

This means compromise; some liberty must be sacrificed for the sake of security. A compromise is a modification of opposing views so that they may blend to the mutual satisfaction of the opponents. The opponents in the issue under discussion are not the assailant and his victim but instead law-abiding citizens who differ in their appraisals of the danger of unbounded liberty on the one hand and the danger of bounding it on the other. The issue is not simplified by the fact that both groups would like to have at the same time both complete security and complete liberty. The impossibility of achieving both desires simultaneously is recognized, and each group makes a compromise it believes will provide a suitable balance between maximum security and minimum restriction on liberty. Were the appraisals by the groups identical, the problem would be solved. Since opposing groups make different appraisals, a reconciliation of the opposing views must be sought.

Compromise is a characteristic of a free society, the strength of which is derived from consolidating the most acceptable features of opposing views into a workable system. In compromise, each side appraises what it gains in advantage against what it loses in disadvantage; there is then a measure of give and take. The appraisal in a free society is participated in by the citizens with the legislature serving as the arbitrator to say, "This is the way it will be." This democratic process enables citizens to have their desires implemented by law.

In the absence of legislation bearing on some aspect of police arrest privileges, the appellate courts may make decisions that are as binding in their effect as legislative enactments. The process which results in an appellate decision is markedly different from the legislative process. The issue before the court relates to the rights of the appellant, who has been judged guilty by the most liberal system of criminal justice found anywhere in the world. The court considers whether the rights of the appellant have been violated, not by organized society, but by a policeman whose actions are often viewed with distaste because all of the facts which may have justified the action are not on the record. The court ponders the alleged infringement of the rights of the convicted person as a legal abstraction and feels obliged to consider the question as it would apply were the individual innocent. Finally, the desires of the general public for some reasonable measure of security and for a redress of the wrong done to the innocent victim of the criminal are not made known nor are they readily available to the court.

The issue before us does not jeopardize the integrity of the Constitution. Instead, it involves an appraisal of relative dangers, or advantages arrayed against disadvantages, which result from restrictions on liberty imposed by police arrest privileges. Statesmen representative of the people seem better qualified to make fair appraisals of public needs than appellate judges who, by virtue of their positions, are not so responsive to the desires of the public. The fundamental question is not a legal one after its constitutionality has been established. Instead, it is a philosophical problem in the science of government.

People on the whole want protection from criminal attack; they want to feel secure in their homes and on the streets from disturbances