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WHEN it was announced in June 1968 that Chief Justice Earl Warren would retire, the Board of Editors of the *Michigan Law Review* decided to publish a Symposium reviewing the past fifteen years of the Court's work. At the time when the participants agreed to join the effort, we felt that by December 1968 Earl Warren would be an active contributor to the newly created Federal Judicial Center and that Abe Fortas would be Chief Justice. The Senate confirmation hearings on the Fortas nomination—unfortunate because they were used by many as a vehicle for broad political criticism of the Supreme Court—underscored the controversy engendered by this particular Court and strengthened our conviction that 1968 was the proper time to assess the Warren tenure.

As many of the contributors to this Symposium point out, there is a consistent pattern evident in the work of the Court under Warren. The thrust of the landmark decisions has been to give substance to the rights embodied in our constitutional concepts. As Justice Schaefer of the Illinois Supreme Court described it, "Flesh and blood are being put on our ideals. . . . And putting on flesh and blood—coming face-to-face with our ideals and looking them in the teeth—is not always a comfortable process, nor is it always an easy one."[1]

In a news conference in July 1968, before the extent of the Fortas controversy became clear, the Chief Justice in a sense assessed the Court's past fifteen years himself. When considering the hierarchy of decisions that Earl Warren described, it is critical to realize that the decisions in themselves will be meaningless if they are not carefully nurtured and developed as key precedents. It is also important to consider where the principal impact of these decisions will be felt. Chief Justice Warren recently stated that the "cry of modern

1. Schaefer, *Symposium, Panelists' Comments*, 54 KY. L.J. 521 (1966).

America is to find a solution to the problems of urban America. . . . Urban America does demand the best that the legal profession can offer."[2]

Thus, it seems natural that the Chief Justice stated that *Baker v. Carr* was the most important decision of the Warren Court; this is symptomatic of his concern for the problems of urban America. A restructuring of representative government, designed to reflect more accurately the goals of a population which is increasingly concentrated in metropolitan areas, was and is essential if legislative bodies are ever to come to grips with the urban crisis. The Chief Justice's choice of *Brown v. Board of Education*—and presumably its progeny —as the next most significant decision needs no commentary to relate it to the plight of the cities. And the fact that *Gideon v. Wainwright* was his third choice simply reflects the confidence which the Chief Justice has in the legal profession's ability to respond to these needs. In times when polarization between the police and citizens of all races is increasingly apparent, the presence of counsel at the critical stages of the criminal process may have a placating effect upon both sides. Certainly, providing counsel to handle cases individually should help to insure that the courts—although a part of the "establishment"—do indeed dispense justice along with law and order.

The fifteen-year tenure of Earl Warren has seen a great increase in public awareness of the Supreme Court as a powerful institution of government. The Senate hearings on the Fortas nomination and the fact that the Court and its "proper" role in the political process were important campaign issues in this election year have assured that the attention of the mass media and the general public will not be diminished to any significant extent. Those who have criticized

2. Warren, Address at the cornerstone-laying ceremonies of the Roscoe Pound-American Trial Lawyers Law Center, Cambridge, Mass., Sept. 28, 1968.

the Warren Court's activism would do well to consider the following remarks about the role of the Supreme Court by one of the Chief Justice's former law clerks:

> Remove this avenue for protection of the constitutional rights of the individual and, I suggest, the fight, inherently incapable of being waged in the legislative halls, has only one remaining battleground. That is the streets. The alternatives to careful judicial review are either disobedience of the law . . . or complacent acceptance . . . . Both alternatives—violence and decadence—are intolerable. The Warren Court today fulfills the central justification of *Marbury v. Madison*—concern for those about whom the other branches and divisions of government often will not be concerned.[3]

The Chief Justice's perception of the primary importance of these goals during his tenure on the Court, and the direction of his remaining career in public life, were reflected in a speech that he gave shortly after announcing his intention to retire:

> Justice in individual cases is the basis of justice for everyone. A failure to protect and further anyone's individual rights leads to justice for no one.
>
> Many countries have provisions in their Constitutions similar to our own. In only a few countries do these provisions find effect in the actual operation of the law. The failure of these Constitutions is not in the concepts of their draftsmen but rather in the absence of an independent judiciary to uphold these rights or a professionally independent bar to assert and defend them.
>
> Justice will be universal in this country when the processes as well as the doors of the courthouse are open to everyone. This can occur only as the institutions of justice, the courts and their processes are kept responsive to the needs of justice in the modern world. Such a goal will be accomplished only as all elements of the legal system, the law-makers, practicing attorneys, legal scholars and judges, recognize the ever-changing effects of the law on society and adapt to them within the principles which are fundamental to freedom.[4]

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3. Choper, *On the Warren Court and Judicial Review*, 17 CATH. U. L. REV. p. 20 (1967).

4. Warren, *supra* note 2.

This Symposium, then, is designed to offer a series of perspectives on the degree to which the Supreme Court, under the leadership of Earl Warren, has succeeded in adapting the principles of fundamental law to the social upheavals and economic developments of the last decade and a half.