

# THE CHARLOTTE NEWS

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THURSDAY, AUGUST 19, 1954

## Where A King's Right Is Wrong

HISTORY does not turn somersaults. There is always a reason for the path it takes. This goes for the ancient legal principle of "the king can do no wrong" as with anything else.

In the days of absolute monarchies, "divine rights" and royal authoritarianism, the king's word was law and his power unchallenged. Because he decreed that all of his acts were performed in the interest of the realm, he could not be held accountable for acts of negligence when it is performing "governmental functions." It is still anchored in the municipal laws of Charlotte. The city charter liberalizes it only to the extent that the governing body is empowered to pay up to \$200 for damages to private citizens and that only when the accident victim is not guilty of contributory negligence.

As we pointed out Monday, this action is hardly adequate. It does not offer the citizen the legal protection he deserves in a democracy.

Bolester our editorial stand are letters today from two Charlotte attorneys (see PEOPLE'S PLATFORM). Both David H. Henderson, a former legislator, and Ernest S. Delaney Jr., a former city councilman, point out that a state law already exists permitting North Carolina municipalities to waive governmental immunity by securing liability insurance. Yet Charlotte has failed to take advantage of the provisions of this statute.

In this particular field, the city is badly out of step with the times. Both state and federal governments have junked the common law principle to the extent that immunity is waived in many cases rising out of negligent acts of governmental employees and proper damages are provided.

"The theory that 'the king can do no wrong' does not fit into our modern machine age," says Mr. Delaney. "The concept that the king can do no wrong is anachronistic," says Mr. Henderson.

Both are correct.

There is no longer any question of what to do. The legislative authority is available. The responsibility for action lies solely with city officials.



"If you're speaking for the people, how come I wasn't consulted?"

## People's Platform

### Old Legal Principle Obsolete

Charlotte

Editors: The News:

THE theory that "The King Can Do No Wrong" does not fit into our modern machine age.

This theory as you pointed out in your editorial provides that the government cannot be held liable for its acts of negligence, however gross when it is performing "governmental functions."

The federal government has realized the social consequences of this ancient common law principle and has provided by the Federal Tort Claims Act that "the United States shall be liable . . . (for the negligent acts of employees), in the same manner and to the same extent as a private individual under like circumstances."

The General Assembly of this state has realized that immunity of the state was unfair to its citizens, and at its 1951 session enacted the Tort Claims Act (G.S. 143-291, et seq.) which provides that the State Industrial Commission shall determine the amount to be paid for claims arising as a result of a negligent act of a state employee while acting within the scope of his employment . . . but in no event shall the amount of damages awarded exceed the sum of \$8,000.

The same session of the General Assembly considered the problem of municipal immunity to its citizens. It has been said that modern man, weary of the complexities and confusions of the Power Age, seems to be seeking escape. One critic has remarked that it is like an unconscious swinging back of minds to a region of wonder where thought need only to be faintly or crudely grasped. In pictures and graphic symbols, man finds attractive, easy-going substitutes for thinking.

E. B. White suggests that America prepare immediately for the Last Reader. He should stand in the same relation to the community as the queen in a colony of bees, says he. All the others would dedicate themselves wholly to his welfare, serving him special food and building special accommodations. "From his nuptial or intellectual flight would come the new race of men," says Mr. White, "linked perfectly with the long past by the unbroken chain of the intellect."

This would indeed be fine. "But it is more likely," adds Mr. White, "that our modern hive of bees, substituting a coaxial cable for spinal fluid, will try to perpetuate the race through audio-visual devices, which ask no discipline of the mind and which are already giving the room the languor of the opium parlor."

Sunday painters and enthusiastic amateur musicians cannot alone provide the intellectual climate for a Golden Age of Culture in the United States. Nor can busy printing presses turning out great quantities of westerns, mysteries and science fiction thrillers add much to the aesthetic scene either. Without serious reading there can be no genuine cultural revival in 20th century America. It takes a reading public to make a cultured people.

a motor vehicle. The cost, spread among all our citizens would be small, but when borne by one individual, could be catastrophic.

—ERNEST S. DELANEY JR.

## Cities Should Waive Their Immunity Too

Charlotte

Editors: The News:

R concerning "the king can do no wrong" as applied to the responsibility of the city for accidents caused by negligent operation of city-owned motor vehicles, your attention is invited to Chapter 1015 of the 1951 Session Laws of North Carolina.

While I was serving as Mecklenburg's representative during the 1951 Session, this bill was considered and passed as a state statute and, by its terms, Section 1 provided:

"The governing body of any incorporated city or town, by securing liability insurance as hereinafter provided, is hereby authorized and empowered, but not required, to waive its governmental immunity from liability for any damage by reason of death, or injury to person or property, proximately caused by the negligent operation of any motor vehicle by an officer, agent or employee of such city or town when acting within the scope of his authority or within the course of his employment. Such immunity is waived only to the extent of the amount of the insurance so obtained. Such immunity shall be deemed to have been waived in the absence of affirmative action by such governing body."

The statute goes on to provide that any city which with the approval of its governing body take out liability insurance and to the extent that the city is covered by such insurance may elect to waive its immunity in these negligence cases.

It is my understanding that the city of Raleigh and Greensboro have elected to waive their immunity and insure their motor vehicles. It is my understanding that Charlotte, the Queen City of the South, should also take advantage of the provisions of this statute, thereby assuring its citizens that, at least, they would be able to have a court determine their claim for monetary damages, should they be left with serious injuries, property damages and hospital bills as a result of a city employee negligently operating

waive immunity and take out liability insurance. It thus appears that the legislature and the bar have done their part to ward attempting to remedy the situation complained of in your editorial.

—DAVID H. HENDERSON

## The People's Power Facilities Endangered

Myrtle Beach, S. C.

Editors: The News:

THE various power monopolies are grabbing the public power facilities of the TVA and REA and other public owned power facilities in fulfillment of the Republican pledge to get the government out of business.

The great Clark Hill power supply is about to be grabbed by the Georgia Power Company. They did nothing about the facilities until the property had been developed by the government.

The great dam is more than a mere power facility. It is a life saver for the rural dwellers of Georgia and South Carolina, as has been the Tennessee Valley Authority a life saver and a tremendous developer of the areas which it serves and so admirably has developed.

No private power facility has the ability, nor even unfortunately the desire, to get out among the farmers and the small businessmen and drum up users for new lines and new mills and mines, to let the rural people to have a say in what they want, or don't want, in the way of power development.

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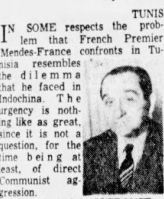
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## Errors, Delays, Uncertainty Produced Crisis In Tunisia

By MARQUIS CHILDS



M. FRANCE

TUNIS

IN SOME respects the problem that French Premier Mendès-France confronts in Tunisia resembles the dilemma that he faced in Indochina. The urgency is nothing new, being a question, for the time being at least, of direct Communist aggression.

Yet, as in Indochina, the responsibility he must accept here represents a long accumulation of error, of delay and of indecision. Even among French businessmen fearful that they will lose investments carefully built up here over the years, there is recognition that in the final showdown the new premier had no choice but to offer the Tunisians an independent government with control over internal affairs.

The promise of freedom has several times been advanced and each time it has come to nothing. A government in Paris with liberal intentions has followed one that pursued a policy of widespread repression, jailing and exiling the Neo-Destourian leaders. The savage terrorism and counter-terrorist operations of recent weeks made it plain that another such cycle could end only in a disastrous explosion.

FAMILIAR OVERTONES

There are overtones here of the kind of change taking place all over the world. Everywhere the French planter stands alone in the United States. He likes the Arabs and he understands them. They work on his plantation and he and his wife are kind to them, giving them medicine and food beyond the wages they receive. If only the politicians in Tunis and in Paris would stop their trouble-making, everything would be all right.

The pattern is familiar from Burma and Indochina. The French colonists, says that he knows from his own experience that the natives are not ready for freedom. Give them time, a probationary period of 10 or 15 years, and then it may work.

Myrtle Leach, S. C.

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