citizens. A greater use of civil remedies, as distinguished from criminal penalties, would be encouraged by the bill. The bill would also provide equal treatment in the enjoyment of accommodations of any public conveyance or facility operated by a common carrier in interstate or foreign commerce, without discrimination or segregation based on race, color, religion, or national origin.

The second of these bills is the proposed "Federal Anti-lynching Act." It is designed to protect against and punish the lawless violence of mob action, which supplants the orderly processes of government.

The third bill is the proposed "Federal Anti-Poll Tax Act." This bill would make unlawful the requirement of payment of a poll tax

as a condition to voting in a primary, general, or other election for national offices. The right to vote--to take part in the selection of those who make and administer the laws--is basic in a democracy. The poll tax, where it is still used as a prerequisite to voting, stands between the citizen and that right. Experience has shown that when voting is conditioned upon paying a poll tax, the number of votes cast is cut drastically; but that when the poll tax is abolished, the number of voters increases very greatly. The poll tax is a way of saying: "The poor shall not vote. The rest of us will decide what is good for them." And so great numbers of citizens, both white and negro, are barred from the polls where this condition prevails. The counterpart of the bill, which as I said would remedy the situation in elections for national offices, has already been passed by the House of Representatives.

The fourth of these measures is the proposed "Federal Fair Employment Practice Act." It is designed to prevent discrimination in employment on grounds of race, color, religion, or national origin. It would apply to employers of fifty or more employees, or labor unions of fifty or more members, engaged in interstate commerce, as well as to the federal government and certain contractors with the federal government. It is important to note that the bill does not permit anyone to demand employment by a given employer. Except for the causes specifically condemned, the employer may hire or refuse to hire or discharge for any cause that seems proper to him.

In respect of the common purpose running through these bills, it is useful to observe the kind of "right" which is sought to be

stated and preserved. In a sense, it is almost a negative right, expressive of the desire of all free men to live unmolested--the right not to be treated differently from other men; the right not to be singled out for the special treatment which implies that there is more than one class of citizenship. The bills propose to reiterate and reinforce the guaranties of equality upon which our Government is based.

Some persons, with the earnestness and sincerity of Hamilton, others with less pure motives, will ask: What do we accomplish by declaring equality by law? Can we eliminate prejudice against minorities by legislation?

Statutes on non-discrimination may not in themselves remove racial, national, or religious prejudices. Admitted. But they can create conditions favorable to the gradual disappearance of such prejudices. Already there are a number of years' experience in your state, New Jersey, with Fair Employment Practice legislation. So, too, there is experience with similar laws in New York, Massachusetts, Washington, Oregon, New Mexico, Connecticut, and Rhode Island--all indicating that this kind of law can create a climate of opinion in which discrimination tends to disappear. And conversely, we know that statutes or public policies which support or condone Jim Crowism, and other forms of caste, simply solidify discrimination, giving it the gloss of respectability. The way to eradicate racial tension, wisely said the Supreme Court of California in a recent case, is not "through the perpetuation by law of prejudices that give rise to the tension."

What I have been speaking of principally, refers to the responsibility of government--the formal organization of our society--

in the protection of individual liberties. But the responsibility cannot rest there alone. The individual, no less than his government, must share in serving the ideals of the democratic faith. Obviously, he has a duty to stand up for his own rights when they are invaded. An authority which threatens the rights of one citizen becomes all the stronger if it succeeds, and all the more dangerous to the rights of others. A citizen who asserts his own rights is therefore protecting not only himself but his fellow citizens as well.

But he has a further duty. This is to respect the rights of other persons. He must recognize each of his fellow men as a human being like himself, with wants, and the need for dignity, like his own. He must remember the words of the Declaration of Independence -- "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." It was essentially for the protection of these rights that the signers of the Declaration of Independence declared that -- "We mutually pledge to each other our lives, our fortunes and our sacred honor."

In the world of today, this duty of each American citizen is more than a duty to the particular individual whose rights would otherwise be violated. It is a duty which each of us owes to every other citizen of the country. In one sense, it is a matter of national security.

Racial, religious, or national discrimination is a fearful thing for our country, both at home and in our international relations. At home, it divides us when we should be united. It leads to bitterness in its victims, and the rejection by some of the American creed.

In a brief filed recently in the United States Supreme Court, in a case involving alleged discrimination in interstate transportation (Henderson v. United States), the Department of Justice took occasion to call the Supreme Court's attention to testimony of a well-known negro baseball player, who appeared before a congressional committee to answer statements which questioned the loyalty of large numbers of American negroes. The witness said:

"Just because Communists kick up a big fuss over racial discrimination when it suits their purposes, a lot of people try to pretend that the whole issue is a creation of Communist imagination.

"But they are not fooling anyone with this kind of pretense, and talk about 'Communists stirring up negroes to protest,' only makes present misunderstanding worse than ever. Negroes were stirred up long before there was a Communist Party, and they'll stay stirred up long after the party has disappeared--unless Jim Crow has disappeared by then as well."

Abroad, discrimination embarrasses us in our international relations. It furnishes hostile propaganda to foreign critics. It raises doubt as to our sincerity among friendly peoples. Today, the United States enjoys a position of world leadership. Yet, the very existence of this country, and of the free nations associated with us, depends in considerable measure upon how well we live up to our own ideals at home. We must therefore do more than let the world know that we have the highest standard of living. We must prove to the world that our

democracy works. Every one of us, by what he does or fails to do, in the daily business of living--in his contacts with neighbors, fellow workers and even strangers--inevitably affects the composite of our efforts to build a peaceful world.

Our concern, and the concern of all freedom-loving peoples, today, goes far beyond the domestic pattern. In many ways we have begun to make it clear that the protection of human rights is a matter of international concern.

Something akin to a constitutional convention of almost the whole world was held in San Francisco in 1945. I am referring, of course to the San Francisco Conference which framed the Charter of the United Nations. In that Charter, universal interest in human rights is expressed more prominently and authoritatively than ever before. "To achieve international cooperation . . . in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion," is stated to be one of the purposes of the United Nations. The General Assembly, the Economic and Social Council, and the Trusteeship Council, are given responsibility for promoting human rights within their fields of competence. The Economic and Social Council is specifically directed to set up a human rights commission--which it has done. And all members of the United Nations pledge themselves to take joint and separate action, in cooperation with the United Nations, to promote universal respect for, and observance of, human rights.

There were some at the San Francisco Conference who thought that the Charter did not go far enough in the protection of human rights.

But there was no time at San Francisco to draft an international bill of human rights. Instead, it was decided that the question of framing one could be taken up by the United Nations Organization itself after it got started. President Truman voiced his hope for such an international bill of rights in his speech at the closing session of the San Francisco Conference. Under the Charter, he said, "We have good reason to expect the framing of an international bill of rights, acceptable to all the nations involved. That Bill of Rights will be as much a part of international life as our own Bill of Rights is a part of our Constitution." And so, just as our Bill of Rights was added to our Constitution after the Constitution was adopted, the United Nations has been taking steps to frame an international bill of rights which, in effect, would be added to the Charter of the United Nations.

A great preparatory step was taken just one year ago. On December 10, 1948, the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights. This Declaration is not a treaty, as is the Charter of the United Nations. But it is, in its own words, "a common standard of achievement for all peoples and all nations." It declares many of the basic rights set forth in our Constitution and Bill of Rights, and some which are neither fully realized here nor elsewhere in the world, but which some day may be accorded to everyone.

Coordinately with the drafting of the Universal Declaration of Human Rights, the drafting of a proposed treaty was begun, to provide the basis from which to give legal effect to certain of the fundamental human rights. This proposed treaty is called the Covenant of Human Rights.

It has been in preparation by the United Nations Commission on Human Rights since 1947 and is not yet finished. It is receiving most careful attention from our Government and the many governments participating in the drafting, as well as from hundreds of organizations in and out of the United States--bar associations prominently among them.

In this way, among others, the United States and other free countries are moving forward together, through the United Nations, in the noble enterprise of weaving their ideals into the fabric of international law.

But always there is the ordinary man and woman, and his and her duties and responsibilities as citizens in a democracy. Individually, at times, the contribution of each, the importance of each, may seem minute. Nevertheless, local governments, state governments, national government, international law and international procedures cannot do the job without them. We know from experience that a great share of our liberties depends upon the vigilance, the wisdom, the tolerance and the courage of our citizenry. Each of you, therefore, as a private citizen, has an unavoidable responsibility for the preservation of the American freedoms. As guardians of these freedoms, you are also guardians of the fair name of the United States and of its powers of moral leadership in the world. To this generation of Americans has come the greatest responsibility ever visited upon the citizenry of any nation. You are keepers of the light. Yours is the duty to make sure that it shines for all the world.