THE SUPREME COURT THE SUPREME LAWBREAKER

Informing the people how their liberty and property are being embezzled in Washington.

by
HARRY P. GAMBLE, SR.
Attorney-at-Law-Retired
of
New Orleans Bar

PREFACE

To those who respect Harvard wisdom, listen to the warning in 1958, of Dr. Mc Ilwain, a Professor of the **Science of Government**:

> "Never in recorded history, I believe, has the individual been in greater danger from government than now; never has law been in greater jeopardy from arbitrary will; and never has there been such need that we clearly see the danger and guard against it."

He does not name all the sources of this danger; but those most obvious are:

The President, when he commands Federal troops to invade States; or, for example, issues "executive orders" threatening to take bread from the mouths of thousands of working people, by withdrawing Federal funds appropriated for local projects, till his commands are obeyed;

AND the Attorney General, who may and does pin the badge of a U.S. Marshal's authority on hundreds of bullyboys, and sends them out to intimidate local authorities to bring them to his views;

AND bureaucrats who freely issue "directives" to control the daily lives of thousands of people, from one to two thousand miles distant from Washington; people whose local laws and culture may be very different, even repugnant, to those of the area of their upbringing;

AND the Supreme Court commanding obedience to their indefensible decisions, under threat of unlimited deprivation of liberty and property for noncompliance.

It is true the Professor relies largely on an "able, honest, **learned**, and independent judiciary" to protect us from the aggressors, but adds:

"I am not defending indefensible decisions of our courts. I would not shield them from the severest criticism."

It is these lawbreakers and unauthorized lawmakers who are dealt with in the following paper.

New Orleans, Louisiana, July 14th, 1963.

HARRY P. GAMBLE, SR.
Of the New Orleans Bar

Note 1: Pertinent provisions of the Constitution are found in the appendix.
Note 2: All emphasis supplied by the writer.

WHO ARE THE LAWBREAKERS

The parrot cry, "Obey the law," is heard daily from Washington. Yet the chief lawbreakers are there; among them, the President, who issues unauthorized "executive orders," and commands the Federal army to invade the States.

But the cocks of the roost, are the nine men on the Supreme Judicial Bench of the United States. These nine men are uncontrolled. Their power is supreme, irresistible, and absolute, in our so-called democracy. Yet in every age in the long ages of government, it has been demonstrated, in the language of Lord Acton, often quoted, that:

"Power corrupts; absolute power corrupts absolutely."

There is no authority in our system to check these nine men; or correct their mistakes, however grievous; or nullify their seizure of unauthorized power; or punish their acts of tryanny.

From time to time the earlier Judges sitting on that Bench have recognized their freedom from control, and asserted that it was not their function to go beyond "judicial review."

Chief Justice Marshall (1801-1835) briefly defining this **Judicial Review** said:

> "The Court is merely a legal tribunal for the decision of controversies brought before them in legal form."

Judicial review means in general, that in cases appealable to the Supreme Court, it will review the evidence introduced in the lower court, and weighing the law applicable, will affirm, reverse, or correct the judgment there rendered. The law applicable has never been held to mean that the Court may contrive, forge, or enact a law, which in its opinion fits the case, but shall render a decision on existing law enacted by the lawmaking power, constitutionally authorized so to do. If the law applied to the case below, in the opinion of the Courts is not constitutionally authorized, then it applies other existing law; still not contriving one of its own, either by strained interpretation, or downright enactment. No one has ever contended otherwise.

A recent announcement of that limitation by Chief Justice Vinson (1946-1953) declares:

> "Since we must rest our decisions on the Constitution alone, we must set aside predilections on social policy and adhere to the settled rules which restrict the exercise of our power to **judicial review**." (346 J.S. 240 1953)

Judge Harlan, father of the sitting Judge Harlan, stated the same thing in this language:

> "When the American people come to the conclusion that the Judiciary is usurping to itself the function of the legislative department, and by judicial construction is declaring what should be the public policy of the United States, **we will be in trouble**."

In referring to the 14th Amendment, fraudulently adopted in 1868, which has become a bottomless fish hatchery, from which the Court has hooked some queer fish, never before suspected of inhabiting those waters, the eminent Judge Holmes (1902-1938) said:

> "I cannot believe that the Amendment was intended to give ***carte blanc*** to embody our economic or moral belief in its prohibitions." Referring to the rights reserved to the states in the 9th and 10th Amendments, he remarked that:
>
> > **"There is hardly any limit but the sky to invalidating these rights if they happen to strike the majority of this Court as for any reason undesirable."** 251 U.S. 580 (1930)

And Chief Justice Hughes (1930-1941) commented:

> **"It is not for the Court to amend the Constitution by judicial decree." This frank spoken jurist once observed, "The Constitution is what the Supreme Court says it is."**

This assertion of a submerged truth did not much shock the careless American people; though displeasing to the Court.

Judge Douglas, still sitting, exploded furiously in the California-Colorado water diversion case, against the majority decision, saying:

> "This case will be marked as **the baldest at-**

tempt by Judges in modern times to spin their philosophies in the fabric of the law in derogation of the will of the legislature."

It will come as a surprise when disclosed that this same Judge (one of the law school teachers appointed, maybe a DEAN) in the earlier case of the Black School decision of **1954**, took a contrary stand, and agreed to founding the decision in that case on the mind reading speculations of a Swede, Gunar Myrdal, and associates, **who figured that it would make the Negro children feel bad if they could not sit with white children in public schools.**

THEIR OWN WILL THE ONLY RESTRAINT OF THESE NINE MEN

In reorganizing their absolute freedom from control, the Court has frequently stated, to use the words of Chief Justice Stone (1925-1946).

> "The only check on our exercise of power is our own sense of **self-restraint**," Butler case.

In thus admitting their freedom from control, they declare they are a **super-government.**

Such a super-government, not elected by the people, but appointed for life, is not tolerated by the great democracies of Europe,—not by England, nor France, nor Germany, nor Italy. This fact is unknown to the great mass of the American people. The continuance of this uncontrollable power in the hands of nine men, is undeniable proof that a potent segment of our political leadership does not trust democratic processes; and have somehow contrived to surround these mere human beings with a halo of sanctity not merited in the experience of life, except by saints; a sanctity which endeavors to protect them from criticism, no matter what.

It is as if assumed and asserted that the appointment by the President of a politically deserving friend (or to get rid of an opponent), will make that politician qualified to sit on the highest Tribunal in the Nation.

In more than one instance such an appointment by the President has been charged to this mode of ridding himself of an active opposition candidate.

President Lincoln appointed Senator Samuel B. Chase to be Chief Justice in 1864, when Lincoln was a candidate for re-nomination of the Republican Party, and Chase was an avowed candidate for the same nomination.

It has been printed that a political deal was made at the 1952 Republican National nominating convention between Governor Warren, who controlled the 72 votes of California, and Eisenhower managers—Eisenhower to get the votes for a decisive lead to the nomination, and Warren to be paid off by appointment to the Supreme Court. This may or may not be true, but since Warren was appointed shortly after Eisenhower assumed office—with no visible judicial qualifications for that high office; low-minded persons could scarcely be censured for raising their eyebrows.

It may be that a miracle can be performed by hanging a black cloth on a politician, to forthwith convert him into a Judge; but few would believe such a ceremony preceded by a sordid political deal, is a correct method to procure SUPERMEN for the Supreme Bench.

It may be accepted as an axiom in government that once a politician, always a politician. A politician cannot escape from a lifelong practice of proposing to amend and improve existing law. His success in politics has been founded on such promise and performance. That mode of thinking has become second nature. **And though politicians are an honorable necessity in a democracy, without whom it could not function, the highest tribunal in the land is no place for them**. School boys know that it is not the business of Judges to make laws, or amend laws, but to interpret and apply the laws enacted by the lawmaking power authorized so to do by the Constitution; and then only in cases duly brought before them. Relying on **self-restraint** by men exercising uncontrollable power is the zenith of folly—proven in all ages.

Thomas Jefferson who spent fifty years with public men in public affairs, expressed his distrust of **judicial restraint** in these words:

> "The Judiciary is the instrument which is to press us at last into one consolidated mass. . . . If Congress fails to shield the States from dangers so palpable and so imminent, the States

must shield themselves, and meet the invader foot to foot." (Thomas Jefferson to Archibald Thweat, 1821)

And:

"The Judiciary of the United States is the subtle corps of sappers and miners constantly working underground, undermining the foundation of our constitutional fabric."

This worldly wise man did not mean to imply that the men who would serve on the Supreme Bench were dishonest or traitors; but simply that their natural bent would be to make the National Government of which they were a part, supreme. In the long history of the Court, not more than one instance is suspected to have brought the shame of lack of integrity to the Supreme Bench.

That is not the charge. The charge is that when appointed they do not know anything about **judicial restraint** and are not likely ever to be much impressed by that limitation. For they are not appointed on the basis of their judicial training and learning.

That these men not elected by the people to reign over them, attain their appointments for political reasons, and not for their judicial qualifications, is abundantly proven by the fact that it is rare indeed to appoint a member of a state Supreme Court, or a Judge from the Federal Judiciary, where men of proven ability and many years of experience are to be found.

In recent years, in respect to this "**judicial restraint**" a new note has been interjected by some now sitting on the Bench, Judge Douglas among them; that it is within the province of judicial action to do some lawmaking; which as we shall see, they have boldly done—united with its partner, **lawbreaking.**

This far afield **lawmaking and law breaking** in recent years have drawn sharp and unusual criticism from the official organ of American lawyers, the American Bar Association; and the official condemnation of an assembly of Chief Justices of state Supreme Benches.

Judicial seizure of power has grown so intolerable, that an Amendment to the Federal Constitution is now in process of adoption for holding them in check, and reducing their powers of **super-**

government. This Amendment has already been adopted by several states.

HOW THESE SUPERMEN BREAK THE LAW

When these nine SUPERMEN do not like a law enacted by Congress or a State Legislature, they shatter it. All they have to do is to call it **unconstitutional**. That it is not authorized, or is prohibited, by the Federal Constitution; and since, in the words of Chief Justice Hughes, the Constitution is what they say it is, the law is broken, and any decision which had before held it to be law is also broken, however long that decision may have been held to be law. In our kind of democracy, there is no remedy.

Often the law is busted by the vote of one of the SUPERMEN. Four say 'tis or 'taint constitutional; and four say 'taint or 'tis; then one decides the question—to make a majority of five to four. Right here it is easy for the unawed mind to become confused with trying to keep up with the "now you see it, now you don't," juggling going on among the SUPERMEN. For in one decision you see that five are truly SUPERMEN, and the other four are bush leaguers; but in the next decision, the bush leaguers are back in the majors, and some of the former SUPERMEN are banished to the minors. These chameleon changes so baffles one contemplating this coming and going, that he is likely to head for the nut house. Only a lizard in the animal world can pass through these changes without loss of prestige.

When a citizen is told about these things, he is amazed that a meek Congress does not perform even the minor checking that the Constitution does authorize it to do, if it had any spunk.

The highly intelligent men who have made it to Congress, you may be sure, are not for a moment smitten with the preposterous idea that hanging a dozen yards of black cloth on a politician (or a law school teacher), and giving him a job for life, will convert him into a SUPERMAN. (The State Judges are elected for periods of from eight to twelve years; and generally re-elected, since they never set up as SUPERMEN.)

But somehow a potent minority who distrust the people prevails; **so we in the great American democracy have our super-government.**

A TESTED STATUTE ENACTED BY CONGRESS OR STATE LEGISLATURE WHEN FOUND CONSTITUTIONAL IS LAW: THAT IS, UNTIL BROKEN

It not infrequently happens that an Act of Congress or a state Legislature is charged before the Courts as being unconstitutional, and therefore, null. If in its decision the Court of last resort pronounces this law to be constitutional, **then it is the law**. Somewhat carelessly, this decision is itself sometimes referred to as the law in question.

Then business and government, state and national, may and often do, expend millions, even billions, on faith thereof. That to the ordinary mind seems logical. The questioned law is settled. Let's go. But to the SUPERMEN, no! Any upcoming set of SUPERMEN may, and often do, assert that their predecessors were not the SUPERMEN that their contemporaries thought. Not at all. That was a big mistake. They were bush leaguers, or old fogies who did not know what was what. This is most extraordinary, since their own claim to absolute supremacy is founded on the proposition that as a body they **are** SUPERMEN. Their puzzling refusal to regard each other as SUPERMEN, while demanding that in a body they be so regarded by the people, is disclosed by the fact that:

> **"In the brief span of sixteen years, between 1937 and 1953, this Court has reversed itself not fewer than thirty-two times on questions of constitutional law." Kirkpatrick in "The Sovereign States," p. 270. This work is less than 300 pages, by a distinguished journalist, quite understandable by laymen. Published by Henry Regnery Co., Chicago.**

In every one of these instances, and many more, before and after, where their predecessors had presumably settled the question by declaring that a disputed act of Congress or Legislature is constitutional, and **therefore the law,** the reversal **broke that law.**

In some of these instances, that law had been settled for many years, in the meantime frequently referred to and approved by subsequent Supreme Court decisions.

A case of reversal and breaking, occurring since

the above record of thirty-two times in sixteen years, is one which will presently be brought under inspection. That was a decision of the Supreme Court of **1896**, declaring an act of the Legislature to be constitutional law. In the interim of nearly sixty years, Supreme Courts presided over by such eminent jurists as Chief Justices White, Taft, Hughes, and Stone, had quoted that decision with approval. **It was the law.**

THE SEGREGATION LAW

That law was an act of the Legislature requiring the separation of the races in passenger transportation. In a case before the Court in **1896**, it was directly charged that this state law violated the 14th Amendment in not granting equal rights to Negro travellers. It was there decided that if the accommodations were equal, the separation of the races was not prohibited by the Amendment. This established the so-called doctrine of "Separate if equal;" and through the years up to **1954**, hundreds of millions have been expended in separate schools and other construction, and in educating Negroes in separate schools. This was the case of Plessy vs. Ferguson; 163 U.S. 537. In referring to other contemporary laws requiring separation of the races, not only in the South, but in the North, it was stated in that decision:

> "The most common instance of this is the establishment of schools for white and colored children, which has been held a valid exercise of legislative police power even by Courts where the political rights of the colored race have been longest and most earnestly enforced."

It is true that in public education, which had to be supported by local taxation, the South was far behind the more prosperous North, which had been enriched by the Civil War, as the South had been impoverished. Added to the ravages of war, was the ten years of misgovernment and looting by adventurers from the North—called **carpet-baggers** because when they arrived in the South their whole worldly possessions were contained in a piece of luggage made of material used in carpet making. These were maintained in office by the votes of the recently enfranchised Negroes, and thousands of Federal bayonets in each South-

ern state. Just as the same self-seeking class of Northern politicians are doing today, these carpetbaggers, instead of trying to do something of economic value for the Negroes, who, when they were freed by their Northern emancipators, were turned out to barren fields, without economic aid from their touted benefactors—these carpetbaggers used the Negro vote to maintain themselves in office, paying off the Negroes with a minimum of participation in the looting, and a maximum of sweet talk about sterile "equality."

Among the Southern people, regrettable as it must be admitted, there was then, as there is today, a relative few who profited by deserting to the enemy. These, called **scalawags**, aided the carpetbaggers and the Negroes; and, with their descendants, were ostracized for three generations.

When these carpetbaggers were forced to flee by the bargain of the Southern Democrat leaders of Louisiana, Florida, and South Carolina, with the Republican President Rutherford B. Hayes, withdrawing the Federal troops they left the Negro in the lurch—just as their modern white models will do when the Northern white voters turn on them for exciting the Negroes to insurrection in those parts.

After the flight of the carpetbaggers, both white and black had to endure another forty years of poverty—though gradually decreasing; until in 1915, the European war, demanding cotton, lumber, and other natural resources of the South, permitted a more rapid economic movement upward. The Second World War accelerated this movement. In 1961 the United States Chamber of Commerce published certain conclusions relating to that development, referring to it as "nothing short of spectacular."

Under this improved economic prosperity, the whites and blacks of the South were making impressive advance in rational partnership when under New York prodding, the SUPERMEN led by Earl Warren, the astute politician from California, broke the law of **1896**—separate if equal. This man, with not an hour's training as a Judge, had just been appointed by President Eisenhower to be Chief Justice over the other eight who had been sitting as Judges for several years. This appoint-

ment was not so reprehensible as might first appear, since of these eight, seven had been put on the Bench without any Judicial training. It must be admitted, in all fairness, that one of them, Judge Black, still there, had been a Justice of the Peace down in Alabama.

The case before them in **1954**, in which they broke the old law of separate if equal of **1896**, was where some Negroes in Kansas, Delaware, South Carolina, and Virginia (the cases consolidated) claimed that the segregated Negro schools of these locations were not equal to the white schools, and they wanted the advantages of the white schools for their children. The Court did not agree that they were not equal, saying:

> "The Negro and white schools have been equalized, or are being equalized, with respect to building, curricula, qualifications and salaries of teachers, and other 'tangible factors'."

That under the existing law, and its approval by intervening Supreme Court decisions, should have ended the case; the Negroes continued in their equal schools, and the separate if equal doctrine again affirmed. But the SUPERMEN said "No." That did not end the case, they had found something their predecessors, the White, Taft, Hughes, Stone, Vincent, Court Judges did not know. The SUPERMEN said that they had read in a book by a fellow by the name of Gunar Myrdal, who lived over in Sweden on the icy Baltic Sea where there are no Negroes, in which he claimed it would **make the Negro children feel bad** if they could not sit with white children in public schools, though their own Negro schools might be equal to the white schools. He was cited as "ample authority;" an **expert**, in other words. The Court noted the names of some half dozen other book writers, who penned more or less the same sentiments in their books.

Now something peculiar happened in this case—something unheard of in judicial procedure where the opinions of persons alleged to be experts are introduced to aid the Courts. In such cases it is common for the alleged "expert" to be brought into Court so that it may be determined by due examination, and cross-examination by opposing

counsel, whether the witness is in fact an expert whose testimony will be of value to the Court. Unhappily for all concerned, the Judges as well as others, this was not done in this case.

What a field day a competent cross-examiner would have had with this Swede; and incidentally, protecting the Court from embarrassment in their subsequent exaltation of the opinions of the Swede, and his Communist tainted associates.

What a joy it would have been to question this resident of the Arctic regions on how he became acquainted with what it took to make Negroes feel bad; what Negroes did he consult; was the feeling **only mental**, or also physical; what schools of medicine did he graduate from; or was he a follower of the Austrian Freud, who emphasized sex in evaluating mental operations; or the German Adler, who stressed fear more than sex in probing the mind; or had he strayed off with the Swiss Jung, who had acquired some twists of his own in thought reading. He could have been required to state whether his investigations related only to what made Negroes feel bad, or if he had included the yellow Chinese, the brown Malays, and the red Indians. Especially he could have disclosed what made white children feel bad, that is if they were important enough to be included in his roamings; and if by making colored children feel good by bringing them into association with white children, it might make the white children feel bad; and which, if either, was the more important, to continue the coloreds in feeling bad, and the whites not, or make the coloreds feel good at the expense of the whites?

The examination would have disclosed what we hope the Judges were ignorant of, when they accepted the Swede, and his companions, as "ample authority," as they said. These authors were rotten with Communist associations, some with more than a dozen Communistic front citations. One must wonder whether, when they approved the Swede as "ample authority," they had read that part of his book declaring that what the Founding Fathers did when they confected the Constitution "was almost a plot against the common people." An instrument of government which non-Communist statesmen have acclaimed for one hundred and

seventy-five years. And was he "ample authority" when he asserted that our Constitution "is impractical and outmoded?"

Having agreed with the Swede that it would make the Negro children feel bad not to sit with white children; it was next in order to determine whether the authors of the 14th Amendment in 1868 had intended by it to turn over to the Federal Government Public Education in the States. If that Amendment did not do this then the SUPERMEN could not seize control of these schools. They concluded, happily for their intent, that from "exhaustive investigation" of the times and what was then said, the evidence was "inconclusive." That opened the way for them to insert in it their own views of what ought to have been, or might have been; that is **to amend it** to suit what they had in mind—namely, that it did take away from the States the right to manage their own schools which they had taxed themselves to support; and turned over to the SUPERMEN the power to say how they should be operated.

It is poetic justice that the fraudulent adoption of that Amendment permits equally fraudulent interpretations—like the one by the SUPERMEN, the latest and most disastrous—which has resulted in the bitter interruption of good relations between the races. That adoption was achieved in an atmosphere of rancour, followed by the very same kind of deception and betrayal of the Negroes by the carpetbaggers, as is certain to result from similar conduct of the modern form of carpetbaggery.

Having now so interpreted the Amendment that they could use it as a basis for their decision to adopt the Swede's cozy views to bring the white and colored children together to make the colored children feel better; that they proceeded to do. The Court's precise language in agreeing with the Swede is as follows:

> "To separate Negro children from others of similar age and qualifications solely because of their race, generates a feeling of inferiority as to their status in the community that **may** affect their hearts and minds in a way unlikely to ever be undone."

The Court failed to discuss whether it would "generate a feeling of inferiority" in the hearts

and minds of white children, if forced to sit with Negro children. Apparently the Swede had no musing on this point.

The modern mania for equal rights evidently does not include within its vague crusade, the white race.

To digress for a moment: Every century or so a craze unaccountably seizes on the world, as this egalitarian craze has appeared in our times. In the 13th century thousands of children were preached in Europe into a march on Jerusalem to free the Holy Sepulcher from the infidel Saracens. These who did not starve or drown before they reached sea ports, were sold into slavery? The witch craze of the Middle Ages took the lives of 300,000 men and women in Europe; not forgetting the seventy-five (75) tortured and executed in Massachusetts in the 1600s. The South Sea and John Law Investment Bubbles of the 1700s impoverished tens of thousands in France and England.

One which much resembles that of today, was the St. Vitus Dance mania, in Germany, where people went prancing about the country in swarms.

Due to the more rapid and far distant communications, the egalitarian mania of today extends from Washington and New York to Africa; where the natives of Angora and Congo "demonstrate" their claim to equality by perpetrating crimes on hundreds of white men, women, and children—priests and nuns—so bestial as to be beyond any civilized imagination—the women raped before the eyes of dying men bleeding to death from unprintable mutilations—being the mildest. Covetous of the riches of Africa, the white nations of Nato, including our own, hastily sweep these horrors under the rug, and hypocritically toady to the "ambassadors" from that country.

The brand of hypocrisy is the same; whether the white politician is bootlicking for the Negro vote in America; or the international "statesmen" are kotowing to African ambassadors—the result will be the same—the black man will end up with his pockets picked by these self-seeking fakirs.

Writing of the crusades, Wells remarks: "From the very first flaming enthusiasm was mixed with baser elements."

Returning to the integration decision; strangely

enough in this case, and all the others which have followed in respect to adult Negroes, an admission is inherent in what the Court said, and accepted by all who agree with the Court, including the "demonstrating" Negroes, that the Negro **is** inferior, and the only hope for his advance is "forced" close association with whites. Later disclosures of his advancement in a segregated society, will not support such a contention.

BARRIERS WHICH THE COURT HAD TO ELUDE

But the Court was confronted with several apparently insurmountable obstacles. How could this constant association, required to improve the asserted inferiority of the Negro children in this case, and subsequent adult cases; and to make them all feel better; be achieved in the face of the segregation laws of many states, North and South? The only answer was for the SUPERMEN to break the laws requiring segregation. That they just hauled off and did. They said the WHITE, TAFT, HUGHES AND VINSON COURTS did not know what they were talking about when they approved the "separate if equal" doctrine. The oldtimers did not have the benefit of the Swede's discovery that it would make the Negro children feel bad not to sit with the whites; and, too, they might not have been frank and cold enough, to say that the Negro is inferior, and that the only remedy for that is constant contact with the white. The knockout blow came in these precise words:

> "Any language in Plessy vs. Ferguson (the old decision of **1896**) contrary to this finding (that is what they and the Swede had agreed upon) **is rejected**."

It may again be repeated that the man who wrote this opinion downgrading the old Judges, had never before his appointment served as a Judge.

It may be added here that the practice of appointing deserving political friends has not ceased. A little while ago the President appointed Messrs. White and Goldberg to fill vacancies on the Court. In these cases, one was the associate of Bobby Sox, Attorney General, whose judgment of what are the qualifications of a Supreme Judge, may be measured by the fact that his first contact with any