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A number of cases of considerable interest and importance were decided by the Supreme Court in the field of constitutional law. In many instances, the holdings also relate to public corporations but since these cases were decided on constitutional grounds, it has been decided to review them under this heading.

Two of the cases decided during the past year are of far-reaching consequence. They are those which involved the validity of Columbia's Standards for Dwellings Ordinance and the same city's Urban Redevelopment Program. The first case, *Richards v. City of Columbia,*[1] relates to the Ordinance prescribing standards for dwelling units wherein humans inhabit. The second, *Edens v. City of Columbia,*[2] relates to the constitutionality of Columbia's Urban Redevelopment Program and the statute of South Carolina authorizing the same. The first challenge failed and the court, by a 3 to 2 decision upheld the right of the City of Columbia, and other South Carolina municipalities with a population of more than five thousand persons, to regulate the standard of dwellings where human beings live. The second, a far-reaching plan designed to enable cities to remove slums through an overall program which would set apart areas formerly of slum character for a different character of use, did not survive the attack made upon it. Both plans stem from statutes designed to furnish incorporated municipalities with a means of removing slums and blighted areas and modernizing the communities in a way conducive to urban living.

The last two decades have seen a marked change in the development of American cities. Prior to the advent of the automobile, distances within the urban area itself were a matter of concern. Space and distance were then factors that were very real. People, of necessity, lived crowded together. The advent of the automobile is the great factor in the development of our suburbs. People wishing the advantages of city life no longer have to live in the crowded city itself but can get outside where space and air are more plentiful. For this reason, there is less incentive to properly maintain the

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1. 227 S.C. 538, 88 S.E. 2d 683 (1955).
2. 228 S.C. 563, 91 S.E. 2d 280 (1956).

older sections in the city itself. Single unit houses are converted into multiple apartments. They become less and less desirable. Of necessity, rents are reduced and maintenance stops. Thus, slums and blighted areas spring up. The growth of the city has continued to the point where many of these sections do have a real potential if they can be properly utilized. Frequently, they can be utilized once again for residential use. Sometimes this can be accomplished by an individual or by groups of individuals. Several notable restorations of this sort have taken place in downtown Charleston. But too often it is beyond the ability of the individual and frequently, key parcels of the area cannot be acquired. If these slums are to be removed, a governmental hand is needed. Doubtless with these factors in mind were the two statutes enacted.

In the *Richards* case the Ordinance established definite standards wherein human beings live. These included:

> A. Inside running water connected to a kitchen sink, and to a lavatory or laundry sink, and to a bathtub or shower, and to a toilet, all connected to the public sewer, or other disposal approved by the City Board of Health;
> B. Adequate screens and glass panes for all doors and windows;
> C. Fireplaces, flues, or other provisions for heating to afford reasonable comfort;
> D. A window in each living room and bedroom which opens not less than 45% of its area and can be effectively opened and closed as a means of ventilation;
> E. Electrical wiring system connected and installed in accordance with the electrical ordinance of the City;
> F. Privacy for toilet and tub or shower, effectively ventilated;
> G. The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather constructed and maintained so as to be reasonably weather tight and water tight, and sound and safe, and capable of affording privacy.

The court approved, as a sound postulate of law, the proposition that:

> When a building used as a dwelling house is unfit for that use and a source of danger to the community, the Legislature in order to promote the general welfare may require its alteration or require that its use for a purpose which injures the public be discontinued; and, subject to reasonable limitation, the Legislature may determine what alterations should be required and what conditions may constitute a menace to the public welfare and call for remedy.

It further said "Police 'power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property.' Mr. Justice Miller, in Re *Slaughterhouse Cases,* 1872, 16 Wall. 36, 21 L. Ed. 394."

Upon these principles, they upheld practically all provisions of the Ordinance in the face of a two-judge dissent which seemed to feel that too many of its provisions had no direct bearing upon public safety, health, peace and morals, but on the contrary denied a freedom of choice which the city dweller should have even though it involved "personal hygiene".

Unfortunately, the very nature of urban areas requires everyone to be interested in the hygiene of his neighbor, for epidemics, while frequently starting in slum conditions, do not confine themselves to those areas.

The dissent in the *Richards* case probably foretold the doom of the Urban Redevelopment plan.

Edens v. City of Columbia[3] is the suit brought to determine the validity of the condemnation provision of the South Carolina Urban Redevelopment Law.[4] The Urban Redevelopment Law of South Carolina follows the pattern of similar statutes enacted in practically every state of the United States and in the District of Columbia as well. Its declared purpose was to facilitate, with abundant Federal financial assistance, the redevelopment of urban regions in the state by the removal therefrom of so-called blighted areas. Little doubt exists but that there are many such areas in all of our cities. The statute requires the adoption of an overall plan for the city and empowers the acquisition of land in order to implement the plan. Mindful that all property could not be acquired voluntarily, the power of eminent domain is given. After the slum or blighted area was removed, the developing agency was empowered to sell the land to private persons or corporations upon the condition that the future utilization of the land will be for the purpose designated in the plan.

The constitutional question involved arises from Section 17 of Article I of our Constitution which provides:

> Private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

3. See note 2 *supra.*
4. CODE OF LAWS OF SOUTH CAROLINA, §§ 36-401 thru 36-414.

The question narrowed into whether a taking which afterwards could be disposed of to private persons constituted a taking for a public use.

Similar questions were involved in suits attacking the constitutionality of most of the statutes of other states. The great majority of these decisions followed the pattern of the Virginia Court in the case of *Hunter v. Norfolk Redevelopment & Housing Authority*.[5] The Virginia Court found that the primary purpose of the legislation was the elimination and rehabilitation of blighted and slum sections of urban areas, and that the removal of these areas was a public use of the land. The Virginia Court noted that when the need for public ownership which occasioned the taking terminated, it was perfectly proper to transfer the property to private ownership. Our court, however, followed the Supreme Courts of Florida and Georgia and became the third state to reject this view. Our court looked not to the removal of the slum areas, but to the use of the land subsequent to their removal. It therefore, interpreted the words "public use" in the constitutional provision literally and found that a taking under this statute would violate the constitutional inhibition. It conceded that public benefit might arise, but held that public benefit and public use were not synonymous.

If, as the statute says, a principal purpose of the plan is to remove slums, it would seem that the taking subserved a public rather than a private use.

Almost twenty years ago our court upheld governmental action for the removal of slums. In the case of *McNulty v. Owens*,[6] the court, after noting a legislative finding that slum clearance was necessary to the public health and to better public morals, held that the slum clearance and low cost housing project planned by the Columbia Housing Authority was an exercise of a proper governmental function and for a valid public purpose. It followed this holding by approving the exercise of the power of eminent domain. As to the exercise of this power, the court said:

> Having reached the conclusion that the project is for a public purpose, it follows that the power of eminent domain may be exercised *if that power be necessary in acquiring property for slum clearance* — and because of the public purpose of the project, it does not constitute a taking of property for private purposes within the prohibition of Section 17, Article I, of the Constitution. (Italics added)

5. 195 Va. 326, 78 S.E. 2d 893 (1953).
6. 188 S.C. 377, 199 S.E. 425 (1938).

The holding in the *McNulty* case was reviewed by the Supreme Court in the case of *Benjamin v. Housing Authority of Darlington County*.[7] There, in order to give an opportunity to slum dwellers and impoverished agricultural workers to remove themselves and their families to healthful living conditions, the court upheld a public housing development to be situated outside of the incorporated municipality in more or less rural areas of the County. The Court said:

> 'We conclude that the program of the Authority is for a public purpose, *both because it will eliminate unsanitary dwelling units* and because it will provide sanitary homes and living conditions for farm families of low income. While necessarily the program differs in detail from that of an urban housing development, we find nothing that would justify a decision differing from that of this Court in the *McNulty* case.' (Italics added)

Thus it seemed clear from these cases that both slum clearance and low cost housing are public purposes. In the *Edens* case the court seemed to lose sight of slum clearance and consider only the subsequent disposal of the property after the slum was removed. To the writer, removal of the blighted area is the basic object of the statute. The subsequent disposal of the real estate is the byproduct.

Unfortunately, the court was obviously adversely impressed by the rather ridiculous language of Justice Douglas of the Supreme Court of the United States in upholding the District of Columbia Urban Redevelopment Act. There Douglas said:

> . . . The concept of the public welfare is broad and inclusive (Citing cases). The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. In the present case the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.[8]

Quite properly, this fanciful language was roundly condemned in the American Bar Association Journal and other periodicals, but the

7. 198 S.C. 79, 15 S.E. 2d 737 (1941).
8. 348 U.S. 26, 75 S. Ct. 98 (1954).

real objection to the *Berman* holding lies not in its vacuous language but in the shocking abdication of the judicial power to review the finding of the administrative agency carrying out the redevelopment plan. Certainly there will be cases where property should not be acquired because it does not fall within the category of slum property and does not by itself block the implementation of the general plan, but the real solution lies not in the broad denial of the power to condemn, but rather in the preservation of judicial review in all instances. The great genius of our government is that courts stand ready to prevent tyranny — obviously Douglas does not take kindly to constitutional government as it was intended by those who wrote our Constitution.

Later this same year, our court quoted the following language with approval in *Dargan v. Richardson*:[9]

> . . . It has often been declared that all property is acquired and held under the tacit condition that it shall not be so used as to destroy or greatly impair the public rights and interests of the community.

On the basis of this statement, the court held that the invitee, fishing in a private pond for a fee, could not take fish without a license. There is no objection to that holding. It seems well supported by authority, but it does seem somewhat feudalistic that trout are protected but unfortunate persons dwelling in the many slum areas of our cities are left to struggle for themselves.

No action has been taken to amend the Constitution as suggested by the court, and the whole Urban Redevelopment Program in South Carolina is dead. When the progress in removing slums in the great metropolitan areas of the country is observed, it seems a shame that we must participate in paying the cost, but stand deprived of benefits locally.

In *Dargan v. Richardson*[10] the plaintiff Dargan, owned certain fish ponds which she stocked at her own expense and permitted persons desiring to fish therein to do so upon payment to her of a fee. After certain of her patrons had been arrested by Game Wardens for fishing without a South Carolina license, she brought suit to enjoin the enforcement of the statute requiring the procuring of a license on the theory that it was in derogation to property rights guaranteed to her by the Constitution. The court, after reviewing authorities elsewhere, held that the regulations were reasonable, and that they did

9. 229 S.C. 135, 92 S.E. 2d 167 (1956).
10. See note 9 *supra.*

not deprive plaintiff of her property rights. In so doing, the court cited, with approval, the language from the Massachusetts Court, noting that all property is held and acquired under the tacit condition that it shall not be so used as to destroy or impair public rights and interests of the community. In other words, the acceptance of government in any form carries with it not only the privileges derived from law and order, but the burden as well of conducting oneself and using one's property in a way which will not adversely affect the community interests of the governed.

Wilder v. South Carolina State Highway Department[11] is a controversy arising from the provision in the 1954 State Appropriations Act which empowered the Highway Department to add to each motor vehicle license fee 30c to cover postage charges. The Highway Department proceeded to charge the 30c in all instances, that is, both where the licenses were mailed and where the licenses were issued at its regional offices throughout the state. Plaintiff brought suit to recover 60c overcharged him on two automobile license tags which he had picked up in person at the Sumter office of the Highway Department. The plaintiff sought to make his suit a class suit, for among other relief, he sought an allowance of attorneys' fees and costs out of the fund which he hoped to create for all who had been thus overcharged. The court below had sustained the plaintiff in theory by overruling a demurrer of the Highway Department, notwithstanding that there was no statutory authorization allowing the state to be sued on such a cause of action.

Following the institution of the suit, the Highway Department had discontinued its practice of charging 30c for license plates which were delivered in person, and during the pendency of the action made numerous attempts to return to plaintiff his 60c. It announced its willingness to treat all others in the same way.

The court stated that while there was authority in other states which permitted suits against the state to recover an unlawful tax or assessment, South Carolina decisions did not permit a recovery requiring return of such illegal taxes, in the absence of a statute creating such right of action. The court held that no statute existed which permitted this suit, and as a consequence held that it could not be maintained. In argument before the Supreme Court, the plaintiff attempted to invoke the due process clause in the State Constitution. The court held that this provision had no application in this instance.

The court was obviously impressed with the facts of this case and

11. 228 S.C. 448, 90 S.E. 2d 635 (1956).

the statement in the brief of the Attorney General that the Department had collected postage charges from approximately 400,000 persons who had purchased their license tags over the counter. It therefore said that it would not decide what remedy would be available if the Highway Department should arbitrarily refuse to refund the 30c to those who applied in person therefor.

Schumacher v. Crawford[12] discloses a most interesting set of facts and a sound application of the proposition of law that retrospective legislation cannot impair vested property rights by reason of the constitutional inhibition against depriving persons of property without due process of law. There are other interesting questions of law in the case as well, but this is the most important question for the purposes of this review.

One James Wister Crawford first married one Pearl Briggs by lawful ceremony on February 26, 1906. Out of this marriage the successful litigant Jeannette C. Chapin was born. Sometime following Jeannette's birth, Crawford removed himself from Clinton where he had established a home for his wife and daughter and took himself to Columbia where he proceeded to remarry (without benefit of divorce but apparently with benefit of clergy) one Pauline Grant. Out of this marriage Eleanor Pauline Crawford Schumacher was born. At the time of this purported second marriage, the law of South Carolina very clearly stated that marriages contracted while either party had a spouse living should be void.

In 1951 the General Assembly amended that law by adding the following proviso:

> Provided, further, that when either of the contracting parties enters into the marriage contract in good faith and in ignorance of the incapacity of the other party, any children born of the marriage shall be deemed legitimate and have the same legal rights as a child born in lawful wedlock.

Crawford died intestate on November 2nd, 1952. This date is of great significance in disposition of the case. In codifying the 1951 proviso, its language was changed so that when, on November 19th, 1952, the Governor signed the Act declaring that the Code was the sole statutory law of South Carolina as of January 8th, 1952, the proviso read:

> When either of the contracting parties to a marriage that is void under the provisions of Section 20-6 *entered* into the mar-

12. 228 S.C. 77, 88 S.E. 2d 874 (1955).

> riage contract in good faith and in ignorance of the incapacity of the other party, any children born of the marriage shall be deemed legitimate and have the same legal rights as a child born in lawful wedlock. (Italics added)

The case involved a contest between the two daughters of the twice married Crawford. Daughter Eleanor Pauline contended that the language of the 1952 Code controlled, notwithstanding the fact that Crawford had died seventeen days before the Governor signed the Act making it the only statutory law of South Carolina. In other words, by changing the word "enters" to "entered" the prospective intention of the 1951 statute had been converted into a statute which was retrospective in application. The court noted that the question to be answered was the effective date of the Code insofar as it applied to the case, and it held that if the court adopted the construction sought by Eleanor Pauline, it would have the effect of divesting daughter Jeannette of a vested property interest. The court said that this could not be done and that such a disposition of the question was required by Section 8, of Article I of the Constitution.

This ruling disposed of the case, but notwithstanding the court went on to decide the case again on a different ground. This time it concluded that the language in the 1952 Code was ambiguous, which permitted the court to resort to the original Act to determine legislative intent. The decisions which the court cites which enables it to resort to original enactments to solve ambiguities in Code provisions are perfectly sound but hardly applicable here where the language of the Code is plain and free from ambiguity and when the point at issue had already been decided. There was a very specific purpose on the part of the framers of our Constitution when they provided for a decennial codification of our laws. They wished to spare the public and the lawyer the necessity for going through each and every volume of the Statutes in order to ascertain a provision of statutory law. (*State v. Meares*.[13]) Consequently, it seems to the writer that the court should be extremely reluctant to go back of the Code for any reason, and it should do so only when no other method can be found to effect the determination of the controversy then before it.

As noted by the court in *State v. Conally*,[14] coordinate with the rule which permits resort to the original statute in case of ambiguity is the rule which should be equally respected, *viz.*:

13. 148 S.C. 118, 145 S.E. 695 (1928).
14. 227 S.C. 507, 88 S.E. 2d 591 (1955).

> Where the meaning of a code provision is plain and unambiguous the court cannot recur to the original statute for the purpose of ascertaining its meaning. The ambiguity must be apparent in the revised version itself; resort to the original enactment must be for the purpose of solving not creating the ambiguity.

Doyle v. Rosen[15] involves no important principle of constitutional law — rather it is an interpretation of a special constitutional amendment relating to the bonded debt of Georgetown; a secondary question related to a provision of the revenue bond act for utilities.[16] The original stringent debt limitations imposed by Section 7, Article VIII and Section 5, Article X, had been relaxed in so far that the City of Georgetown was concerned to bonds whose proceeds were applied to the city's water works system, sewerage system, and its municipal gas and electric light plants, *where the entire revenue arising from the operation of such a plant was devoted solely and exclusively to the maintenance and the operation of the same.* Litigant Doyle contended that this provision meant that water works revenue must be devoted to the water works system and hence Georgetown could not combine its systems and pledge the revenue from the combined systems to pay principal and interest on bonds whose proceeds were to be used in part to improve the sewerage system which admittedly produced no revenue at all.

The court did not agree with this construction and permitted Georgetown to consolidate its water works system, its sewerage and electric light and gas systems and pledge the revenue of the systems as thus combined for improvements to any of the three combined units.

A provision in the revenue bond act for utilities required that provision for debt service or bonds issued pursuant to it be made prior to the payment of operation and maintenance costs. Georgetown had outstanding bonds payable from net revenues; hence, the bonds which it sought to issue had to be made payable from revenues remaining after operation and maintenance had been met. To dispose of this question, the court referred to its recent decision of *City of Spartanburg v. Blalock*[17] and held that the real intent of the revenue bond act was to enable all municipalities of the state to utilize its provisions to the extent that conditions and their outstanding obligations permitted; an answer which sustained the action taken

15. 229 S.C. 67, 91 S.E. 2d 887 (1956).
16. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 59-361 thru 59-415.
17. 223 S.C. 252, 75 S.E. 2d 361 (1953).

by Georgetown even though the disposition of the revenue from the utilities systems did not literally conform to the order set out in Code Section 59-402.

Dunham v. Davis.[18] This was an action by the heirs of one W. A. Dunham to recover possession of a tract of land which had been owned by W. A. Dunham at the time of his intestate death in 1913. The defendant claimed title under a tax deed. There had been no administration of the estate of W. A. Dunham, and the property had been sold to the defendant in January, 1936, at a tax sale for delinquent taxes in the name of "Estate of W. A. Dunham" in which name the property was returned for taxes and the levy made. The tax deed was dated May 10, 1937, and was delivered to the defendant during May of 1937. The 1936 tax sale was conceded by the defendant to be invalid, but the defendant contended that it was validated by Act No. 259 of the 1947 Acts of the General Assembly (parts of which are now codified as Sections 65-2769 and 65-2769.1) and that, therefore, the plaintiffs were barred by the two year statute.

Section 1 of the 1947 Act provided that a levy and sale of property for delinquent taxes could be made in the name of the person in whose name the property was returned for taxation whether or not he "be deceased or in existence at the time of the levy and/or sale without naming or referring to the heirs or estate of such owner". Section 3 provided "That this Act shall apply to sales heretofore made, as aforesaid, and such sales are hereby confirmed; provided, however, this Act shall not be construed so as to effect suits or actions pending on claims heretofore actually made against purchasers or their heirs or grantees." (Incidentally, Section 3 was omitted in the codification of the Act in the 1952 Code. However, for the purpose of this case, the court assumed without deciding that the applicability of Section 3 to prior tax sales was not affected by its omission from the 1952 Code).

The court held that Section 3 of the 1947 Act did not validate a void tax sale on the ground that title to the property had vested in the plaintiffs prior to the tax sale, and they were not affected by it because the sale was void. "Retroactive application of the 1947 Act would be clearly unconstitutional as depriving them of property without due process of law."

The court recognized that the Legislature, by a curative or validating statute which is necessarily retrospective in character and retroactive in effect, can validate any act which it might originally have

18. 229 S.C. 29, 91 S.E. 2d 716 (1956).

authorized subject to the constitutional limitation against depriving persons of property without due process of law.

Thus, in an action between private litigants, the court has protected property rights against deprivation without due process. This is a sound decision.

The case of *Bynum v. Barron*[19] involves the validity of a compromise and settlement effected by the General Assembly through the enactment of a directive in the 1954 York County Supply Act.

An attempt had been made in the 1946 Supply Act for York County to increase the compensation of York County Treasurer, D. D. McCarter, by adding to his salary future "execution fees and execution fees since his term of office began July 1, 1941". The Annual Supply Bills for several years following contained a similar provision In 1949 a taxpayer's suit was instituted to enjoin the payment of further tax execution fees to McCarter and to require him to account for such as had theretofore been paid to him, on the ground that such payments were illegal. A rule to show cause issued against McCarter was followed by a temporary restraining order. No further proceedings were had in that action.

With that action pending, in 1954 the York County Supply Act noted that from the tax executions then in the hands of the delinquent tax collector of York County, fees due to McCarter for having issued the executions would equal or exceed the fees which would have accrued to McCarter from July 1, 1941, to July 1, 1946 (the period when McCarter's compensation was salary alone unless the retroactive attempt to give him the fees noted was effective). It, therefore, directed that McCarter be paid the Treasurer's fees on such executions, and that the acceptance on his part would bar him from asserting any claims in the future for fees on tax executions. Numerous contentions were made that the settlement act was invalid, but the most important of these is that which challenged the legislative power to effect the compromise and settlement of the pending controversy in the courts. The court held that such power existed if the facts relied on by the Legislature to justify its action were not found to be inaccurate. In so holding, the court noted that legislative findings of fact were presumptively correct and will be accepted by the court in the absence of allegation and proof to the contrary. No quarrel can be found with this principle of law. Its application to the facts of this case give rise to question. One must note that the method of compensating the Treasurer is most devious. Clearly, the

19. 227 S.C. 339, 88 S.E. 2d 67 (1955).

attempt to provide compensation to a public officer for services after the same had been rendered is invalid as violative of Section 30, of Article III, of the Constitution. Thus the pending suit must have succeeded in preventing McCarter from obtaining the fees prior to 1946. Therefore, it is difficult to see what there was to compromise. True, the General Assembly might provide by law for future compensation of a county officer by fees, notwithstanding that he formerly had been placed on a salary basis of compensation exclusively. But, by the tame token, public officers have no contractual or property rights in their offices and their salaries may be reduced during the period of time for which they have been elected to serve. Furthermore, under the South Carolina Constitution, as now amended, this can be accomplished by special act. Hence, if the General Assembly wished to stop McCarter from drawing compensation on the execution fees subsequent to the effective date of the 1954 Supply Act, it had merely so to state. If it did not so state, but wished McCarter to have fees, that too could have been accomplished. But here, while admitting that McCarter had no right to fees prior to 1946, the court lets him have them as a compromise. Thus, by indirection, there is brought about that as to which direct action is forbidden. The decision should have gone the other way.

Flemming v. South Carolina Electric & Gas Company[20] is not an unexpected nail in the coffin which is about to bury civilized man's greatest effort at self-government. Nor does this decision in itself do too much harm; for today the local bus is not in the universal use that the street car was forty years ago. Hence, of itself, the conclusion by the Court of Appeals for the Fourth Circuit, that the action of an employee of the South Carolina Electric & Gas Company in requiring a negro woman to sit in the part of the bus reserved for her race violated the Fourteenth Amendment because it was done pursuant to the statute law of South Carolina requiring such action, does no great harm. But since it is the part of a great pattern of destruction, the writer cannot resist the temptation to comment on the appalling ignorance in this country today concerning the true concept of constitutional government which extends even to the Supreme Court of the United States itself.

Do-gooders in all walks of life and at all levels of intelligence have portrayed our government as one of perfection under which democracy and perfect justice can and will always flourish. Such is neither the American constitutional system nor the Anglo-Saxon theory of

20. 224 F. 2d 752 (1955).

justice, and it has long been overdue that this be explained to our naive public. Had the barons at Runnymede wished to secure perfect justice, they might have been satisfied with something different from a trial by their peers. Many would have been happy with the right to challenge to physical combat. But the whole truth of the matter is that the wiley barons knew that by obtaining a trial by their peers, many could escape punishment for crimes that they were guilty of. Which, may we ask, is most likely to decide guilt or innocence correctly, Judge Parker, the chief judge of our Court of Appeals for the Fourth Circuit, or the jury in a magistrate's court? From the abstract point of view there can be no argument. This simple analogy points up the jury system in its true perspective. It was never dreamed that perfect justice would be done in all cases. The guilty might from time to time escape punishment and the innocent might occasionally be found guilty. But the appellate courts are available to overturn unjust convictions. The system is just as simple as that. The Anglo-Saxon mind refused to seek abstract perfection. He realized that human nature was at best imperfect and that any system of justice based upon perfection could never succeed with mere human beings.

That same recognition of human imperfection is the great genius of the American constitutional system of government. Those who wrote our Constitution evolved the greatest system of checks and balances ever conceived. These checks and balances were in tacit recognition of the impossibility of achieving abstract perfection in any type of governmental set-up, and they were undoubtedly designed in order that the greatest good could be done for the greatest possible number.

They also provided for change where change was required. But in so providing for changes, they recognized the conceit of succeeding generations which might assume for themselves greater knowledge than their predecessors, and deliberately slowed down the process of change in order that those who proposed the changes might pause and reflect upon their own apparent wisdom.

So sure were the agriculturists of the South and the merchants of New England that a central government could not do justice on a local basis, that they not only preserved the absolute integrity of the states forming the Union, but they denied to the Federal government any and all aspects of police power.[21] But, unfortunately, those who

21. *Compare* Nigro v. U. S., 276 U.S. 332, 48 S. Ct. 388, 72 L. Ed. 600 (1927), upholding a conviction for violation of an early Federal narcotics act upon the theory that the penalty provisions in the law relating to traffic in

now hold office as judges of the United States Supreme Court seem wholly ignorant of this Anglo-Saxon approach to representative government. And, because in their own minds, they have assuredly achieved a wisdom denied to their predecessors, it does not occur to them that they as a court should do anything less than to render perfect justice on all occasions and preserve and promote democracy in its purest aspects.

The great tragedy lies not only in the segregation decisions, for the writer, for one, feels that the South can successfully resist them in the main. The crime is that the court has promoted democracy as a form of government to be sought for, oblivious of the fact that democracy, in its final analysis, represents no more than the unimpeded will of the majority. As such it is the most primitive and cruel of all types of government. Petty bickering undoubtedly brought about the election of the tribal chieftain as a protection to the weaker from the stronger members of the tribe. Slowly, through the centuries, and at the expense of great human suffering and countless human lives were the powers thus first voluntarily granted to the tribal chieftain taken from his successor the absolute monarch. But those who wrote our Constitution had a better memory than did the present Supreme Court. They remembered man's bigotry toward his fellow man and set up in our written Constitution a system of checks and balances to prevent a return to absolute democracy, and to protect minorities from unenlightened majorities. Thus, although democracy in its final form is just what those who wrote our Constitution sought to avoid, it is just what the nine *wise* men of the Federal Supreme Court who now interpret the Constitution are plunging this country headlong for. Only public enlightenment can prevent the pending disaster, and it is time that the public began to think, in order that the school children of today may be taught true values and shall not remain longer confused by glittering generalities and psychological discourses. To live, the United States must have a government of laws and not of men. It likewise must have courts willing to interpret laws and not try to make them.

narcotics was incidental to the revenue phase of the act requiring the payment of a license for the privilege of dealing in narcotics. In this case Chief Justice Taft said "In interpreting the act, we must assume that it is a taxing measure, for otherwise it would be no law at all."