

Parker, John Johnston ^[1]

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Photograph of Judge John J. Parker. Image from the Library of Congress.

^[2]John Johnston Parker, lawyer, politician, and jurist, was born in Monroe, the eldest of four children and the brother of World War I hero Samuel Iredell Parker ^[3], first recipient of the army's three highest decorations for valor. His well-educated mother, Frances Ann Johnston, from Edenton ^[4], was descended from William Bradford of Plymouth Colony, Mass., a line of early North Carolina governors, and Associate Justice James Iredell ^[5] of the U.S. Supreme Court (1790–99). The daughter of an Episcopal ^[6]clergyman, she married John Daniel Parker, a Baptist-turned-Episcopalian, who eked out a living as an independent grocer.

The ambitious, thrifty, and self-reliant young Parker worked his way through The University of North Carolina ^[7], where maverick philosophy professor Horace H. Williams ^[8] materially contributed to his intellectual development and cosmopolitan outlook. At Chapel Hill Parker won numerous academic honors and prizes, became student government leader, actively opposed the undemocratic fraternities, and began a long oratorical career. He received his A.B. degree in 1907 ^[9] and the LL.B. in 1908.

Six feet tall with gray-blue eyes, Parker was somewhat reserved and possessed a deep sense of dignity and morality. His vast capacity for tedious, demanding work was offset by a genial personality and a wry sense of humor. He married Maria Burgwin Maffitt of an old and prominent Wilmington ^[10]family on 23 Nov. 1910. An innately private person, she devoted herself to raising two sons and a daughter: Sara Burgwin (Mrs. Rufus Montgomery Ward, b. 1911), John J., Jr. (b. 1914), and Francis Iredell ^[11] (b. 1923). John, Jr., a promising law student, died on 4 July 1941 of injuries suffered in an automobile accident.

Following legal apprenticeship in 1908 with David Stern in Greensboro and another year of practice alone in his hometown, Parker formed a partnership with A. M. Stack in Monroe (1910–19), becoming a senior partner in the firm of Stack, Parker, and Craig (1919–22). In 1922 he moved to Charlotte where, until 1925, he headed the firm of Parker, Stewart, McRae, and Bobbitt. Both firms developed large general civil and criminal practices in North Carolina and South Carolina although public service corporations were never numbered among their clients. Parker, a skilled advocate, argued cases in state and federal trial and appellate courts, including the U.S. Supreme Court. His regional reputation as a criminal lawyer led to his appointment as special assistant to the U.S. attorney general (1923–24), in which capacity he prosecuted several hard-fought war fraud cases.

The son of Democratic ^[12]parents, Parker joined the Republican party ^[13] in 1908. He cast his lot with the dominant Ily-

white^[14]" and anti-Bryan "business respectables" faction that sought to promote and represent the state's nascent industrial interests. The youthful Parker climbed the orthodox political ladder—manager of John Motley Morehead^[15]'s successful 1908 campaign for Congress, Seventh District congressional nominee against Democratic incumbent Robert N. Page^[16] (1910), candidate for attorney general (1916), gubernatorial contender (1920), and member of the GOP National Committee and delegate-at-large to the Republican National Convention (1924). In his vigorous but losing (42.8 percent) 1920 campaign against Cameron Morrison^[17], he advocated woman suffrage^[18], protectionism, and opposition to the League of Nations treaty, and, at the state level, a variety of progressive programs: an income tax, a workmen's compensation law, protective legislation for women and children in industry, collective bargaining and a voluntary state labor arbitration system, improved highway and educational systems, and a more powerful and centralized executive branch. To the traditional race-baiting strategy of the state's Democratic party, he responded that the largely disenfranchised^[19] negro as a class does not desire to enter politics. The Republican party of North Carolina does not desire him to do so."



Photograph of John Johnston Parker published in 1922. Image from the N.C. Government and Heritage Library.

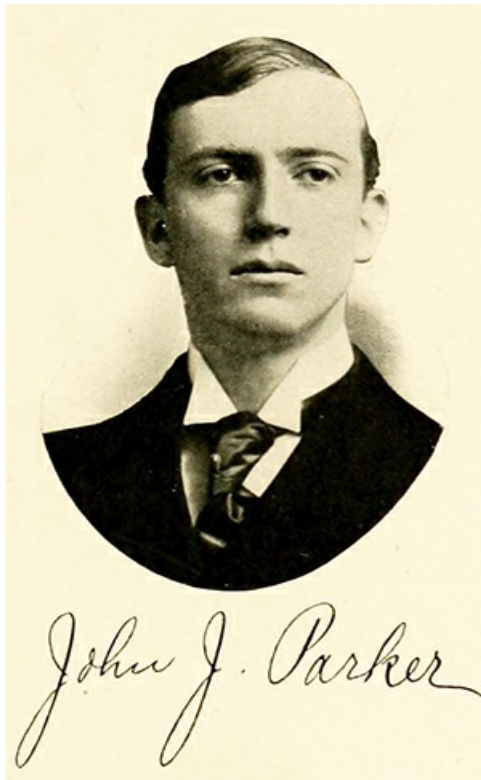
President Calvin Coolidge^[20] gave Parker a recess appointment to the U.S. Court of Appeals for the Fourth Circuit (to succeed Charles A. Woods, deceased) on 3 Oct. 1925 and a lifetime appointment on 14 Dec. 1925. In the wake of Hoover^[21]'s 1928 electoral triumph in North Carolina, the forty-four-year-old jurist was considered for the solicitor and attorney generalships and for appointment to the Law Enforcement and Observance Commission before nomination to a Supreme Court vacancy caused by Edward T. Sanford's death. The nomination on 21 Mar. 1930 reflected political, sectional, and jurisprudential considerations. Parker's four-year judicial record of 184 written opinions received little publicity, but his single decision in United Mine Workers of America [UMW] v. Red Jacket Consolidated Coal and Coke Co.^[22] (18 F. 2d 839 [1927]) ignited massive opposition from organized labor and their allies in the Senate who perceived it as further legitimating the legality of yellow-dog employment contracts^[23]. Although the constitutionality of such contracts was not at issue, the scope of a sweeping injunction against UMW organizing efforts was involved. And Parker upheld that portion enjoining the union from even "persuading" employees to break their nonunion contracts. Such "persuasion" indicated an "unlawful purpose" as laid down in landmark Supreme Court decisions issued in 1917 and 1921 and in a 1925 decision of his own circuit court. In addition Walter White, then acting director of the NAACP^[24], led a frenetic grass-roots lobbying campaign against the nomination. Although no evidence of racism appeared in his judicial opinions, the association assailed Parker for his political statement of a decade earlier. These two interest groups, combined with other factors, caused the Senate to deny his confirmation (41–39) on 7 May 1930. Parker continued a fruitless quest for a place on the high court by launching major campaigns in 1941, 1942–43, 1945, and 1954.

On the Court of Appeals, Parker sat with such distinguished colleagues as John C. Rose, Morris A. Soper, and Simon E. Sobeloff of Baltimore, Armistead M. Dobie of Virginia, and Clement F. Haynsworth, Jr., of South Carolina. He heard more than 4,000 arguments during his thirty-two years as appellate judge and wrote opinions in approximately 1,500 cases found in volumes 8–253 of the *Federal Reporter, Second Series*. These opinions reflect an ability to grasp complicated issues of fact and law and to apply logically his philosophy of law. That philosophy was based on the major premise that society was an ever-changing organism and law the life principle of that organism. Law was thus "not a static thing," Parker said, in *Marshall v. Manese* (85 F. 2d 944, 948 [1936]), "bound down by prior decisions and legislative enactments. It is based on reason, arises out of the life of the people, and must change as the conditions of that life change."

He eschewed the role of "judicial legislator"; recognition of legislators as preeminent lawmakers and of the subordinate place of an intermediate appellate court in the judicial hierarchy guided his work (cf. *United States v. Appalachian Coals, Inc.*, 1 F. Supp. 339, 349 [1932]). But where ambiguity or gaps in law existed, Parker's opinions manifested his broad humanitarianism, reliance upon the "rule of reason," and belief that constitutions should be interpreted as charters of

government not as contracts.

On the controverted relationship between government and the economy he regarded it as "unthinkable that the public should be left at the mercy of private individuals as to matters which affect the public welfare." Government must protect free people from economic tyranny. Even in the 1920s, he upheld exercises of state police powers as against challenges based on the due process clause of the Fourteenth Amendment ^[25] (*Suncrest Lumber Co. v. North Carolina Park Commission*, 30 F. 2d 121 [1929]) and the constitution's contract clause (*Carolina and North Western Railway Co. v. Town of Lincolnton*, 33 F. 2d 719 [1929]). With the exception of gold clause cases *Machen v. United States*, 87 F. 2d 594 [1937]), landmark New Deal regulatory legislation generally passed early muster under Parker's broad conception of the general welfare clause (*Greenwood County, South Carolina v. Duke Power Co.*, 81 F. 2d. 986 [1936]), the commerce clause (*Virginian Railway Co. v. System Federation* #40, 84 F. 2d 641 [1936]; contra, *Burco, Inc. v. Whitworth*, 81 F. 2d 721 [1936]), and federal bankruptcy power (*Bradford v. Fahey*, 76 F. 2d 628 [1935]). He believed that government must be a liberating not an oppressive force in economic life. Resolution of conflicts between property and government demanded of judges not self-restraint to the extent of abdication of duty, but rather the application of law and reason to prevent arbitrariness. Judges must compel public officials to act justly in taking privately owned property for public use (*United States v. Twin City Power Co.*, 215 F. 2d 592 [1954]) and in regulating and fixing the price of its products (*Hope Natural Gas Co. v. Federal Power Commission*, 134 F. 2d 287 [1943]).



John J. Parker's college yearbook photograph and signature from 1907. Image from University of North Carolina at Chapel Hill.

^[26]Major issues of civil liberties and rights came before Judge Parker in the 1940s and 1950s. He typically applied various reason-based pragmatic "balancing" tests to the former category. In voiding West Virginia's compulsory flag salute law, Parker balanced religious freedom of *Jehovah's Witnesses* ^[27] against the compelling nature of the state's interest in enforcing a secular regulation (*Barnett v. West Virginia Board of Education* ^[28], 47 F. Supp. 251 [1942]). But when those asserting First Amendment rights were members of a Communist conspiracy, "nothing in the Constitution or in any sound political theory . . . forbids [government] to take effective action . . . to protect itself from being overthrown by force and violence" notwithstanding the absence of a "clear and present danger" (*Frankfeld v. United States*, 198 F. 2d 679, 682 [1952]; *Scales v. United States*, 227 F. 2d 587 [1955]). In criminal appeals Parker proved no supporter of the Bill of Rights "incorporation" theory. He consistently treated alleged procedural errors with the due process-based "fair trial" rule (*Cary v. Brady*, 125 F. 2d 253 [1942]). And his sympathy for "dual federalism" was reflected in repeated attempts to restrict the use of habeas corpus writs as vehicles of appeal from final decisions of the highest state courts (*Stonebreaker v. Smyth*, 163 F. 2d 499 [1947]).

His last decade on the bench confronted Parker with a rising volume of race relations cases. Racial disenfranchisement ^[19] resulting from state "white primary" laws and practices were enjoined as clearly discriminatory under the Fourteenth and Fifteenth amendments (*Rice v. Elmore*, 165 F. 2d 387 [1947]; *Baskin v. Brown*, 174 F. 2d 391 [1949]). Although the equal protection clause barred state racial discrimination, Parker believed that "if equal service is accorded . . . reasonable regulations based on public custom and a desire to avoid disturbances of the public peace should be sustained." Strictly applying this "separate but equal" standard in the light of reason, Parker struck down as racially discriminatory a municipal zoning ordinance (*Deans v. City of Richmond*, 37 F. 2d 712 [1930]), public school teachers' salary schedules (*Alston v. School Board of Norfolk*, 112 F. 2d 992 [1940]), and union collective bargaining and seniority strategies (*Brotherhood of Locomotive Firemen and Engineers v. Tunstall*, 163 F. 2d 289 [1947]; *Dillard v. C and O Railway Co.*, 199 F. 2d 948

[1952]). But in *Briggs v. Elliot* (98 F. Supp. 529 [1951]) he resisted going beyond that standard long endorsed by the Supreme Court to find South Carolina's legally segregated public schools unconstitutional per se. Reversed by the Supreme Court in *Brown v. Board of Education of Topeka*^[29] (1954), Parker immediately complied and construed that decision as meaning "the Constitution does not require integration; it merely forbids discrimination. It does not forbid segregation as it occurs as the result of voluntary action, but forbids the use of governmental powers to enforce segregation" (*Briggs v. Elliot*, 132 F. Supp. 776 [1955]). This often-reiterated statement of interpretation and conciliation would, Parker hoped, promote "amicable adjustment" of the heated desegregation question on the basis of what he called a "spirit of Christianity."

As acting or regular presiding judge for twenty-eight years, he was administrator of his circuit as well as a member of the national policy-making Judicial Conference of the United States. From 1941 to 1958 he served on sixteen Conference committees, including the Advisory Committee, and chaired those on punishment for crime, court reporting, habeas corpus, pretrial, venue and jurisdiction, appeals from interlocutory orders, and administration of the criminal laws. His efforts aided enactment of the Administrative Office of the U.S. Court Act of 1939, the Federal Court Reporters Act of 1944, the Federal Youth Corrections Act of 1950, and the Interlocutory Appeals Act of 1958. They also contributed to preservation of broad federal diversity of citizenship jurisdiction and to compensation of counsel and public defenders for indigent defendants posthumously provided by law.

Parker was active in the American Law Institute and the American Bar Association (ABA). His service on ABA committees began in 1931 (Jurisprudence and Law Reform, 1931–33) and largely reflected an abiding interest in judicial administration, criminal law (council member, Section on Criminal Law, 1945–53), and a subsequently developed concern with international law and relations. As leader in the Section of Judicial Administration (council member, 1934–38, 1942–58; chairman, 1937–38; chairman, Special Committee on Improving the Administration of Justice, 1940–46) and in the Judicial Conference (1930–58), and as judicial adviser to the U.S. high commissioner for Germany (1949), he promoted judicial reforms to strengthen an independent judiciary and protect its functions by means of judge-centered courts. Thus his enduring legacy included diminution of popular influence over courts, enhancement of institutional autonomy of the judiciary as a coordinate branch of government, unification, simplification and centralization of intrajudiciary procedures and administration, and assertion of judge control over court proceedings.

From numerous platforms, Parker advanced his optimistic view that Americans as individuals and as a nation could, if they would, surmount all obstacles and master their environment. His own life, the postbellum recovery and industrialization of his native state, and the rise of the United States as a world power served to reinforce his idealism. As a member of The University of North Carolina^[7] Board of Trustees (1921–58) and as a firm supporter of the North Carolina College for Negroes in Durham^[30] (now North Carolina Central University), founded and led by his longtime friend James E. Shepard^[31], he worked to provide the state's youth with low-tuition, higher educational opportunities in the belief that the "source of all wealth is to be found in the intelligence of the people." He denounced the "parsimonious policy" of the General Assembly of North Carolina^[32] before its Appropriation Committee in the depths of the Great Depression^[33]. That policy, he said, would drive "the more ambitious to seek an education elsewhere and probably to live elsewhere." In 1930 he served as a member of the board's presidential search committee that nominated Frank Porter Graham^[34]. Thereafter Parker became one of the president's stalwart supporters although differing with Graham's absolutist interpretation of free speech. But when the president waged battle with the medical school's anti-Semitic admissions quota system in 1933, he sided with Graham. Together with board colleagues O. Max Gardner^[35], Josephus Daniels^[36], and Cameron Morrison, Parker led and defended consolidation of the university system^[37] in the 1930s. As war clouds loomed in June 1940, he urged preparedness, and the board adopted his resolution to establish a military training program at Chapel Hill. Then in the 1950s the judge urged racial integration of the professional schools; after *Brown II* in 1955, he called on the board to reverse its segregation policies forthwith.

Parker also served his state as a member of the North Carolina Constitutional Commission (1931–32), to which he was appointed by Governor Gardner. The new constitution proposed by the commission gave recognition to the need for a modern state government capable of positive action in conserving natural resources and regulating industry and commerce. It reflected Parker's administrative thought through provisions for flexible legislative taxing power, a stronger executive with budget and veto powers as well as an appointed council of state, and a unified judicial system under control of the chief justice of the supreme court.

In addition, Judge Parker performed important extrajudicial services for the nation. By appointment of President Franklin D. Roosevelt^[38] in late 1943, he sat with Judge Learned Hand (CA2) and Joseph C. Hutcheson, Jr. (CA5), on the Advisory Board on Just Compensation to the War Shipping Administration, which drafted rules used to fix compensation paid for requisitioned vessels. Appointment by President Harry S. Truman^[39] as alternate member for the United States of the International Military Tribunal at Nuremberg, Germany (1945–46), attested to Parker's rising prominence as a spokesman for "internationalism." At the trial, he materially contributed to development of the critical "conspiracy" issue in the tribunal's final judgment. Subsequently, as chairman of the American Bar Association Committee on Offenses against the Law of Nations (1946–51), he regarded the trial as "strengthening immeasurably the foundation of international law." His idealism led him to perceive America's postwar mission as that of building a new world order based on such law, incorporating the basic principles of this country's constitutional structure and endowed with force. Thus he became an early advocate of a United Nations (UN) organization, led by the United States and equipped with military capabilities. His interest resulted in election to the UN's International Law Commission in 1953, a post that he declined on constitutional grounds (cf. U.S. Constitution, Art. I, Sec. 9). As the Cold War waxed, he publicly warned against Communist-bloc military power, warmly endorsed aid to Greece and Turkey in 1947, and supported both universal military training and collective security arrangements such as the North Atlantic Treaty Organization. Isolationism manifested in the Bricker Amendment

^[40]to limit the president's power to make treaties and to enter into executive agreements evoked sharp public criticism from the judge. As delegate of the ABA's International and Comparative Law Section (1952–54; member of its council, 1955–58) and in testimony before Congress, Parker actively opposed the measure that he regarded "as the most dangerous" since FDR's court-packing bill. Nevertheless, in *United States v. Capps* (204 F. 2d 655 [1953]) he held that inherent presidential power to make executive agreements was limited by express constitutional grants of power to Congress, especially when Congress had enacted laws on the basis of such grants.

Parker was a devout and biblically knowledgeable member of the Protestant Episcopal church ^[6]. He served as a Sunday school teacher, vestryman, and delegate to the 1937 General Convention of the Episcopal church. He was an Episcopal lay representative to the National Study Conference of the Commission on a Just and Durable Peace of the Federal Council of Churches at Cleveland, Ohio, in early 1945. Chaired by John Foster Dulles, the conference sought to promote "world-mindedness" among American Protestants and to encourage congregational support for international cooperation as represented by the then-emerging United Nations organization. In November 1957 he became chairman of the General Crusade Committee of the Billy Graham Charlotte Crusade. To that committee, Judge Parker declared that peace among people and nations could be achieved only "through the cleansing of the hearts of men and women throughout the world and instilling in them a sense of responsibility to Almighty God and to the ideals and standards of human brotherhood."

He died in active judicial service at Washington, D.C., and was buried in Charlotte's Elmwood Cemetery.

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