Judicial Verbicide: An Affront to the Constitution

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Judicial Verbicide

JIM'S ADMINISTRATOR was suing the railroad for his wrongful death. The first witness he called to the stand testified as follows: "I saw Jim walking up the track. A fast train passed, going up the track. After it passed, I didn't see Jim. I walked up the track a little way and discovered Jim's severed head lying on one side of the track, and the rest of his body on the other." The witness was asked how he reacted to his gruesome discovery. He responded: "I said to myself something serious must have happened to Jim."

Something serious has been happening to constitutional government in America, and I want to write about it. My motive for doing so is as lofty as that which caused Job Hicks to be indicted and convicted of disturbing religious worship in the Superior Court of Burke County, North Carolina, my home county, 75 years ago. Job revered the word of the Lord. An acquaintance of his, John Watts, took a notion he had been called to preach the Gospel, and adopted the practice of doing so in any little country church which would allow him to occupy its pulpit. While he was well versed in his profession as a brick mason, John Watts was woefully ignorant in matters of theology. One Sunday, Job Hicks imbibed a little too much Burke County corn liquor, a rather potent beverage. After so doing, he walked by a little country church, saw John Watts in the pulpit, and heard him expounding to the congregation his peculiar version of a biblical text. Job Hicks entered the church, staggered to the pulpit, grabbed John Watts' coat collar, dragged him to the door, and threw him out of the church.

When the time came for the pronouncement of the sentence upon the jury's verdict of guilty, Judge Robinson, the presiding judge, observed: "Mr. Hicks, when you were guilty of such unseemly conduct on the Sabbath Day, you must have been too drunk to realize what you were doing." Job Hicks responded: "It is true, Your Honor, that I had had several drinks, but I wouldn't want Your Honor to think I was so drunk that I could stand by and hear the Word of the Lord being *mummicked up* like that without doing something about it."

Although I am completely sober, I am constrained to confess I am like Job Hicks in one respect. I cannot remain silent while the words of the Constitution are being

mummicked up by Supreme Court Justices. This is so because I entertain the abiding conviction that the Constitution is our most precious heritage as Americans. When it is interpreted and applied aright, the Constitution protects all human beings within our borders from tyranny on the one hand and anarchy on the other. William Evart Gladstone, the wise English statesman, correctly described it as the most wonderful work ever struck off at a given time by the brain and purpose of man.[1]

I entitle this essay "Judicial Verbicide: An Affront to the Constitution." I am prompted to do so by this trenchant truth which was told by Dr. Oliver Wendell Holmes in his *Autocrat of the Breakfast Table*:

> Life and language are alike sacred. Homicide and verbicide—that is—violent treatment of a word with fatal results to its legitimate meaning, which is its life—are alike forbidden.[2]

Why the Constitution was Framed and Ratified

THE TERM "Founding Fathers" is well designed to describe those who framed and ratified the Constitution and its first ten amendments. For ease of expression, I also apply it to those who framed and ratified subsequent amendments. The Founding Fathers knew the history of the struggle of the people against arbitrary governmental power during countless ages for the right to self-rule and freedom from tyranny, and understood the lessons taught by that history.

As a consequence they knew these eternal truths: First, that "whatever government is not a government of laws is a despotism, let it be called what it may;"[3] second, that occupants of public offices love power and are prone to abuse it;[4] and, third, that what autocratic rulers of the people had done in the past might be attempted by their new rulers in the future unless they were restrained by laws which they alone could neither alter nor nullify.[5]

The Founding Fathers desired above all things to secure to the people in a written Constitution every right which they had wrested from autocratic rulers while they were struggling for the right to self-rule and freedom from tyranny. Their knowledge of history gave them the wisdom to know that this objective could be accomplished only in a government of laws, *i.e.*, a government which rules by certain, constant, and uniform laws rather than by the arbitrary, uncertain, and inconstant wills of impatient men who happen to occupy for a fleeting moment of time legislative, executive, or judicial offices.

What the Constitution was Designed to Accomplish

FOR THESE REASONS, the Founding Fathers framed and ratified the Constitution, which they intended to last for the ages, to constitute a law for both rulers and people in war and in peace, and to cover with the shield of its protection all classes of men with impartiality at all times and under all circumstances.[6] While they intended it to endure for the ages as the nation's basic instrument of government, the Founding Fathers realized that useful alterations of some of its provisions would be suggested by experience.[7]

Consequently, they made provision for its amendment in one way and one way only, *i.e.*, by combined action of Congress and the States as set forth in Article V. By so doing, they ordained that "nothing new can be put into the Constitution except through the amendatory process" and "nothing old can be taken out without the same process;"[8] and thereby forbade Supreme Court Justices to attempt to revise the Constitution while professing to interpret it.[9]

In framing and ratifying the Constitution, the Founding Fathers recognized and applied an everlasting truth embodied by the British philosopher, Thomas Watts, in this phrase: "Freedom is political power divided into small fragments." They divided all governmental powers between the Federal Government and the States by delegating to the former the powers essential to enable it to operate as a national

government for all the states, and by reserving to the states all other powers. They divided among the Congress, the President, and the federal judiciary the powers delegated to the federal government by giving Congress the power to make federal laws, imposing on the President the duty to enforce federal laws, and assigning to the federal judiciary the power to interpret federal laws for all purposes and state laws for the limited purpose of determining their constitutional validity.

In making this division of powers, the Founding Fathers vested in the Supreme Court as the head of the federal judiciary the awesome authority to determine with finality whether governmental action, federal or state, harmonizes with the Constitution as the supreme law of the land, and mandated that all federal and state officers, including Supreme Court Justices, should be bound by oath or affirmation to support the Constitution.[10]

The Founding Fathers undertook to immunize Supreme Court Justices against temptation to violate their oaths or affirmations to support the Constitution by making them independent of everything except the Constitution itself. To this end, they stipulated in Article III that Supreme Court Justices "shall hold their offices during good behaviour...and receive for their services a compensation, which shall not be diminished during their continuance in office."

In commenting upon the obligation of Supreme Court Justices to check unconstitutional action in his dissenting opinion in *United States v. Butler*, Justice (afterwards Chief Justice) Stone made this cogent comment: "While unconstitutional exercise of power by the executive and legislative branches of government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint."[11]

Wise Americans Condemn Judicial Activism and Verbicide

SOME EXCEEDINGLY wise Americans, who understood and revered the Constitution, have expressed opinions concerning Justices who do not exercise the self-restraint which their oaths or affirmations to support the Constitution impose upon them, and the impact of their derelictions upon constitutional government. George Washington, who served as President of the convention that framed the Constitution before becoming our first President under it, gave America this solemn warning in his *Farewell Address*:

> If in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Chief Justice Marshall emphasized the supreme importance of a Supreme Court Justice accepting the Constitution as the absolute rule for the government of his official conduct by declaring that if he does not discharge his duties agreeably to the Constitution his oath or affirmation to support that instrument "is worse than solemn mockery."[12] Another great constitutional scholar, Judge Thomas M. Cooley, asserted that such a Justice is "justly chargeable with reckless disregard of official oath and public duty."[13]

Benjamin N. Cardozo, Chief Judge of the New York Court of Appeals and Justice of the United States Supreme Court, stated in *The Nature of the Judicial Process* that "judges are not commissioned to make and unmake rules at pleasure in accordance with changing views of expediency or wisdom" and that "it would put an end to the reign of law" if judges adopted the practice of substituting their personal notions of justice for rules established by a government of laws.[14]

Constitutional Obligations of Supreme Court Justices

NO QUESTION IS more crucial to America than this: What obligation does the Constitution impose upon Supreme Court Justices? America's greatest jurist of all time, Chief Justice John Marshall, answered this question with candor and clarity in his opinions in *Marbury v. Madison* and *Gibbons v. Ogden*.[15] In these indisputably sound opinions, Chief Justice Marshall declared:

1. That the principles of the Constitution are designed to be permanent.
2. That the words of the Constitution must be understood to mean what they say.
3. That the Constitution constitutes an absolute rule for the government of Supreme Court Justices in their official action.

In elaborating the second declaration, Marshall said:

> As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said.[16]

Judicial Activism and Verbicide

JUDGES WHO PERPETRATE *verbicide* on the Constitution are judicial activists. A judicial activist is a judge who interprets the Constitution to mean what it would have said if he instead of the Founding Fathers had written it. Contrary to popular opinion, all judicial activists are not liberals. Some of them are conservatives. A liberal judicial activist is a judge who expands the scope of the Constitution by stretching its words beyond their true meaning, and a conservative judicial activist is one who narrows the scope of the Constitution by restricting their true meaning. Judicial activism of the right or the left substitutes the personal will of the judge for the impersonal will of the law. The majority opinion in *Miranda v. Arizona* is the product of liberal judicial activism, and the majority opinion in *Laird v. Tatum* is the product of conservative judicial activism.[17]

Judges are fallible human beings. The temptation to substitute one's personal notions of justice for law lies in wait for all occupants of judicial offices, and sometimes ordinarily self-restrained judges succumb to it. Nobody doubts the good intentions of the judicial activists. They undoubtedly lay the flattering unction to their souls that their judicial activism is better than the handiwork of the Founding Fathers, and that America will be highly blessed by an exchange of the constitutional government ordained by the Constitution for a government embodying their personal notions.

Before accepting these assurances as verity Americans would do well to ponder what Daniel Webster said about public officials who undertake to substitute their good intentions for rules of law. Webster said:

> Good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

Alexander Hamilton's Assurance Concerning Judicial Activism and Verbicide

WHEN THE CONSTITUTIONAL Convention of 1787 submitted the Constitution to the States, Eldridge Gerry, who had been a delegate from Massachusetts, and George Mason, who had been a delegate from Virginia, opposed its ratification because it contained no provision sufficient to compel Supreme Court Justices to obey their oaths or affirmations to support it. Gerry complained that, "There are not well defined limits to the judiciary powers" and that "it would be a herculean labour to attempt to describe the dangers with which they are

replete." George Mason said that "the power of construing the laws would enable the Supreme Court of the United States to substitute its own pleasure for the law of the land and that the errors and usurpations of the Supreme Court would be uncontrollable and remediless."

Alexander Hamilton, a delegate from New York, rejected these arguments with the emphatic assertion that "the supposed danger of judiciary encroachments...is, in reality, a phantom." To support his assertion, Hamilton maintained in much detail that men selected to sit on the Supreme Court would be chosen with a view to those qualifications which fit men for the stations of judges, and that they would give that inflexible and uniform adherence to legal rules and precedents which is indispensable in courts of justice.[18]

By his remarks, Hamilton assured the several states that men selected to sit upon the Supreme Court would be able and willing to subject themselves to the restraint inherent in the judicial process. Experience makes this proposition indisputable: Although one may possess a brilliant intellect and be actuated by lofty motives, he is not qualified for the station of judge in a government of laws unless he is able and willing to subject himself to the restraint inherent in the judicial process.

Fruits of Judicial Activism and Verbicide

HAMILTON'S PREDICTION about the qualifications of the men to be selected to serve as Supreme Court Justices proved valid for generations. Unfortunately, however, for constitutional government in America, Hamilton's phantom has now become an exceedingly live ghost. While they have acted with reasonable judicial decorum in ordinary cases, the tragic truth is that during recent years some Supreme Court Justices have adopted and exercised the role of judicial activists with more or less abandon in cases involving the place of the states in the federal system, cases involving prosecution for crimes in federal and state courts, and cases having emotional, political, and racial overtones.

A high proportion of these cases have been decided by a sharply divided Court. Limitations of language and space compel me to confine my remarks in respect to them to the handiwork of the Supreme Court Justices who have enacted the role of judicial activists and to omit reference to that of their brethren whose vigorous dissents have protested such actions.

By committing verbicide on the Constitution, the judicial activists concentrate in the federal government powers the Constitution reserves to the states; diminish the capacity of federal executive officers and the states to bring criminals to justice; rob individuals of personal and property rights; and expand their own powers and those of Congress far beyond their constitutional limits.

In Milton's poetic phrase, the cases in which the Supreme Court has committed *verbicide* upon the Constitution have become as "thick as autumnal leaves that strow the brooks of Vallombrosa."[19] The number and variety of these cases make it impossible to detail them within appropriate limits. If anyone should detail them in their entirety, he would be justly chargeable with forsaking time and encroaching upon eternity. Merely to indicate how judicial verbicide performs its wonders, I cite a few of the innovative decisions an activist Supreme Court has handed down since 1968. They are *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409; *Sullivan v. Little Hunting Park*, 396 U.S. 229; *Tillman v. Wheaton-Haven Recreation Association*, 410 U.S. 431; *Johnson v. Railway Express Agency*, 421 U.S. 454; *Runyon v. McCrary*, 427 U.S. 160; and *McDonald v. Santa Fe Trail Transportation Company*, 427 U.S. 273.

By committing colossal verbicide on the plain words of the Thirteenth Amendment and the Civil Rights Act of 1866, Supreme Court Justices have assigned to themselves and Congress powers to dominate and punish the private thoughts, the private prejudices, and the private business and social activities of Americans which are repugnant to the powers given them by the Constitution.

A Chorus of Protest Against Judicial Activism and Verbicide

IN CHARGING in Chief Justice John Marshall's unhappy phrase that some Supreme Court Justices are making a solemn mockery of their oaths to support the Constitution, I am not a lone voice crying in a constitutional wilderness. I am, in truth, simply one member of a constantly expanding chorus.

Judge Learned Hand, Alexander Bickel, Philip B. Kurland, and other profoundly enlightened constitutional scholars have made similar accusations. These charges are corroborated in detail by these recent books: *Government By Judiciary*, by Raoul Berger; *The Price of Perfect Justice*, by Macklin Fleming; and *Disaster By Decree*, by Lino A. Graglia. Besides the apostacy of the activist Justices to the Constitution is highlighted in numerous vigorous dissents by their brethren on the Supreme Court bench.

One of the most lucid comments on the judicial verbicide of activist Supreme Court Justices is that of Justice Jackson in his concurring opinion in *Brown v. Allen*, 344 U.S. 443, 542-550. In deploring the perverted use of the great writ of habeas corpus to rob the verdicts and judgments of state courts in criminal trials of any finality, Justice Jackson said:

> Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of the Justices. Whatever has been intended, this Court also has generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles.

Justice Jackson closed his observations on judicial verbicide with this sage comment:

> I know of no way we can have equal justice under law except we have some law.

Excuses For Judicial Activism and Verbicide

CANDOR COMPELS the confession that many Americans commend the usurpations of the activist Justices, especially when they harmonize with their wishes. These erring ones seek to coerce critics of judicial activism into silence. To this end, they assert that all Supreme Court decisions are entitled to respect, and that those who criticize any of them are unpatriotic. This assertion is contemptuous of the wisdom of the Founding Fathers in incorporating in the First Amendment for the benefit of all Americans guarantees of freedom of speech and the press. Besides, it is downright silly.

Like other official action, judicial decisions merit respect only when they are respectable, and no decision of the Supreme Court is respectable if it flouts the Constitution its makers have obligated themselves by oath or affirmation to support. As Justice Felix Frankfurter so rightly declared: "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions.... Judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."[20]

Chief Justice Stone concurred with Justice Frankfurter's view by stating that "where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action, and fearless comment upon it."[21] Apologists for the *verbicial* attacks of Supreme Court Justices upon the Constitution attempt to justify them by these arguments:

1. They are necessary to keep government abreast of the time because the amendatory process established by Article V is too cumbersome and dilatory.

2. They are desirable because they make pleasing amendments to the nation's supreme law which Congress and the states are unwilling to make.

3. They prove that the Constitution is a living instrument of government.

The Invalidity of the Excuses

THERE ARE TWO incontestable answers to these arguments in their entirety. They are first, that tyranny on the bench is as reprehensible as tyranny on the throne; and, second, that the ultimate result of judicial activism on the part of the Supreme Court Justices is the destruction of the government of laws the Constitution was ordained by the people to create and preserve.

There are also separate irrefutable answers to each of the arguments. As James Madison, the Father of the Constitution, stated, the Founding Fathers created the amendatory process of which the apologists complain to ensure that Congress and the states will act with deliberation when they consider proposed changes in the Constitution and will refrain from acting unwisely in making them.

The Founding Fathers knew that a Constitution is destitute of value if its provisions are as mutable as simple legislative enactments,[22] and they certainly did not intend that decisions of constitutional questions by the Supreme Court should ever be rightly compared as they were by Justice Roberts in a colorful phase with restricted railroad tickets, good for this day and train only.[23]

The second argument of the apologists is the stuff of which tyranny is made. Its underlying premise is their apprehension that Congress and the states acting in combination may have too much wisdom to amend the Constitution in ways pleasing to them. Hence, they maintain that for their pleasure Supreme Court Justices ought to usurp and exercise the power the Constitution vests exclusively in the people to have the Constitution amended only by the representatives they choose to act for them at congressional and state levels.

The usurpation of this power by Supreme Court Justices does not prove that the Constitution is a living instrument of government. On the contrary, it proves that the Constitution is dead, and that the people of our land are being ruled by the transitory personal notions of Justices who occupy for a fleeting moment of history seats on the Supreme Court bench rather than by the enduring precepts of the Constitution.

Despite *Miranda's* disapproval of confessions, I am going to make an honest one. Those who abhor tyranny on the bench as much as tyranny on the throne are unable to devise any pragmatic procedure to compel activist Judges to observe their oaths or affirmations to support the Constitution.

Judicial aberrations are not impeachable offenses under Article II, Section 4. No earthly power can compel activist Justices to exercise self-restraint if they are unable or unwilling to do so, and the soundest criticism is not likely to deter activist Justices from their activism and verbicide when they honestly believe their handiwork is better than that of the Founding Fathers. It is obvious, moreover, that Congress and the states cannot protect constitutional government adequately by adding new amendments to the Constitution. This is true for these reasons: First, it is folly to expect activist Justices to obey new constitutional provisions when they spurn the old; and, second, it would complicate simplicity and convert the Constitution into a confusing document as long as the *Encyclopaedia Britannica* to rid us of all the judicial usurpations of recent years.

In Conclusion

ALL HISTORY PROCLAIMS this everlasting truth: No nation can enjoy the right to self-rule and the right to freedom from tyranny under a government of men. The Founding Fathers framed and ratified the Constitution to secure these precious rights to Americans for all time. Judicial verbicide substitutes the personal notions of judges for the precepts of the Constitution. Hence, judicial verbicide is calculated to convert the Constitution into a worthless scrap of paper and to replace our government of laws with a judicial oligarchy.

A great Senator, Daniel Webster,

warned America in eloquent words what the destruction of our Constitution would entail. He said:

> Other misfortunes may be borne, or their effects overcome. If disastrous wars should sweep our commerce from the ocean, another generation may renew it; if it exhaust our treasury, future industry may replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again, and ripen to future harvests.
>
> It were but a trifly even if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All of these may be rebuilt.
>
> But who shall reconstruct the fabric of demolished government?
>
> Who shall read again the well-proportioned columns of constitutional liberty?
>
> Who shall frame together the skillful architecture which unites national sovereignty with States Rights, individual security, and public prosperity?
>
> No, if these columns fall, they will be raised not again. Like the Colisseum and the Parthenon, they will be destined to a mournful and melancholy immortality. Bitterer tears, however, will flow over them than ever were shed over the monuments of Roman or Grecian art; for they will be the monuments of a more glorious edifice than Greece or Rome ever saw—the edifice of constitutional American Liberty.

Finally, I reiterate some inescapable conclusions: The distinction between the power to amend the Constitution and the power to interpret it is as wide as the gulf which yawns between Lazarus in Abraham's bosom and Dives in hell. The power to amend is the power to change the meaning of the Constitution, and the power to interpret is the power to determine the meaning of the Constitution as established by the Founding Fathers.

The Founding Fathers did not contemplate that any Supreme Court Justice would convert his oath or affirmation to support the Constitution into something worse than solemn mockery. On the contrary, they contemplated that his oath or affirmation to support that supreme instrument of government would implant indelibly in his mind, heart, and conscience a solemn obligation to be faithful to the Constitution.

A Justice who twists the words of the Constitution awry under the guise of interpreting it to substitute his personal notion for a constitutional precept is contemptuous of intellectual integrity. His act in so doing is as inexcusable as that of the witness who commits perjury after taking an oath or making an affirmation to testify truthfully.

We must not despair because there is no way by which law can compel activist Supreme Court Justices to subject their personal wills to the precepts of the Constitution. This is true because it is not yet unconstitutional for Americans to invoke divine aid when they are their wits' end.

Hence, we can pray—hopefully not in vain—that the activist Justices will heed the tragic truth spoken by Webster and their own oaths or affirmations to support the Constitution, and become born-again supporters of the most precious instrument of government the world has ever known.*

*This article is based on an address given as the second of a series of Hubert H. Humphrey Lectures in Public Affairs at Louisiana State University, October 22, 1980. The series, established in honor of the late Vice President and former Senator from Minnesota, who received his Master's degree from LSU in 1942 and an honorary Doctor of Laws in 1965, is sponsored by the department of political science, of which Ellis Sandoz serves as chairman.

[1]William Ewart Gladstone: *Kin Beyond the Sea, North American Review*, September-October, 1878. [2]Oliver Wendell Holmes: *Autocrat of the Breakfast Table*, (The Limited Editions Club 1955), Chapter I, p. 9. [3]*The Writings and Speeches of Daniel Webster,*

National Edition, Vol. 2, p. 165. [4]George Washington: *Farewell Address*. [5]*Ex Parte Milligan*, 4 Wall. (U.S.) 2, 120-121. [6]*Ibid.* [7]James Madison: *The Federalist* No. 43. [8]Frankfurter, J.: *Ullman v. United States*, 350 U.S. 422, 428. [9]Cardozo, C.J.: *Sun Printing and Publishing Association v. Remington Paper and Power Company*, 235 N.Y. 338, 139 N.E. 470. See, also, *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, when Justice Sutherland stated in a dissent: "The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase 'Supreme law of the land/ stands for and to convert what was intended as inescapable and enduring mandates into mere moral reflections. If the Constitution, intelligently and reasonably construed in the light of these principles, stands in the way of desirable legislation, the blame must rest upon that instrument, and not upon the court for enforcing it according to its terms. The remedy in that situation—and the only true remedy—is to amend the Constitution." [10]*The United States Constitution*. [11]*United States v. Butler*, 297 U.S. 1, 78. [12]*Marbury v. Madison*, 1 Cranch (U.S.) 137, 180. [13]Thomas M. Cooley: *Constitutional Limitations*, pp. 88-89. See Volume 1, p. 153, of the 8th Edition of this treatise where Judge Cooley makes this statement: "Whoever derives power from the Constitution to perform any public function is disloyal to that instrument, and grossly derelict in duty, if he does that which he is not reasonably satisfied the Constitution permits. Whether the power be legislative, executive, or judicial, there is a manifest disregard of the constitutional and moral obligation by one, who having taken on oath to observe that instrument, takes part in any action which he cannot say he believes to be no violation of its provisions." [14]Benjamin N. Cardozo: *The nature of the Judicial Process*, pp. 68, 136. [15]*Marbury v. Madison*, 1 Cranch (U.S.) 137, 175, 180; *Gibbons v. Ogden*, 9 Wheat. (U.S.) 1, 188. [16]*Gibbons v. Ogden*, 9 Wheat. (U.S.) 188. [17]*Miranda v. Arizona*, 384 U.S. 486; *Laird v. Tatum*, 408 U.S. 1. [18]Alexander Hamilton: *The Federalist* Nos. 78, 81. [19]John Milton: *Paradise Lost*, Book I, line 292. [20]Frankfurter, J., in *Bridges v. California*, 314 U.S. 252, 289-290. [21]Alpheus Thomas Mason: *Harlan Fiske Stone, Pillar of the Law*, (1968 edition) p. 398. [22]James Madison: *The Federalist* No. 43. [23]Roberts, J. in *Smith v. Allwright*, 321 U.S. 649, 669.