Washington Law Review

Volume 45 | Number 3

5-1-1970

The Role of a Bill of Rights in a Modern State Constitution: Introduction

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WASHINGTON LAW REVIEW

Volume 45, Number 3, 1970

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INTRODUCTION

In an era of public and private trespass upon fundamental rights, libertarians must refer back to and expand upon written principles, rather than resort to unauthorized self-help and poorly articulated outrage. Professors Countryman and Morris examine from distinct perspectives the contemporary need for and desirability of a State Bill of Rights.

Widespread discontent with the activism of the United States Supreme Court, and backlash by powerful political figures at the Court's apparent circumvention of supposed "principles" of federalism, seem calculated to halt the era of judicial energy which prevailed during the leadership of Chief Justice Earl Warren. Yet, while the future of the Court as an adaptive organism may be cast in doubt by Congressional attempts at reversal and by Executive attempts at dilution, there is no question that the society which the Court serves cannot be suffered to stagnate in a pool of static rights. The internal motion of our society, constantly erupting under the pressures and conflicts engendered by the threat of nuclear destruction, unpopular wars, environmental contamination, racial hatred, glaring social injustice, and political ferment evidenced by totalitarian tendencies on both sides of the fence, requires untiring reinterpretation of our traditional rights and creation of new rights previously unknown. In the years ahead, it will be increasingly necessary for the States in our federal scheme to assume a role of activism designed to adapt our law and libertarian tradition to changing civilization.

In these papers, first presented at the State Constitutional Revision Conference at the University of Washington School of Law, June 13 and 14, 1968, Professors Countryman and Morris illuminate, respec-

tively, the need for a State Bill of Rights and the content which those rights must embrace.

John M. Steel†

I. WHY A STATE BILL OF RIGHTS?*

VERN COUNTRYMAN**

There is a school of thought among policemen, prosecutors, legislators, lawyers, law professors and other scholars that the Supreme Court of the United States has given us more of a Bill of Rights under the federal Constitution than we need. This view is by no means unanimous, but it is widespread.[1] Periodically this view manifests itself in thus far unsuccessful efforts in Congress to restrict the jurisdiction of the Supreme Court. One such effort was defeated in the Senate less than a month ago.[2] A few years ago the Council of State Governments was sponsoring an amendment to the Constitution to create a "Court of the Union," made up of the chief justices of the fifty states, to review decisions of the Supreme Court involving "rights reserved to the states or to the people."[3]

Some of the criticism of the Court does not rise above the level of

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* This article was presented at the State Constitutional Revision Conference, sponsored by the University of Washington School of Law, Seattle, Washington (June 13-14, 1968).

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1. For collections of, and rebuttals to, expressions of this view, see Choper, *On the Warren Court and Judicial Review*, 17 CATHOLIC U.L. REV. 20 (1967); Kamisar, *On the Tactics of Police-Prosecution Oriented Critics of the Courts*, 49 CONN. L.Q. 436 (1964); BLACK, THE PEOPLE AND THE COURT (1960).

2. The Senate acted to delete from S. 917, 90th Congress, 2d Session the so-called Omnibus Crime Control and Safe Streets Bill, provisions which would deprive the federal courts of habeas corpus jurisdiction over state criminal convictions and of jurisdiction to review in any manner state court rulings on the admission of confessions and of evidence of police line-up identifications. 114 CONG. REC. S6037-S6045 (daily ed. May 21, 1968).

3. *See* Monroe, *To Preserve the United States*, 8 ST. LOUIS L.J. 533 (1964).