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Philip B. Kurland

THE NEW SUPREME COURT

by PHILIP B. KURLAND*†

The Supreme Court of the United States is a peculiar institution. It is peculiar in two senses: it is peculiar in the sense that it is unique; it is peculiar, too, in the sense that it is strange.

I think we are usually aware that the Supreme Court is both strange and unique. What we tend to forget is that it is an institution. As a people we generally ignore the institutional aspects of our government. And many of our present ills derive from this failure to comprehend that government institutions — like other institutions of our society — are both more than and different from the men who happen, at any given time, to occupy office. If the consequences of this failure are not immediately discernible, they are nonetheless grave. Indeed, I respectfully submit, it is this failure of perception that may very well prove fatal to the basic American concept of democratic government.

When this nation was born, the Constitution served the function of assigning different powers to different branches of government. It was recognized by the Founding Fathers, if not by their successors, that power is corrupting of the individuals who exercise it and dangerous to the people on whose behalf those powers are theoretically exercised. The Constitution, therefore, divided power, not only between the nation and the states in that unique scheme that was American federalism, but within the national government among three branches. The constitutionally commanded separation of powers and system of checks and balances were thought necessary to the preservation of individual freedom.

It is, in part, the rejection of these checks and balances and separation of powers that has resulted in the inordinate loss of individual freedom from which we suffer today and which is likely to be exacerbated tomorrow. For we are already living in an era in which the individual has been subordinated to a

* Professor of law at the University of Chicago Law School. After acquiring degrees from the University of Pennsylvania and Harvard Law School, Mr. Kurland served as law clerk to U.S. Appellate Court Justice Jerome Frank and to Supreme Court Justice Felix Frankfurter. Eight books he has written or edited deal with one aspect or another of the Supreme Court, and these are in addition to the annual *Supreme Court Review*, published by the University of Chicago Press.

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whole group of corporate elements in our society, not least of which is government itself.

One need spend very little time in Washington, D.C., to recognize that, for the most part, government exists for its own sake and not for the benefit of the people to whom it should be responsible. Nor is Springfield or City Hall any different on this score. It was this condition that John Adams sought to prevent when he advocated a government of laws and not of men.

Instead of a division of function between local and national government, we have witnessed over the last century a steady accumulation of national power with a concomitant reduction in local authority. Certainly this is due to a multitude of causes. In many ways it is the natural result of our technological progress that has reduced space and time through better — or at least quicker — means of transportation and communication, that has, indeed, made one society out of many. In no small measure, however, it is also a consequence of an unwillingness on the part of local government to assume its obligations and responsibilities.

And this has been matched by a grasp for power by the central government that was made to exceed even the bureaucratic reach. When the lawyers for the rich warned us of the dangers inherent in the national income tax, we tended to deride them for special pleading. But it is the national income tax that has made the states dependent on the charity of the national government, charity which in its latest form is labeled "revenue sharing." Charity may be the greatest of individual virtues; it is the most stifling of governmental powers.

Just as the states have become moribund as agencies of government, destroying the safeguards that federalism was intended to secure, so too have we seen the deterioration of separation of powers in the national sphere. Here again the centralization of power in the executive branch is in some measure due to the inordinate growth of government that has made it possible for Congress adequately to oversee the functions of that government. In part, it is due to the failure of Congress to perform the tasks assigned to it, because it was easier to let someone else do it. In part, it is due to the desire and demand for power — some may call it usurpation — by the executive branch itself.

THE PERSONALITY APPROACH

Meanwhile, the American people have tended to measure the desirability of the result of this deterioration of representative government in terms of their personal predilections for

the occupants of the Presidential office. When it is a President with what has come to be called "charisma," a Franklin Delano Roosevelt or a John Fitzgerald Kennedy, some of us have applauded the seizure of power by the President. When that office is occupied by one whose objectives are less to our tastes, we deplore the power that has become his to exercise.

We have not been willing to understand that when we approve the transfer of power from Congress to the President because we tend to trust and admire the recipient of that authority, we are assuring that his successor, too, whoever he might be, will be able to assert the same authority, even if he uses it to different ends. As Justices Roberts, Frankfurter and Jackson once observed: "Evil men are rarely given power; they take it over from better men to whom it had been entrusted."[1]

It is essentially since the regime of Franklin Roosevelt that this country has become the subject of Presidential government so clearly distinguished from Congressional government as described by Woodrow Wilson many decades ago.

Executive Power Intensifies

But it is also true that the powers that were exerted by Franklin Roosevelt were puny as compared with those which are now exercised by his successors in office. For we have arrived at the stage where the President asserts — without meaningful challenge — powers and privileges that once were those of the legislature, even to the point of assuming the power over the appropriations process which was thought to be the primary safeguard of democratic government.

(It may be recalled that it was Parliament's successful assertion of the power over the purse that moved England from an autocratic monarchy to a democratic polity.)

The new Presidency has ridden over even the authority of the old-line executive departments. These executive departments have been reduced to menial status. All policy is made and largely effected by what is benignly known as "the White House staff," a staff that once could be more than amply housed in a single wing of the White House, but which now sprawls through buildings that once contained the entire Department of State and several other old-line departments as well.

And, without a semblance of substantial concern by the people or their elected representatives, the President now proposes to reorganize the national government to reduce further the power of these departments by consolidating them in a way that affords greater and greater White House control. Yes, that reorganization may make for more efficiency, although I doubt

[1] Screws v. United States, 325 U.S. 91, 160 (1945).

it. But as Mr. Justice Douglas once noted: "All executive power — from the reign of ancient kings to the rule of modern dictators — has the outward appearance of efficiency."[2]

It may be that the problem of the ever-expanding executive power has come closer to American consciousness in recent years as Presidents — and I am certainly speaking of more than one — have undertaken to engage this country in foreign wars without Congressional authority, as Truman and Eisenhower and Kennedy did; to impose economic controls by fiat, as Kennedy and Nixon have done; to determine which Congressional programs they will effectuate and which they will ignore, as Truman and Kennedy and Nixon have done; and to do all these things behind a cloak of secrecy that cannot be penetrated even by the elected representatives of the people — as certainly all of them have done.

And all of this has been justified by invoking precedents, precedents to which the American people took no exception because the leaders who indulged in this abuse of power were trusted by them to bring about the right ends, even if by the wrong means.

It was Mr. Justice Frankfurter who reminded us, when the Court stopped the exertion of executive authority in the case of the seizure of the steel mills by the President: "The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."[3]

I have dwelled on the Presidency and the violation of its institutional limits because they are easily discerned and, today at least, readily acknowledged. Senators who acquiesced for years in Presidential aggrandizement are suddenly vocally cognizant of the dangers. It remains to be seen whether Congress has the backbone to indulge more than empty words to reestablish its constitutional authority. (Despite "Watergate," the House continues to be the tail to the presidential kite.)

JUDICIAL ACTIVISM

As with the White House, so, too, with the Supreme Court. During the tenure of Chief Justice Warren, there were many who could find no fault with the constantly expanding power of the judiciary. For surely it was directed to ends of which they approved. Now that the personnel of the Court has changed, and with that change has come a change in the ap-

[2] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 629 (1952).
[3] *Id.* at 594.

parent values of the justices, these same people who once so loudly acclaimed the assertion of judicial authority are now concerned to assure that the judiciary be kept in its sphere. The lesson of the Sorcerer's Apprentice must be learned once again.

Just as it may be too late to restore the Presidency to its proper dimensions, so it may be impossible to confine the Court. Despite the plentiful rhetoric, the question is no longer whether we should have an activist Court. An activist Court is one that assumes capacities to govern in broader and broader areas. An activist Court is one that interferes with legislative and executive judgments on the basis of its own contrary personal predilections.

But such a Court may have either a conservative or liberal bias. It will remain an activist Court even if its clientele changes from the laborer, the black, and the economically deprived, to big business, big labor, and big government. The Nine Old Men whom Roosevelt sought to displace were no less an activist Court than the Warren Court, whose justices President Nixon has — almost as successfully so far — sought to replace.

The Burger Court with its inheritance of authority is not likely to prove less activist, but only less liberal. And those who scorned the idea of institutional limitations — constitutional limitations if you will — are suddenly taken with the importance of those limitations. Too late.

Responsibility and Life Tenure

There are, however, several differences between the judicial and executive branches of the national government that are relevant here. The first is that the judicial branch has no direct responsibility to the people. Where the President must be chosen every four years — representatives every two and senators every six — the judicial appointees remain in office for life. A new Court, unlike a new administration or a new Congress, is a fortuitous event. And, contrary to public opinion, a new Court does not derive from the appointment of a new chief justice. For the other justices are not subordinate to the chief justice. The chief justice has no lawmaking authority that is greater than that of his judicial brethren.

Indeed, a new Court, in the sense of a new jurisprudence, need not even be brought about by a change of a majority of the personnel and, on the other hand, may be brought about even where the personnel does not change at all. I would submit as examples the fact that the Roosevelt Court came into exis-

tence, in the sense of the end of the era of "substantive due process," when Justices Hughes and Roberts became firmly attached to the theretofore dissenting trio of Brandeis, Stone and Cardozo, even before any Roosevelt appointee joined it.

Again, the Warren Court did not come into existence in 1954, when Warren was appointed and the *School Desegregation Cases*[4] were decided. (The school cases would have been decided the way they were had Vinson survived to preside over that term of Court.) The Warren Court — a Court with its own patent judicial philosophy — did not come into existence really until the decision in a case called *Mapp v. Ohio*[5] made it clear that the Court was prepared to impose on the states its own expansive notions of a code of criminal procedure, and the decision in *Baker v. Carr*,[6] which made it clear that the Court was prepared to prescribe the proper form of government for the states.

And it was called the Warren Court because Warren was its chairman, not because Warren was its leader. The doctrines of the Warren Court had been formulated by Justices Black and Douglas long before the advent of Warren, and those two justices remained the Warren Court's doctrinal leaders throughout its life.

Acquiescence Necessary

There is, moreover, one difference of no small importance between the accretion of power in the judiciary and that which has occurred in the executive branch. The judiciary is inherently a governmental weakling. Its power is dependent upon acquiescence in its orders by the other branches of government. Thus, the school segregation decisions were meaningless words so long as President Eisenhower and the Congress refused the approval and cooperation of their powers that could make the decisions meaningful.

Indeed, much of the Court's alleged successes in recent years have been verbal rather than real, with the result that it has been given both credit and blame which do not properly belong to it.

For example, if we examine the three areas in which the Court established its reputation for doing good during the Warren regime, we discover something less than glorious achievement. One needn't live in Chicago, under the shadow of

[4] *See* Oliver Brown v. Bd. of Education of Topeka, 349 U.S. 294 (1955); Brown v. Bd. of Education of Topeka, 347 U.S. 483 (1954); Bolling v. Sharpe, 347 U.S. 497 (1954); Gebhart v. Belton, 345 U.S. 972 (1953).

[5] Mapp v. Ohio, 367 U.S. 643 (1961).

[6] Baker v. Carr, 369 U.S. 186 (1962).

yesterday's headlines, to know that separation of the races, in and out of school, remains — despite the Court's decision — the dominant problem of American society.

It is clear that the state legislatures have been reapportioned in accordance with the commands of the federal courts, commands frequently issued by divided federal three-judge courts, divided according to the political party allegiance of each of the judges. Even so, the shift of seats in the legislatures has been from a conservative farm constituency to a more conservative suburban constituency.

The plight of urban America is no more the direct concern of the new legislatures than it was of the old ones. The cure has been of a symptom rather than a disease. For even under the "new equality" of the Warren Court, the power of gerrymander has remained undisturbed. Corporate, *i.e.*, group, interests as distinguished from individual interests are well served under the new allocation as they were under the old one.

When we come to that area of constitutional law which has aroused perhaps the greatest political furor, the Supreme Court's decisions in the area of criminal justice, we again see little change wrought by the Court's judgments. Surely the Court is not to blame for the crime wave that inundates the country. Certainly, as a result of the Court's decisions, there are criminals on the loose who might otherwise have been punished.

But it is ludicrous to suggest that the overabundance of criminals that we have with us are charting their courses by the decisions of the Supreme Court. Law is probably the last thing in the minds of those who have made the FBI crime statistics look like our national debt, climbing at an even more rapid rate.

On the other hand, when it is noted that the function of the Court's rulings was not to free the guilty but to chastise the police and the prosecutor so that they would not engage in police-state tactics against the innocent citizen, it must be recognized that the Supreme Court's decisions seem to have brought about no noticeable improvement in police behavior, either. Mr. Justice Holmes' dictum is as applicable to the Warren Court's activities as to that of all its predecessors. Courts are capable of bringing about only molecular, and not molar, changes in our society.

Nevertheless, it should be recognized that the Court's behavior is not unimportant. If it affirms basic ethical concepts, which may be as old as the decalog or the glories of Greece or Rome, it provides a strong moral force for good, but by way

of example rather than precept. And, then, none knows better than those now living that molecular changes, too, can be of no small consequence when enough molecules are rearranged to form new patterns or destroy old ones.

Unpredictable Difference

That the new Court — the Burger Court — is different from the old one — the Warren Court — is easily acknowledged, and yet prediction of what results that difference is going to bring about would be foolhardy. One could hardly have anticipated that the Burger Court would have been the one to decide that the death penalty as it has been applied is unconstitutional. The Warren Court had that question before it again and again. Never did it face up to the question and hold, as the Burger Court did last term, that the death penalty violated the "cruel or unusual punishment" clause of the Eighth Amendment.

And yet every member of the five-man majority in that case was a holdover from the Warren Court, and every dissenting member of the Court in that case was a Nixon appointee.

And it was the Burger Court that, earlier this year, struck down state laws banning abortions, a result repeatedly sought from and repeatedly denied by the Warren Court. It cannot be said that precedent or personal predilection was an adequate basis for predicting the outcome of the capital punishment cases or the abortion cases.

New Directions

On the other hand, we have already seen that the Burger Court has drawn back from an extension of the Warren Court's decisions in the area of criminal procedure. The infamous *Miranda* rule that prevented convictions for police failure to instruct the accused of his right to silence and to counsel has not been overruled but stopped in its tracks — tracks made, until the advent of the Burger Court, by seven-league boots.

The sanctification of the jury trial by the Warren Court has been reversed by the Burger Court, in the latter's holdings that less than twelve persons can properly constitute a jury — even in the federal courts — and, indeed, that a less than unanimous verdict satisfies the demands of the Constitution.

If pornography has received less protection from the Burger Court than it did from the Warren Court — although it should be remembered that Chief Justice Warren himself was not often to be found on the side of the First Amendment against the claims for suppression of obscenity — it might be noted that it was the Burger Court that ruled in favor of the right of the

New York Times to publish classified data purloined from the secret files of the Defense Department.

The Court is a complex mechanism. Those who would paint it with a broad brush and in a single color cannot be true to the subject or to the viewer for whose benefit the image is created. The perspective of time will reveal the new Court's dominant characteristics. They have not yet emerged.

Comparisons, moreover, are difficult if not impossible. The new Court will be facing new problems arising in new contexts. We live in a volatile society and the law — even as pronounced by the most powerful judicial tribunal in the world — remains essentially a response to the demands of its society rather than a formulator of that society.

In some ways, the new Court will be faced with harder questions than its predecessor was prepared to meet. I have already made reference to the capital punishment cases. Let me offer one more example. The Warren Court chose not to answer the question whether non-Southern states, too, have obligations to desegregate their schools. But the Burger Court has, in the *Denver*[7] case, held applicable to the North, East, and West, the rules that the Warren Court would apply only to the South.

Then, too, the Burger Court will have important new facts to assay in reaching its conclusions about the continued validity of earlier decisions. Just to stick to the school desegregation question for the moment, it should be noted that *Brown v. Board of Education*[8] rested on the proposition that equality of educational opportunity was dependent on desegregation of the schools. Recent scientific — or quasi-scientific — data have undermined that premise. Work culminating in the Coleman Report,[9] the Moynihan and Mosteller book,[10] the study by David Armor,[11] and the recent book by Christopher Jencks[12] seems to suggest that it is not the educational process that creates the differences in educational achievement of blacks and whites.

How should the Court utilize the new data which contradict the social science evidence on which the Court purported to rely in *Brown*? Surely it is not going to reverse *Brown*. But how is it going to accommodate the law to the facts?

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[7] Keyes v. School Dist. No. 1 of Denver, 409 U.S. 818 (1973).
[8] 347 U.S. 488 (1954).
[9] Office of Education, U.S. Dept. HEW, EQUALITY OF EDUCATIONAL OPPORTUNITY (1966).
[10] F. MOSTELLER & D. MOYNIHAN, ON EQUALITY OF EDUCATIONAL OPPORTUNITY (1972).
[11] D. Armor, *The Evidence on Bussing, Research Report;* Public Interest Magazine at 90-126 (Summer 1972).
[12] C. JENCKS, CHRISTOPHER JENCKS IN PERSPECTIVE (1973).

DECISION AS SYMBOL

So, too, we have evidence that the *Miranda* rule has brought about none of the results that were anticipated. Whether or not the fourfold warning is delivered to an accused, he seems to behave in the same way, and so, too, do his prosecutors. These facts confound the condemners of the *Miranda* decision no less than its defenders. But what is the Court to do about it? The *Miranda* decision, like the *Brown* case, is more important now as a symbol than as a reality.

Not only is the experiential base on which the Burger Court operates different from that of its predecessor, so too, of necessity is its legal base. Its inheritance is different from that of the Warren Court. One of the major determinants of the new Court's behavior will be its attitude toward precedents, including the precedents of the Warren Court. And the question will be whether the Burger Court will do as the Warren Court did or as the Warren Court said. For surely, no Court ever treated precedents more cavalierly than did the Warren Court. A similar attitude on the part of the Burger Court could soon doom all the judgments of recent years. And, as might be expected, the new Court has already followed example rather than precept. If it has not overruled precedents, it has distinguished them in such a way as to leave them all but dead.

Members of the Warren Court asserted that no judgment was binding on them in which they did not personally participate. Such a rule would mean that precedents of the Warren Court would remain extant only until the President makes one more appointment to the high court bench.

Still another question about the new Court, yet to be answered, is how the justices themselves will regard the Court's proper role. I do not refer here to the sterile concept of strict construction, but rather to which groups will be selected by the Court as its clientele, its wards, its constituency, however you wish to phrase it.

History has revealed that the rhetoric of judicial opinions has remained fairly consistent, however disparate the results. The banners of freedom and equality have been raised by the Court over very different contending forces. It was freedom — freedom of contract — that grounded the actions of the followers of Mr. Justice Field in affording protection to commercial and industrial interests against the onslaught of government regulation. It was the notion of equality that so long doomed the labor unions to government by injunction. The answer to the question of who will be the beneficiary of the new Court's benevolence remains in the womb of time. Thus far the Burger

Court seems to have taken only "Women's Lib" under its protective wing.

THE ABDICATION VACUUM

One more factor in the fashioning of the Burger Court will be the action or inaction of other branches of the American government. It surely must be conceded that, in no small measure, the original impetus for the Warren Court's jurisprudence came from the failure of the national and state governments to address meaningfully the myriad of problems deriving from the racial discrimination that plagued the nation; from the failure of the state legislatures to abide the commands of their own constitution to apportion their legislatures democratically; from the failure of the states to provide against the abuses of the criminal laws, even after these abuses had been pointed out to them by the Supreme Court. If the other branches of government undertake to perform their functions and attempt to resolve the societal problems that sicken the nation, there may be no reason for the judicial branch to intervene at all; certainly there will be less compulsion to do so.

Allow me a few minutes more to speak of the Burger Court's attitude toward state power and authority. First, however, I would make it clear that the one constant factor in the Supreme Court's jurisprudence, from Chief Justice Marshall's day to this one, has been its persistent contribution to the movement of power from the states to the nation.

In this regard the United States Supreme Court has not been unique. Historians have shown that it was the national judiciaries that provided the avenue for the transfer of power from the barons to the crown in medieval Europe. This too was the lesson of Westminster in English history. And the role of the national judiciary in this country has been the same, as Jefferson saw at the outset of his controversy with Marshall and Marshall's Supreme Court. There is no reason to suspect that there will be a reversal of this general position by the Burger Court. Some cases, however, such as the recent pornography decisions and criminal law cases, speak of the return of authority to local government.

RESURGENCE OF DUE PROCESS

There are two basic means for the Supreme Court and the other courts of the federal judicial system to invalidate state statutes and to reverse or overrule state judicial decisions; the equal protection clause and the due process clause of the Fourteenth Amendment.

Evidence is that the former will prove less expansive under

the Burger Court than it was under the Warren Court. Equality will no longer be the primary slogan to justify constitutional decisions.

On the other hand, due process — minimal standards of decency as distinguished from equal standards of decency — may well see a resurgence.

We have already witnessed some decisions that give rise to this anticipation. But, before I build your hopes too high, it should be made clear that there is not likely to be a judicial revolution on this score. Equality for women will be a developing area, both under the existent statutory provisions and under the demands of the equal protection clause — and more so if the vagaries of the equal rights amendment become binding on the Court. Problems of desegregation will continue to receive friendly attention, although it is likely that the school desegregation cases have reached the end of the road. The NAACP desire to "metropolitanize" school systems to incorporate suburbs and cities is not likely to succeed, although desegregation among school systems throughout the country will, sooner or later, be brought about. And the classic demands for equality in such matters as jury selection are not likely to be stayed.

So, too, it would seem that the reapportionment cases will not be expanded to meet the remaining essential problem of gerrymandering, with the exception of those cases that fall afoul the Fifteenth Amendment's ban on the inhibition of the franchise for blacks as revealed in the *Tuskegee* case,[13] lo these many years ago now. Indeed, the requirements of the simplistic "one-man, one-vote" rule have been substantially limited in the most recent term.

The equality cases do show that the Court is no longer reaching out to establish doctrines of substantive equal protection. This may be seen in last term's decision in the *Moose Lodge* case[14] that permitted a private club to discriminate despite the liquor monopoly conferred by the state. And we have the refusal of the Court to find discrimination violative of the Constitution in Texas's allocation of welfare payments in such a fashion that the category with the highest proportion of blacks and Mexicans received the highest proportional cut in benefits.[15] But it must be said, in all fairness, that the Burger Court has not been niggling in its readings of federal statutes commanding equality of treatment.

Due process requirements on the other hand, have seen less

[13] Gomillion v. Lightfoot, Mayor of Tuskegee, 364 U.S. 339 (1960).
[14] Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972).
[15] Jefferson v. Hackney, 406 U.S. 535 (1972).

substantial limitations from the Burger Court. It is true that there have been several major cases in which the Burger Court refused to damn judgments that would surely have fallen during the heyday of the Warren Court. The refusal to extend the *Miranda* rule to exclude evidence used solely for impeachment purposes is typical of these.[16]

Fourteenth Amendment Reinterpreted

There is a burgeoning area of Supreme Court substantive constitutional law to be found under the rubric of the "right to travel." My own analysis is that this foreshadows a development of the third major provision of the Fourteenth Amendment, the privileges or immunities clause, from which the notion of the right to travel originally derived. The right to welfare benefits and the right to a ballot, both without residency requirement, have already been established under this new doctrine. It is in defining the privileges or immunities clause that I expect the Burger Court to make its major impression on the meaning of the Fourteenth Amendment's restrictions on the states.

I venture only one prediction about the Burger Court here. For prediction is a function of scientists and fools and I know I am not a scientist.

I predict that those who blindly worshipped the Warren Court as the epitome of good, largely because it reflected their own prejudices, will find the Burger Court an abomination. For those who, equally blindly, despised the Warren Court as the epitome of evil, largely because it rejected their own prejudices, the Burger Court will be regarded as an improvement.

For those of us who consider ourselves somewhere in between these extremes — as we all do — it is necessary to remember that the Supreme Court is not the government of the United States, but only a part of it. Its primary function remains, in part because its capacities will allow it no more, to restrain the misbehavior of other governmental bodies. It is overburdened with problems that should better be left outside its ken: some too large, others too small to call on the limited resources that the Court can bring to bear.

This is not to demean the Court's role, but to preserve it. It remains the one governmental institution above all others capable of affording some protection, however temporary, to individuals and minorities against the incursion of majorities.

The primary defect of the Burger Court so far revealed is the same defect that was observed in the Warren Court. It has

[16] *See* Harris v. New York, 401 U.S. 222 (1971).

failed to account properly for its judgments. It has issued decrees but it has not afforded adequate rationales for them; it has attempted to rule by fiat rather than reason.

Perhaps the Warren Court was the right Court for the Age of Aquarius, that period of purple passions when reason was subordinated to emotion and righteousness was overcome by self-righteousness.

The Age of Aquarius is dead. Its funeral was held on November 7, 1972. What the proper appellation will be for the age that is dawning, we do not know.

The Court may be the quiet voice of reason that inhibits a populism that is the opposite of Aquarianism and yet is the same, just as fascism and communism are identical opposites. It may be the handmaiden of an executive power that is destructive of individual freedom. It could be an ally of a legislative resurgence that may yet make democratic government meaningful without destroying minority rights. The new Supreme Court has not yet taken shape.

I would close with a quotation from G. K. Chesterton's *Ballad of the White Horse*:

> *I tell you naught for your comfort.*
> *Yea, naught for your desire.*
> *Save that the sky grows darker yet,*
> *And the sea rises higher.*