

## *Court vs. Constitution*

**The Warren Court and the Constitution**, by John Denton Carter, *Gretna, Louisiana: Pelican Publishing Company, Inc., 1973. 171 pp. \$7.95.*

GENERALLY SPEAKING, the United States Supreme Court has adopted a liberal pose, which, in the older and etymologically accurate sense of the term, meant to favor freedom against government. But under the influences of Earl Warren and the New Deal justices it became, as Mr. Carter shows, a wholly reactionary institution, forsaking its constitutional role as an impartial court of justice to convert itself into a political power center in competition with the federal, legislative and executive branches and with the elected state governments. Its decisions tended to concentrate power in the central bureaucracies, thus restricting or diminishing the liberties of the states, of local governments, and of the people. Once the consolidation was achieved, inimical influences could the more easily threaten the entire constitutional structure, since the sensorium of power and policy-making was no longer diffused among the sovereign and independent states.

Mr. Carter tells us that under Chief Justice Warren the Court "was not even concerned with establishing justice but was quite vigilant in granting special privileges to favored minorities and to those elements operating on the fringes of the law or without the law who demanded rights while re-

jecting all responsibilities." From the decisions reflecting this favoritism have flowed several grievous consequences, among them a weakened internal security, judicial supervision of public schools in the most minute detail, increasing subjection of the citizenry to criminal attacks on persons and property, the intensification of race conflict, North and South. The "moral disintegration," the "intellectual chaos," the "internicine war," which Mr. Carter considers "a fair description of the trends in our society today" may, he believed, be blamed in large degree on the attitudes of the Supreme Court and on the liberal intellectuals and publicists who served as the cutting edge for will of an ideological élite on recalcitrant politicians and the populace. This group has gradually extended its influence and power over the various forms of public communication, over schools and universities, over trade unions, over church organizations as well as over federal and state bureaucracies, the great foundations, some unassimilable ethnic groups, and over a large part of the teachers and students in our institutions of higher learning. The American people have watched and many have rejoiced as the Supreme Court, mesmerized by the intellectuals, attempted to dismantle the federal constitutional system of republican government and to substitute for it a form of government by decree. Only conservatives, some libertarians, but very few others outside the South—which is still largely populated by the race which devised the constitutional system and whose legal traditions are woven into it—have opposed this transformation.

Mr. Carter believes that the evolution of the Court from a judicial agency into a political power claiming and exercising constitution-making, legislative and executive authority first became evident at the beginning of Franklin Roosevelt's second term. By the 1950's it was apparent to all that those constitutional principles, which earlier generations of Americans had believed would forever protect their liberties,

were now in danger of extinction; for, says Mr. Carter "even the most conservative of the justices on the Warren Court accepted the doctrine that the Court has a rôle as a maker of public policy in addition to its prescribed duties as the highest court of law under the Constitution." He finds the reasoning of the court in the famous and revolutionary case of *Brown v. Virginia* both symptomatic and outrageous.

The Brown opinion is so lacking in moral and intellectual respectability that it may go down in judicial history as the shoddiest performance of the United States Supreme Court in 165 years. It is shoddy, whether viewed as rhetoric, ethics, history, logic, or constitutional law.

The Court under Earl Warren became the instrument of the power-hungry liberal-left coalition. This coalition consisted largely of members of the intellectual class—the verbalists of the academy, the media, the pulpit, and the bureaucracies, acting in alliance with special interest groups such as the National Education Association, the National Council of Churches, the NAACP, the utopian activists, the sentimentalist women of the social-service type, and the subservient politicians. Mr. Carter finds that the Supreme Court of the Warren era became "little more than a transmission belt, the means of effecting a massive transfer of political power from elected representatives of the people to this same liberal-left coalition." He believes that the publishers of certain liberal newspapers, some members of the Harvard Law School faculty, and some other extra-constitutional groups now have more authority over the schools and the police systems of, say, Alabama than do the governor, the state legislature, the state courts and the duly elected local officials. "Revolutionary progress" was the descriptive term applied by one member of the Warren Court, former Justice Abe Fortas, to this transition of power.

Mr. Carter, as the reader will have

gathered, is rather bitter about it all. He recalls that the famous inscription prepared by Dr. Johnson for the monument to Oliver Goldsmith in Westminster Abbey contains the words, *Nullum quod tetigit non ornavit*: “[he] touched nothing that he did not adorn.” An appropriate verdict on Earl Warren and his judicial colleagues, as far as the performance of their public duties is concerned, would be, Mr. Carter thinks, “They demeaned everything they touched!”

Reviewed by TOMMY W. ROGERS