

The bill of rights of the United States I shall leave with the house. The house knows it, but I should like to quote what was said by Mr. Jefferson. In the first place this was his first inaugural address, delivered on March 4, 1801. I think the last words of the address are far more powerful than the words of the United States declaration of independence. I must say something here in a personal way. I think that the words of the United States declaration of independence are indefensible where they say that every man is entitled as of right to life, liberty and the pursuit of happiness. It is obvious that in these days of uncertainty, in these days when nations have duties one to another, no one is entitled to free possession of life because his life may be at the service of the state. Liberty is a variable thing. On the streets of your communities, your municipalities or cities, there is interference with your liberty, and properly so. The pursuit of happiness depends on many elements. It depends on heredity, it depends on environment, it depends on political, social and economic conditions that surround one's life. There is no fundamental right to the pursuit of happiness but there is a fundamental right that one shall not be prevented from pursuing happiness.

This is what Jefferson said, in a far finer phrase, in my opinion:

Equal and exact justice to all men of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations,—entangling alliances with none; the support of the state governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies; the preservation of the general government in its whole constitutional vigour, as the sheet anchor of our peace at home and safety abroad;—

And these are the lines that I really wish the house to remember:

—freedom of religion; freedom of the press; freedom of person under the protection of the habeas corpus; and trial by juries impartially selected—these principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation.

It is clear, Mr. Speaker, that the American bill of rights, like the great British charters, laid no claim to the declaration of a new law; and as a fundamental principle that may be recalled, it was rather, sir, in the words of an eminent authority, Sir Maurice Amos, in his work on the American constitution, an attempt to insure—

—that certain fundamental axioms might be placed by the constitution beyond the reach of the ordinary legislature.

This was possible in the United States because its parliamentary bodies, its congress, its state legislatures derive all their powers from the express language of a written constitution. It is possible in a country which functions under a written constitution to define and limit the powers of law-making bodies. The function of the British North America Act is to lay down which of our two parliamentary bodies, the federal or the provincial, has jurisdiction to legislate in certain fields. In theory at least, Mr. Speaker, the dominion and the provinces have their rights under their respective jurisdictions. Hence if we are to consider whether in Canada we should adopt something in the nature of a bill of rights, we must do so having regard to certain conditions.

Let us never forget that we already possess in this country the rights affirmed in magna carta on the nineteenth day of June, 1215, the declaration of rights in 1628, the Habeas Corpus Act of 1679, and the great body, with its sweep and scope, of common law. We can legislate with no greater authority or durability than pertains to an act of parliament. Some of the subjects commonly associated with a bill of rights are not within the jurisdiction of the federal government but have been assigned by the British North America Act to provincial jurisdiction. That is one thing this committee will of course remember.

It will be noted, Mr. Speaker, that to the extent that we may wish to deal with the subject of human rights and fundamental freedoms as domestic legislation, there is much, very much, for a select committee to consider. It may even be desirable or necessary that consultation with the provinces take place.

Just a word about France. They attempted a comprehensive constitution last May but they finished up with a brief affirmation of a fundamental principle which they have had since 1789. May I read it—it is only four lines:

The solemn affirmation of the rights and liberties of man and of the citizen consecrated by the Declaration of Rights of 1789—and the fundamental principles recognized by the laws of the Republic.

Thus, sir, we see that on second consideration the people of France regard it as wiser to avoid defining and confining in mere iteration of words those deeply ingrained concepts of men's inherent rights, whose greatest protection is not in printed words but in mankind's sense of natural justice.

I wish to say a word or two about my native country, and this will probably shock