the state appellate court had ruled against the legal sufficiency of these same allegations. Indubitably, *Moore* marked the abandonment of the Supreme Court's deference, founded upon considerations of comity, to decisions of state appellate tribunals on issues of constitutionality, and the proclamation of its intention no longer to treat as virtually conclusive pronouncements by the latter that proceedings in a trial court were fair, an abandonment soon made even clearer in *Brown v. Mississippi* [1191] and now taken for granted.

The Court has held, however, that the Due Process Clause does not provide convicted persons a right to postconviction access to the state's evidence for DNA testing.[1192] Chief Justice Roberts, in a five-to-four decision, noted that 46 states had enacted statutes dealing specifically with access to DNA evidence, and that the Federal Government had enacted a statute that allows federal prisoners to move for court-ordered DNA testing under specified conditions. Even the states that had not enacted statutes dealing specifically with access to DNA evidence must, under the Due Process Clause, provide adequate postconviction relief procedures. The Court, therefore, saw "no reason to constitutionalize the issue." [1193] It also expressed concern that "[e]stablishing a freestanding right to access DNA evidence for testing would force us to act as policymakers . . . . We would soon have to decide if there is a constitutional obligation to preserve forensic evidence that might later be tested. If so, for how long? Would it be different for different types of evidence? Would the State also have some obligation to gather such evidence in the first place? How much, and when?" [1194]

Rights of Prisoners.—Until relatively recently the view prevailed that a prisoner "has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the state." [1195] This view is not now the law, and may never have been wholly correct.[1196] In 1948 the Court declared that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights"; [1197] "many," indicated less than

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[1191] 297 U.S. 278 (1936).

[1192] District Attorney's Office for the Third Judicial District v. Osborne, 557 U.S. ___, No. 08–6 (2009).

[1193] 557 U.S. ___, No. 08–6, slip op. at 2.

[1194] 557 U.S. ___, No. 08–6, slip op. at 20 (citation omitted). Justice Stevens, in a dissenting opinion joined by Justices Ginsburg and Breyer and in part by Justice Souter, concluded, "[T]here is no reason to deny access to the evidence and there are many reasons to provide it, not least of which is a fundamental concern in ensuring that justice has been done in this case." Id. at 17.

[1195] Ruffin v. Commonwealth, 62 Va. 790, 796 (1871).

[1196] *Cf. In re* Bonner, 151 U.S. 242 (1894).

[1197] Price v. Johnston, 334 U.S. 266, 285 (1948).