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The Bill of Rights **by Hugo L. Black**

Today most Americans seem to have forgotten the ancient evils which forced their ancestors to flee to this new country and to form a government stripped of old powers used to oppress them. But the Americans who supported the Revolution and the adoption of our Constitution knew firsthand the dangers of tyrannical governments. They were familiar with the long existing practice of English persecutions of people wholly because of their religious or political beliefs. They knew that many accused of such offenses had stood, helpless to defend themselves, before biased legislators and judges.

John Lilburne, a Puritan dissenter, is a conspicuous example. He found out the hard way that a citizen of England could not get a court and jury trial under English law if Parliament wanted to try and punish him in some kind of summary and unfair method of its own. Time and time again, when his religious or political activities resulted in criminal charges against him, he had demanded jury trials under the "law of the land" but had been refused. Due to "trials" either by Parliament, its legislative committees, or courts subservient to the King or to Parliament, against all of which he vigorously protested as contrary to "due process" or "the law of the land," Lilburne had been whipped, put in the pillory, sent to prison, heavily fined and banished from England, all its islands and dominions, under penalty of death should he return. This last sentence was imposed by a simple Act of Parliament without any semblance of a trial. Upon his defiant return he was arrested and subjected to an unfair trial for his life. His chief defense was that the Parliamentary conviction was a nullity, as a denial of "due process of law," which he claimed was guaranteed under Magna Carta, the 1628 Petition of Right, and statutes passed to carry them out. He also challenged the power of Parliament to enact bills of attainder on the same grounds — due process of law. Lilburne repeatedly and vehemently contended that he was entitled to notice, an indictment, and court trial by jury under the known laws of England; that he had a right to be represented by counsel; that he had a right to have witnesses summoned in his behalf and be confronted by the witnesses against him; that he could not be compelled to testify against himself.

When Lilbume finally secured a jury, it courageously acquitted him, after which the jury itself was severely punished by the court....

Unfortunately, our own colonial history also provided ample reasons for people to be afraid to vest too much power in the national government. There had been bills of attainder here; women had been convicted and sentenced to death as "witches"; Quakers, Baptists, and various Protestant sects had been persecuted from time to time. Catholics were barred from holding office in many places. Test oaths were required in some of the colonies to bar any but Christians from holding office. In New England Quakers suffered death for their faith. Baptists were sent to jail in Virginia for preaching, which caused Madison, while a very young man, to deplore what he called that "diabolical hell — conceived principle of persecution."

In the light of history, therefore, it is not surprising that when our Constitution was adopted without specific provisions to safeguard cherished individual rights from invasion by the legislative, as well as the executive and judicial departments of the National Government, a loud and irresistible clamor went up throughout the country. These protests were so strong that the Constitution was ratified by the very narrowest of votes in some of the states. It has been said, and I think correctly, that had there been no general agreement that a supplementary Bill of Rights would be adopted as soon as possible after Congress met, the Constitution would not have been ratified. It seems clear that this widespread demand for a Bill of Rights was due to a common fear of political and religious persecution should the national legislative power be left unrestrained as it was in England....

Misuse of government power, particularly in times of stress, has brought suffering to humanity in all ages about which we have authentic history. Some of the world's noblest and finest men have suffered ignominy and death for no crime — unless unorthodoxy is a crime. Even enlightened Athens had its victims such as Socrates. Because of the same kind of bigotry, Jesus, the great Dissenter, was put to death on a wooden cross. The flames of inquisitions all over the world have warned that men endowed with unlimited government power, even earnest men, consecrated to a cause, are dangerous.

For my own part, I believe that our Constitution, with its absolute guarantees of individual rights, is the best hope for the aspirations of freedom which men share everywhere. I cannot agree with those who think of the Bill of Rights as an 18th Century straitjacket, unsuited for this age. It is old but not all old things are bad. The evils it guards against are not only old, they are with us now, they exist today

Hugo L. Black was a United States Supreme Court Justice from 1937 to 1971. This article originally appeared in Black, "The Bill of Rights," 35 N.Y.U. L. Rev. 865 (1960). Reprinted by permission.

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