

our procedures impose; at every turn we have learned to expect that some will not.

Universal Suffrage and Majority Rule

There is no one procedural formula applicable to all nations alike for the attainment of the five individual freedoms of liberty. The newborn of each nation come into a society which has institutions, mores, laws, and habits which they could not choose. The people of each nation have to custom-build their own procedures and institutions. They are not conceived in a cultural vacuum. In a nation that would have them, there must be a dominant number who have already made the convictions, morals, and habits of free men their own.

The force of public opinion controls. Different from the military practices and propaganda power of totalitarianism, communistic or other, it would be a contradiction of terms to say or think that liberty could be thrust upon the people of a nation. Physical power can be thrust upon the people of a nation, but not the power of liberty. Men are not persuaded, save they persuade themselves. The inspiration and perspiration that create and maintain a free state must ultimately move from within or not at all.

During the 2,500 years of re-

corded history there has never been a dominantly free society without some form of self-government. Historically, self-government has been a common denominator of all dominantly free societies. The statement that the perpetuation of the five freedoms of individual liberty requires universal suffrage and majority rule is of such persuasive power that even though we know that the majority has to be a responsible majority, I believe that we have to take that gamble. Procedurally we take that gamble aided by a written constitution.

A Written Constitution

In the United States our political procedures are realistically grounded. Many years before Castro, Hitler, and Mussolini, and in fact many years before Lord Acton said it, our Founding Fathers were aware that "power tends to corrupt and absolute power corrupts absolutely." Accordingly, under our procedures we seek to accomplish the five freedoms of individual liberty by a representative republic under an organic written law. By its terms and in fact our Federal Constitution is the "supreme Law of the Land." It provides for a diffusion of delegated power into judicial, executive, and legislative branches, a system of checks and balances, a

co-ordination of Federal with state rights and a Bill of Rights, all with the power to amend by orderly procedures. We have set up these procedural odds in favor of a free society.

Other free societies may prefer an unwritten constitution, but we believe that a written one is the best procedural way for us to accomplish the five freedoms of individual liberty. When we make it work for us, we avoid a concentration of arbitrary power, both private and public.

Thus far, we have found that when our written Constitution is interpreted by use of the cardinal rules of construction applied to legal instruments, it is a powerful tool in the maintenance of the five freedoms of individual liberty and the right to an equal ballot. This attitude toward our Constitution does not result in complete agreement, but that does not perturb me. On the contrary, I do scare easily when I read a majority opinion of our United States Supreme Court which shows an attitude toward our written Constitution that allows it to be interpreted without any real use of the cardinal rules of construction of written instruments. For example, such is the accusation of Justice Harlan in his dissenting opinion in *Reynolds v. Sims*, 377 U. S. 533 (1964), when he writes:

... It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored.¹

Our procedures to maintain a free society do not allow for that attitude to become a habit. In the same dissenting opinion Justice Harlan says why this is so:

... The Constitution is an instrument of government, fundamental to which is the premise that in a diffusion of governmental authority lies the greatest promise that this Nation will realize liberty for all its citizens. This Court, limited in function in accordance with that premise, does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process. For when in the name of constitutional interpretation, the Court *adds* something to the Constitution that was deliberately excluded from it, the Court in reality substitutes its view of what should be so for the amending process.²

In actual litigated controversies there have been more than 4,000 decisions authored by our United States Supreme Court which have interpreted and applied its less than 7,000 words — more than 50,000 pages of interpretative decisions. Some of these controversies

¹ 377 U. S. at 591.

² 377 U. S. at 625.