A distinction has been drawn between general custom, custom so widespread as to be judicially noted, and usage, custom limited to a class or locality. *Hicks Co. v. Federal Reserve Bank*, 174 Ark. 587, 296 S.W. 46 (1927); *Anglo-Hellenic S.S. Co. v. Dreyfous & Co.*, 108 L.T. 36 (1913); Salt, the Local Ambit of Custom, Cambridge Legal Essays (1926), 279. A general custom binds even those who are unaware of it. *Howard v. Walker*, 92 Tenn. 452, 21 S.W. 897 (1893); *Spokane Valley State Bank v. Lutes*, 133 Wash. 66, 233 Pac. 308 (1925). But unless the existence of a usage is brought to the attention of the parties they are not bound by it. *Federal Reserve Bank v. Malloy*, 264 U.S. 160 (1924); *American Savings Bank and Trust Co. v. Dennis*, 90 Wash. 547, 156 Pac. 550 (1916). What is custom and what merely usage is often a difficult question leading to a difference of opinion. *Lowell Co-Op Bank v. Sheridan*, 284 Mass. 594, 188 N.E. 636 (1934); *cf. Johannsen v. Evans*, 271 Ill. App. 372 (1933). In the instant case a fair interpretation indicates that the practice was limited to a particular locality. Insofar as it was a local custom and the maker had no knowledge of it, the court properly held that the statutory requirement of presentation within a reasonable time was not affected by the presence of custom. Since the payee secured the advantage of lower clearing charges, it does not seem unfair to place on him the risks incident to roundabout collection methods. See 31 Yale L. J. 189 (1921).

Constitutional Law—Billboard Regulation—Exercise of Police Power for Aesthetic Purposes.—[Massachusetts].—The Department of Public Works of Massachusetts was empowered by constitutional amendment and statute to "regulate and restrict" the use of billboards. Mass. Const. Amend. art. 50; Mass. Gen. Laws (1921), c. 93, § 29–33. The regulations prohibited billboards within certain distances of streets or highways, within three hundred feet of any park and wherever the commissioners believed they would mar scenic beauty. Plaintiffs, billboard owners, contended that these regulations deprived them of the use of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. *Held*, that the regulation was a valid exercise of the state police power. The highway regulations were justified on the traditional ground that billboards create a driving hazard by attracting the attention of passing motorists, and are a nuisance since they force unwelcome advertising messages before the eyes of travellers. The "park" and "scenic beauty" regulations, however, were sustained on the ground that aesthetic considerations alone will justify an exercise of the police power. *General Outdoor Advertising Co. v. Department of Public Works*, 193 N.E. 799 (Mass. 1935).

The case marks the climax of a trend toward police power regulation for aesthetic ends, the court suggesting a new theory to justify such legislation. It should be noted, however, that, because of the amendment to the Massachusetts Constitution, the due process clause of the federal Constitution only was involved. This fact may have influenced the court to be more liberal than if the billboard legislation in question had been attacked as violating both state and federal due process clauses. The right to own and use property, protected by the Fourteenth Amendment of the federal Constitution, can be denied or restricted by a state only when the interference is justified as a valid exercise of police power. Freund, Police Power (1904), 3. The orthodox rule is that the police power of a state is limited to legislation affecting the public health, safety, morals and general welfare. *Cusack Co. v. City of Chicago*, 242 U.S. 526 (1916)

(billboard restriction held constitutional); *cf. Welch v. Swasey*, 193 Mass. 364, 79 N.E. 745 (1907) (building height restriction valid because of light, air, and fire detriments to the public); *Opinion of the Justices*, 234 Mass. 597, 127 N.E. 525 (1920) (billboards endanger motorists by distracting driver's attention); *Cochran v. Preston*, 108 Md. 220, 70 Atl. 113 (1908) (tall buildings are fire hazards); *St. Louis Gunning Advertising Co. v. City of St. Louis*, 235 Mo. 99, 137 S.W. 929 (1911) (billboards hide criminals and prostitutes and function as privies and fire hazards). Traditionally it could not be exercised for purposes which the courts felt were purely aesthetic. *Curran Bill Posting Co. v. Denver*, 47 Colo. 221, 107 Pac. 261 (1910) (billboards in city have not sufficient relation to health and welfare of the public to justify restriction); *Williston v. Cooke*, 54 Colo. 320, 130 Pac. 828 (1913) (business restrictions in residential districts are purely for aesthetic ends); *Haller Sign Works v. Physical Culture Training School*, 249 Ill. 436, 94 N.E. 920 (1911) (billboard restriction within 500 feet of a public park); *People v. City of Chicago*, 261 Ill. 16, 103 N.E. 609 (1913) (ordinance restricting retail stores from residential districts invalid); *State Bank and Trust Co. v. Village of Wilmette*, 193 N.E. 131 (Ill. 1934) (zoning business restriction invalid because based solely on aesthetic considerations); *City of Passaic v. Paterson Bill Posting Co.*, 72 N. J. L. 285, 62 Atl. 267 (1905) (billboards ten feet back of building line); *Spann v. City of Dallas*, 111 Tex. 350, 235 S.W. 513 (1921) (business building restriction is purely for aesthetic purposes); *Piper v. Ekern*, 180 Wis. 586, 194 N.W. 159 (1923) (building height cannot be restricted because only aesthetic ends); Burdick, Law of the American Constitution (1922), 567; 3 Conn. L. Rev. 135 (1918); 19 Mich. L. Rev. 191 (1920).

Courts in recent years, however, have tended to give greater weight to aesthetic considerations in justifying various types of police regulations. Chandler, The Attitude of Law toward Beauty, 8 A. B. A. J. 470 (1922). The building restriction and zoning ordinance cases evidence this change. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1920); *Windsor v. Whitney*, 95 Conn. 357, 111 Atl. 354 (1920) (beauty and wholesomeness of building line regulation considered); *State v. Kievman*, 116 Conn. 458, 165 Atl. 601 (1933) (considered aesthetic effect of a junk yard in residential section); *Ware v. City of Wichita*, 113 Kans. 153, 214 Pac. 99 (1923) (court practically rested case on aesthetic considerations though incidentally mentioned some relation to health and safety); *State ex rel. Civello v. New Orleans*, 154 La. 271, 97 So. 440 (1923) (health and welfare supplemented by aesthetic reasons). The courts have been particularly willing to consider the aesthetic effects of billboards in allowing their regulation. *St. Louis Poster Advertising Co. v. St. Louis*, 249 U.S. 269 (1919); see *State ex rel. Civello v. New Orleans*, 154 La. 271, 97 So. 440 (1923) (billboard cases might well have rested solely on aesthetic considerations); *Perlmutter v. Greene*, 259 N.Y. 327, 182 N.E. 5 (1932). See 46 Harv. L. Rev. 157 (1932); Baker, Municipal Aesthetics and the Law, 20 Ill. L. Rev. 546 (1926).

The changing attitude of the courts toward beauty is reflected in the eminent domain cases where aesthetic considerations are given much weight in justifying condemnation proceedings. See *Shoemaker v. U.S.*, 147 U.S. 282 (1892) (land may be taken for parks if owner is compensated); see *Attorney General v. Williams*, 174 Mass. 476, 480, 55 N.E. 77, 78 (1899) (dictum to effect that the height of buildings around parks can be limited); *State ex rel. Twin City Building and Investment Co. v. Houghton*, 149 Minn. 1, 176 N.W. 159 (1920) ("It is time that courts recognized the aesthetic as a

factor in life"); *In re New York*, 57 App. Div. 166, 68 N. Y. S. 196 (1901) (the center of a street for planting trees was taken by eminent domain proceedings); Nichols, Power of Eminent Domain (1917), 161. Although, in the eminent domain cases the owners are compensated, the courts' attitude toward beauty in them has had a decided influence in "police power" cases. *Cf. State ex rel. Twin City Building and Investment Co. v. Houghton*, 149 Minn. 1, 176 N.W. 159 (1920) (eminent domain zoning case); and *State ex rel. Beery v. Houghton*, 164 Minn. 146, 204 N.W. 569 (1925) (similar ordinance sustained under police power). The court in the principal case, instead of rationalizing its decision by "health and safety" arguments, declared unequivocally that regulation for aesthetic ends is a valid exercise of police power.

The courts in refusing to sustain police power regulation in previous cases have construed "aesthetic" to mean "an appreciation of the beautiful." On this interpretation they have denied an interference with private property rights when the purpose was solely to satisfy the desire of the public to live in a more beautiful or attractive environment. The court in the principal case, however, placed an economic value on beauty, considering it as an asset of the state enuring to the benefit of the public. Thus the scenic beauty of the state in attracting tourists results in great economic benefit to the state. Similarly, attractive residential districts greatly increase the actual value of the property of the people in that area. This concept makes restriction for aesthetic purposes analogous to police power control in other instances. It has been frequently held that a private owner cannot be allowed to dissipate the natural resources of the state in order to gain a slight benefit to himself. *Ohio Oil v. Indiana*, 177 U.S. 190 (1900) (owner wasting large quantities of gas in order to produce a small amount of oil); see *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Wall, Attorney General of the State of Wyoming v. Midland Carbon Co.*, 254 U.S. 300 (1920) (state can prevent private owner from burning gas wastefully purely for purpose of producing carbon). And it has been held that the use of private property can be restricted when such use results in great economic loss to the general public. *Miller v. Schoene*, 276 U.S. 272 (1928) (state prevented growth of red cedars which injured surrounding orchards). Thus the slight economic benefit to owners of billboards derived by placing them within certain distances of parks and in other places of scenic beauty is overwhelmingly offset by the great injury that would result to the general public by this destruction of the community economic asset of beauty.

Constitutional Law—Exclusion of Negroes from Primaries—State Action and the Fourteenth Amendment—[U.S.]—The respondent county clerk refused the petitioner, a negro, a Democratic primary election ballot, because of a resolution of the state Democratic convention excluding negroes from membership in the party. *Held*, the refusal did not violate the Fourteenth or Fifteenth Amendment of the federal Constitution, since the clerk was acting for a voluntary association and not for an agency of the state. *Grovey v. Townsend*, 55 Sup. Ct. 622 (1935).

Certain Southern states have made persistent efforts to disfranchise the negro by legal means. *Ratliff v. Beale*, 74 Miss. 247, 266, 20 So. 865 (1896). See reported aside by Justice Holmes indicating that he was well aware of disfranchisement by non-legal means. 41 Yale L.J. 1212, 1221 (1932). See also Rose, Negro Suffrage: The Constitutional Point of View, I Am. Pol. Sci. Rev. 17, 25 *et seq.* (1906). Qualifications