

EDUCATION, SEGREGATION AND THE SUPREME COURT —A POLITICAL ANALYSIS.

By JOHN P. ROCHE†

Eleven months ago in the celebrated *Sweatt* and *McLaurin* cases¹ the United States Supreme Court made headlines by requiring two southern state universities to grant full equality of educational treatment to two Negro students. Since that time a discussion has raged on the implications of these two decisions with some commentators maintaining that the Court in effect undermined the precedent of *Plessy v. Ferguson*,² and others of a more cautious bent holding that the Court did no more than reemphasize the principles enounced ten years ago in *Missouri ex rel. Gaines v. Canada*.³ Since there has now been time for the Court's decisions last June to percolate down to the lower federal and state courts, it seems timely to reassess the *Sweatt* and *McLaurin* cases in the light of their effects on subsequent equal protection decisions.

Before beginning this investigation, however, it may be advisable to examine closely the Court's holdings in those two cases to see what, if any, alternate, or possibly even contradictory, interpretations of the meaning of "equal protection" might be based upon them. Two important points deserve extended consideration.

First, in spite of the urgings of counsel for *Sweatt* and *McLaurin* and many groups in *amici curiae* capacities,⁴ the Court refused to re-examine the doctrine laid down in *Plessy v. Ferguson*⁵ that equal, separate facilities for Negroes and whites do not violate the equal protection clause of the Fourteenth Amendment. In fact, the Court refused even to discuss this issue. In reply to the contention that separate facilities were *per se* unequal Chief Justice Vinson merely stated:

† A. B., Hofstra; A. M., Ph. D., Cornell University. Assistant Professor of Political Science, Haverford College. Author, *The Loss of American Nationality—The Development of Statutory Expatriation*, 99 U. OF PA. L. REV. 25 (1950).

1. *Sweatt v. Painter*, 339 U.S. 629 (1950), *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950), *Henderson v. United States*, 339 U.S. 816 (1950) has been omitted from consideration since it was decided on the basis of statutory interpretation.

2. 163 U.S. 537 (1896).

3. 305 U.S. 337 (1938).

4. Among the groups that filed supporting briefs were the United States, the Congress of Industrial Organizations, the American Federation of Teachers, the American Veterans Committee, and the Committee of Law Teachers Against Segregation. The National Association for the Advancement of Colored People carried these cases to the Supreme Court.

5. 163 U.S. 537 (1896).

[These cases] present different aspects of this general question: To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university? Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court.⁶

Looking at *Plessy v. Ferguson*⁷ in the light of this declaration, one might be justified in asking how the "separate but equal" doctrine ever obtained validity in the field of education in the first place. *Plessy* dealt with the validity of separate railroad accommodations, not segregated educational facilities. As one of the briefs presented to the Court in the *Sweatt* case put it:

in *Gong Lum v. Rice*, 275 U.S. 78 (1927), the Court treated segregation in education as legitimate on the basis of the *Plessy* and *Cumming* cases despite the fact that the basic problem was not argued in the *Gong Lum* case and that it was neither involved in *Plessy* nor decided in *Cumming*. The result is that if segregation in education is constitutional, it became so under a rule of law that came from no place.⁸

In short, the "separate but equal" rule enunciated in *Plessy v. Ferguson* was almost automatically broadened to regulate every possible relationship between Negroes and whites, but the present Court will supply no similarly automatic counter-agent. Every area of segregation must be litigated on its merits before the shade of *Plessy* will be exorcised from American life and constitutional law. Presumably the Court looks forward to years of peeling layers off the onion and at last arriving at the place where nothing remains. This may be a process which will cause the least dislocation and furore in the South, but it is litigious, expensive and, above all, time consuming. At a time when a speedy demonstration of the meaning of American democratic ideals is an essential factor in the struggle with the pseudo-egalitarian Communists, any countenancing of segregation by the Supreme Court arms our enemies.

Why did the Court so curtly reject the sword offered to it? Speculation on the motives of the justices is an unrewarding pastime and normally should be left to the retrospective omniscience of biographers, but there is one feature of the *Sweatt* and *McLaurin* cases that en-

6. *Sweatt v. Painter*, 339 U.S. 629, 631 (1950).

7. 163 U.S. 537 (1896).

8. Brief of the Committee of Law Teachers against Segregation, as *Amicus Curiae* p. 35, *Sweatt v. Painter*, 339 U.S. 629 (1950).

courages contemporary analysis—both decisions were *unanimous!* At a time when the unanimous decision is rapidly becoming a rare bird in the forest of American constitutional law,⁹ even the most cautious commentator may be led to suspect something out of the ordinary when two unanimous decisions occur on one day in the vital area of racial segregation.

It is possible that a majority could have been mustered to overrule *Plessy v. Ferguson*, but that this majority might have felt that a five-four decision on the issue would be politically disastrous. It is even more probable that the advocates of this strong action could not muster a majority and settled for a unanimous decision on the lowest common denominator. This would explain in part the Chief Justice's evasion of the basic question of "separate but equal." In any case, the unanimity of the Court in these opinions was a political *tour de force*, given added effectiveness by the fact that Chief Justice Vinson, a leading southern figure in Washington,¹⁰ spoke for the Court.

Second, the Court pointed out that there were certain situations in which separation *per se* denied that equality of treatment which is required by the Fourteenth Amendment. In the *McLaurin* case the issue was: Once admitted to a combined state university, could a Negro be segregated? In the *Gaines* case,¹¹ the Court had held that a state wishing to segregate college students must build them a separate institution equal in all respects to its counterpart. If the state were unwilling to do this, it must admit them to its regular educational facilities. Unwilling to build a separate Graduate School of Education for its Negro constituents, the state of Oklahoma had admitted McLaurin to its white Graduate School of Education, but took great pains to prevent the Negro student from "contaminating" his white neighbors. He was given a separate desk in the mezzanine of the library and not permitted to use the desks on the floor of the reading room, he was required to sit in the anteroom adjoining the classroom, he was given his meals at a different time from white students.¹²

Chief Justice Vinson held that McLaurin had indeed been denied the equal protection of the laws. Once he had been admitted to a state

9. See Pritchett, *The Roosevelt Court: Votes and Values*, 42 AM. POL. SCI. REV. 53 (1948), for an excellent treatment of the growing number of dissenting opinions and the reasons for this growth. Pritchett shows that the percentage of non-unanimous opinions rose from 16 in 1935 to 64 in 1946, the last year analyzed. The analysis of Note, *The Supreme Court, 1949 Term*, 64 HARV. L. REV. 114 (1950) reveals that only 38% of the decisions in which full opinions were read were unanimous. *Id.* at 162. Needless to say, the more controversial the issue, the more dissents.

10. Several times in the past two years southern Congressmen have suggested unofficially that Vinson replace Acheson as Secretary of State.

11. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

12. *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 640 (1950).

supported graduate school in which whites and Negroes were combined, McLaurin "must receive the same treatment at the hands of the state as students of other races."¹³ Thus the state of Oklahoma, having refused to supply McLaurin with separate equal facilities, must grant him full equality in its single, combined school. In effect, the *McLaurin* case was an implementation and amplification of the *Gaines* case.¹⁴ It has added importance from the fact that the Court here pointed to a situation in which separation was *per se* unconstitutional.

The *Sweatt*¹⁵ case was far more complicated and contained overtones that were missing from *McLaurin*. Following the rule established in the *Gaines* case, Texas opened a separate law school for Negroes in preference to admitting them to its white school. However, Sweatt claimed that this Negro school was unequal in facilities to its white counterpart. The Court agreed that the Negro facilities were separate and unequal, but based its opinion on grounds that *could* go far to undermine the "separate but equal" rule. After pointing out that the white law school was technically superior to the Negro one in its staff, buildings, and library, Chief Justice Vinson continued,

What is more important, the University of Texas Law School [white] possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. . . . The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts.¹⁶

The Chief Justice then noted that the Negro law school automatically excluded 85% of the population of Texas—the people who would sit on the juries, be the witnesses, officials and judges in the courts where Negro lawyers would practice. From this he drew the conclusion that,

With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.¹⁷

The implications of this last statement are tremendous. The Chief Justice stated in so many words that *separate legal education cannot be equal*: the very existence of segregation in legal training violates the Fourteenth Amendment. Immediately the question arises:

13. *Id.* at 642.

14. 305 U.S. 337 (1938).

15. 339 U.S. 629 (1950).

16. *Id.* at 634.

17. *Ibid.*

In what other areas of education might this rule be applied? What one is here asking is in what other fields are students being trained for community action, and answers immediately spring to mind. Certainly the medical and teaching professions are analogous to the legal, and it is difficult to think of an area to which this "community action" principle is not in some degree applicable.

Specific application to other fields of learning must await the labyrinthine process of litigation. Furthermore, Justice Frankfurter to the contrary notwithstanding,¹⁸ the Court's attitude *must* be charted as much from the cases it refuses to review as from those on which it expresses an explicit opinion. Since the Court refuses to generalize, or even to peek beyond the confines of the immediate case at bar, its specific actions in denying certiorari assume additional meaning.¹⁹

This summary and interpretation of the *Sweatt* and *McLaurin* cases should serve to demonstrate that the Court left several avenues of precedent open for lower courts to follow. In analysing a segregated situation a judge may:

1. Cite the *Sweatt* and *McLaurin* cases as precedents for ruling that "separate but equal" facilities do not violate the equal protection clause of the Fourteenth Amendment—"Plessy was not overruled."

2. Cite the *McLaurin* case as precedent for ruling that where a state has combined Negroes and whites in the same facilities it may not enforce segregation.

3. Cite the *Sweatt* case as precedent for ruling that where unequal separate facilities have been established the Fourteenth Amendment has been violated.

4. Cite the *Sweatt* and *McLaurin* cases as precedents for ruling that in certain situations the very fact of segregation engenders inequality, violating the Fourteenth Amendment.

Although the Court's decisions in these two cases aroused national and international²⁰ attention, there have been relatively few relevant cases in the federal and state courts decided in the last eleven months. However, an analysis of these subsequent decisions may prove useful in determining what the effect of the above decisions on the segregation system will be.

18. See *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950).

19. For an excellent discussion of this point, see Harper & Rosenthal, *What The Supreme Court Did Not Do In the 1949 Term—An Appraisal of Certiorari*, 99 U. OF PA. L. REV. 293 (1950).

20. For an acute foreign analysis see Hinden, *Hope in the Negro South*, 14 SOCIALIST COMMENTARY 210 (Sept. 1950).

To date the Supreme Court has taken action in two cases on the basis of the *Sweatt* and *McLaurin* holdings. The first, *Rice v. Arnold*,²¹ may be very significant, for in it the Court suggested a possible new application of the "combined facilities" rule laid down in the *McLaurin* case to a municipal golfcourse. The city of Miami, Florida, owns a municipal golfcourse on which Negroes were allowed to play one day per week. This division of time between whites and Negroes was based on the statistical ground that six times as many whites as Negroes used the course. The Florida Supreme Court held that this was a legitimate division of time as the Negroes were granted substantial equality.²² The Supreme Court, in a one paragraph *Per Curiam* decision, reversed this holding and remanded the case to the Florida court for "reconsideration in the light of subsequent decisions of this Court in *Sweatt v. Painter*, . . . and *McLaurin v. Oklahoma State Regents*, . . ." ²³

What did the Court mean by this cryptic statement? While it is impossible to know exactly, it would appear that the city of Miami has the option of building a separate, equal golfcourse for Negroes, or admitting Negroes without discrimination of any kind to the combined golfcourse. If this is the correct interpretation of the Court's intent, the implications for southern municipalities are enormous. Unless these towns are prepared to build or otherwise establish fully equal separate recreational facilities for Negroes, they must admit them to combined facilities on a basis of complete equality. An arrangement whereby Negroes use a municipal swimming pool one day per week would obviously fall under this rule, but what about segregation in municipally owned transportation systems? If the "combined facilities" rule were applied to segregation in street cars, buses, etc., where Negroes are relegated to the rear seats of the vehicles, it would seem that municipalities would either have to supply separate, equal buses for Negroes, or abandon the discriminatory seating arrangements. State laws or municipal ordinances requiring segregation on vehicles used by the whites and Negroes in common logically should fall under this interdict. If carried to this point, the doctrine of "combined facilities" would go far in the direction of subverting the *Plessy* rule.

The second case decided by the Supreme Court, *Board of Supervisors of Louisiana State University v. Wilson*,²⁴ served to reemphasize the rule of the *Sweatt* case that separate facilities must be equal. The district court, in ruling that Wilson must be admitted to the white

21. 340 U.S. 848 (1950).

22. *Rice v. Arnold*, 45 So. 2d 195 (Fla. 1950).

23. 340 U.S. 848 (1950).

24. 340 U.S. 909 (1950).

law school at Louisiana State University, did not discuss the question of whether segregated legal education could be legitimate; it merely held that equal facilities had not been supplied for Negroes.²⁵ The Supreme Court, again *Per Curiam*, affirmed the decision of the lower court without discussion.²⁶ Thus, unfortunately, in neither opinion was the implication of the *Sweatt* case that segregation in publicly supported colleges training students for "community action" was unconstitutional elaborated.

Since the *Sweatt* and *McLaurin* cases, only three segregation problems have been litigated in the United States Courts of Appeal. Last July the Fourth Circuit held in *Boyer v. Garrett*²⁷ that the city of Baltimore had supplied separate, equal recreational facilities for Negroes and whites, and, consequently, that segregation was valid on the basis of *Plessy v. Ferguson*. In December 1949 the district court upheld the segregation on the ground that *Plessy v. Ferguson* was still good law,²⁸ and the Circuit apparently felt that *Sweatt* and *McLaurin* had confirmed *Plessy*, adding "It is for the Supreme Court, not us, to overrule its decisions or to hold them outmoded."²⁹

In the second case, *Brown v. Ramsey*³⁰ the Eighth Circuit sustained the separate educational facilities of Fort Smith, Arkansas, as substantially equal. The decision in this case, as in *Boyer v. Garrett*,³¹ rested squarely on the *Plessy* rule. Unless the Circuits had been willing to reject *Plessy* outright, it is difficult to see how they could have decided either case differently.

On March 27, 1951, the Fourth Circuit held that the University of North Carolina must admit Negro law students to its white law school. The court based its decision on the patent inequality of the legal training offered to Negroes at the colored law school.³²

In addition to the *Wilson* case,³³ discussed above at the appeal level, there has been only one relevant recorded decision in the United

25. *Wilson v. Board of Supervisors of Louisiana State University*, 92 F. Supp. 986 (E.D. La. 1950).

26. *Board of Supervisors of L.S.U. v. Wilson*, 340 U.S. 909 (1950).

27. 183 F.2d 582 (4th Cir. 1950).

28. *Boyer v. Garrett*, 88 F. Supp. 353 (Md. 1949).

29. *Boyer v. Garrett*, 183 F.2d 582 (4th Cir. 1950).

30. 185 F.2d 225 (8th Cir. 1950).

31. *Boyer v. Garrett*, 183 F.2d 582 (4th Cir. 1950).

32. Information on the content of the court's opinion obtained through the courtesy of Mr. Robert Carter, Assistant Special Counsel, N.A.A.C.P. This was a reversal of District Judge Hayes' decision last November that the facilities offered to Negroes at North Carolina College were "substantially equal" to those at Chapel Hill. See *Civil Liberties*, Monthly Bulletin of the American Civil Liberties Union, November 1950, p. 4.

33. See notes 24 and 25 *supra*.

States District Courts since last June.³⁴ In *Draper v. St. Louis*³⁵ a district court ruled that Negroes must be given immediate access to outdoor swimming pools supported by municipal funds. Although Judge Hulén did not explicitly so state, it would appear from this decision that St. Louis must admit Negroes to all outdoor swimming pools until it can build fully equal, separate pools for them. The city apparently cannot escape from its obligation by merely building one outdoor pool for Negroes.³⁶

So far there has been little recorded activity in the state courts occasioned by the *Sweatt* and *McLaurin* decisions. A thorough review of all reports shows eight cases on the points at issue. For convenience sake, they will be discussed in chronological order.

The first case, *State v. Board of Education*,³⁷ was decided before the Supreme Court's decisions in the *Sweatt* and *McLaurin* cases, but since a petition for rehearing was denied a week after the High Court's action, it has been included in this analysis. The issue at bar was whether there was "substantial equality" between the Negro and the white state teachers' colleges in St. Louis. The Supreme Court of Missouri held, reversing a lower court decision, that there was substantial if not mathematical equality between these two institutions. It would seem that this would be a case in which the "community action" rule, discussed above, might be applicable. If teachers are being trained to work in mixed communities, it could follow from the tenor of Chief Justice Vinson's remarks in the *Sweatt* case³⁸ that segregation in teacher training is automatically unconstitutional. However, the Supreme Court of Missouri refused to revise its decision, and there is no recorded appeal to the United States Supreme Court.

The next five cases, decided on the same day by the Florida Supreme Court, all concerned the right of Negro students to attend the white facilities of the University of Florida. Two asked admission

34. Apparently there have been decisions on this point that have gone unrecorded. For example, an article in a weekly magazine recently discussed the admission of one Gregory Swanson to the Law School of the University of Virginia. The board of visitors of the University at first refused the Negro's request for admission. "A court test followed. It took a three-judge Federal court about thirty minutes to hear and to decide the case. An injunction was issued to compel the University to admit Mr. Swanson and 'others similarly situated' to its law school." King, *Breaking Down the Barriers*, *The New Leader*, September 30, 1950, p. 11. This decision apparently was not solemnized in the Federal Reporter, and there may be others in the same category.

35. 92 F. Supp. 546 (E.D. Mo. 1950).

36. "The completion by defendants at some future date, and restriction to use of members of plaintiff's race, of an open-air swimming pool in some other part of the City, is no answer to plaintiffs' present claim of their constitutional rights. Even when completed such a pool may mitigate discrimination, but it will not validate it as to other sections of the City." *Id.* at 550.

37. 230 S.W.2d 724 (Mo. 1950).

38. See note 1 *supra*.

to the School of Law,³⁹ one to the College of Chemical Engineering,⁴⁰ one to the College of Pharmacy,⁴¹ and one to the Graduate School of Agriculture.⁴² Subsequent to the filing of these suits, the state of Florida took action to establish separate educational facilities for these Negro students. The Florida court held that the establishment of these schools on the substantially equal basis contemplated would satisfy the demands of the Fourteenth Amendment, and approved the interim arrangement whereby the Negroes could attend the white facilities until equal separate schools have been set up.⁴³ The court refused to examine the question of whether these proposed facilities would in fact be substantially equal on the ground that the Negro students could not raise this issue until they were admitted.⁴⁴

It is interesting to note the interpretation this court put upon the Supreme Court's holding in the *Sweatt* case. It entirely ignored the implication that separate legal training could not be equal, stating:

No court in the land has ever required of a sovereign state any more than is encompassed within the plan proposed by the Board of Control in its answer. [The establishment of separate equal law schools.] Every individual political right and privilege guaranteed the citizen by the provisions of the Federal Constitution is maintained under the program, while at the same time the right of the State to adopt such method as it finds best designed to afford substantially equal educational opportunities to Florida citizens of different race groups has been preserved. See . . . *Sweatt v. Painter*⁴⁵

This demonstrates the degree to which the Supreme Court's decision can be interpreted as merely a refinement of the *Plessy v. Ferguson* doctrine. It serves as an interesting example of how men's ideological commitments can operate to the direct disadvantage of their pocketbooks—the establishment of separate Negro facilities to parallel all those existing for whites is an expensive process.

The Negroes won their first substantial victory in Delaware. In August 1950 the Delaware Court of Chancery, after an elaborate investigation and comparison of the facilities offered by the state to its

39. State *ex rel.* Hawkins v. Board of Control, 47 So.2d 608 (Fla. 1950), State *ex rel.* Lewis v. Board of Control, 47 So.2d 617 (Fla. 1950).

40. State *ex rel.* Maxey v. Board of Control, 47 So.2d 618 (Fla. 1950).

41. State *ex rel.* Boyd v. Board of Control, 47 So.2d 619 (Fla. 1950).

42. State *ex rel.* Finley v. Board of Control, 47 So.2d 620 (Fla. 1950).

43. State *ex rel.* Hawkins v. Board of Control, 47 So.2d 608 (Fla. 1950). The Florida court discussed the problems raised in the *Hawkins* case. The other cases were decided by reference to the opinion in *Hawkins*.

44. *Id.* at 616.

45. *Id.* at 614.

white and Negro citizens, determined that the State College for Negroes was substantially unequal to the University of Delaware.⁴⁶ However, Vice Chancellor Seitz emphasized that segregation alone was in no sense violative of the equal protection clause, and added:

As recently as June of this year the United States Supreme Court applied the separate but equal test in two cases involving graduate and professional schools.⁴⁷

The most recent recorded case⁴⁸ deals with a different aspect of education than those discussed heretofore. Wesley Brewton, a Negro high school student, brought suit against the St. Louis Board of Education to gain admission to a course in aeromechanics offered in a white high school only.⁴⁹ The Supreme Court of Missouri, while noting that exact parallelism of courses was not required by the Fourteenth Amendment, held that the exclusion of Negroes from this course constituted a substantial inequality of educational facilities. The Board of Education could not escape the alternatives of either admitting Brewton to this course in the white school, or offering it in the Negro school.⁵⁰

This concludes the summation of segregation cases decided since the Supreme Court's action last June in the *Sweatt* and *McLaurin* cases. If any moral can be drawn, it would appear to be that the High Court will have to make its position clear. If, as is assumed herein, the Court initiated a departure from the *Plessy* rule that segregation is constitutional so long as equal separate facilities are supplied both "races", this point must be explicitly driven home in the months that come. The Court should have ample opportunity, to state clearly its views on segregation in legal education, as well as in other fields of specialized study. If it applies what I have described as the "com-

46. *Parker v. University of Delaware*, 75 A.2d 225 (Del. 1950).

47. *Id.* at 230.

48. Since this article was completed, Mr. Robert Carter, Assistant Special Counsel of the N.A.A.C.P., has sent me information on several unrecorded segregation cases. Two cases were decided by the Maryland courts, one holding that a Negro girl must be admitted to the School of Nursing at the University of Maryland, and the other requiring the University of Maryland to admit a Negro to the Graduate School of Sociology. Both of these decisions were based on the lack of equal—or any—educational facilities for Negroes in these fields. The Board of Regents of the University of Maryland subsequently announced that in any case where instruction was offered to whites at the University and was not offered to Negroes at a separate institution, Negroes would be admitted to the University. At the present moment the N.A.A.C.P. is taking action against the University of Kentucky, and has to date been successful in its suits there. I should like to express my gratitude to Mr. Carter for his courtesy in supplying me with information about these unrecorded decisions.

49. *State ex rel. Brewton v. Board of Education*, 233 S.W.2d 697 (Mo. 1950).

50. For a similar determination made prior to the *Sweatt* and *McLaurin* cases, see *Carter v. School Board*, 182 F.2d 531 (4th Cir. 1950).

munity action" principle, that segregation *per se* is unconstitutional where the state is training young citizens for community action, a new milestone in equal protection will have been achieved. *Plessy v. Ferguson*, though not overruled explicitly, may be undermined in the specific area of education.

Even if the Supreme Court should beat a "strategic retreat" to the position that equal separate educational facilities fulfill the requirements of the Fourteenth Amendment provided they are in fact *fully equal*, the *Sweatt* and *McLaurin* cases will still have considerable significance for the future. As more and more Negro students demand their educational rights from the states, the latter will be faced with the prospect of building fully equal parallel facilities in many areas of study. This uneconomic process may continue for some time, but in the long run "the high cost of prejudice" may do more to eliminate segregation than would be accomplished by idealism working alone. The states are now faced with the alternatives of building separate, equal and expensive establishments for Negroes, or of admitting the Negro students on a fully equal basis to combined facilities. Thus, even if the Court rejects the "community action" principle, the operation of the "combined facilities" rule marks a great advance in interpretation and application of the equal protection clause.

Plessy v. Ferguson still stands, but not with its former vigor and certainty. Like an ancient fort, it shakes upon its foundations and the wind whistles through gaps in its walls. Some may claim that it is still defensible, but others, with a better understanding of the imperatives of modern democracy, realize that its walls are but hollow shells. Perhaps it will survive another decade; perhaps it will never be taken by storm, but the inexorable demands of a democratic society will eventually leave it, at best, a historical curiosity, at worst, an anonymous pile of rubble.