John Whitehead
The 2nd Am. Revolution
1982 Crossway Books

It is no coincidence that the family is attacked by those who object to "the limits and restrictions placed on their personal freedom of choice" by Christian values and absolutes. They obviously realize what countries like the Soviet Union have known for years: If one can destroy the traditional family unit—set child against parent and give the ultimate authority in child rearing to the state—the basic institution that stands between total state control of the citizenry is eradicated. And the freedom of thought passed down by the family from generation to generation is lost.

All this is not to say that children do not have rights, but that the advocacy of children's rights, apart from the biblical base, could lead to the destruction of the family unit. Of course, children who are physically abused or otherwise mistreated should have the protection of the law. In fact, the church should strive toward establishing programs to care for and protect such children.

With the humanist makeup of the Supreme Court and lower federal courts, many are concerned that the United States is coming perilously close to enacting a federal judicial policy that is antagonistic toward Judeo-Christian theism as a whole. This would mean that attorneys advancing arguments in support of Christian values would find it extremely difficult to prevail before such courts. Clearly, the activist nature of the federal courts would militate against an impartial hearing on issues of Christian concern.

The Legiscourt

The judicial action in the last two decades "adds up to a radical transformation of the role and function of the judiciary in American life," remarks Harvard law professor Abram Chayes. "Its chief function now is as a catalyst of social change with judges acting as planners of large scale."[25]

Whether particular decisions are just is not the ultimate issue. The key to a constitutional government is that the people supposedly possess a written document to which an appeal can be made against statist interference. A written constitution is in itself a restriction and limitation on the state. But if the Constitution can be disregarded or "interpreted" to fit the social desires of a particular judge, then its value as a governing document is greatly diminished, and the power of the state, acting through its judge, is increased.

Unfortunately many of the American people accept the court system's usurpation of rights. As Professor William Forrester, former dean of the Cornell Law School, aptly noted: "The Court has assumed, gradually, the role of deciding the problems on its own and . . . the American people and their selected officials gradually have accepted the Court as the political instrument for lawmaking."[26]

The research of Dr. Peter A. J. Adam, an associate professor of pediatrics at Case Western Reserve University, shows how far a Supreme Court decision can be taken. Six months after *Roe* v. *Wade* Dr. Adam reported to the American Pediatric Research Society on research he and his associates had conducted on twelve babies who had been born alive by hysterotomy abortion up to twenty weeks. These men took the tiny babies and cut off their heads—decapitated the babies and cannulated the internal carotid arteries (that is, a tube was placed in the main artery feeding the brain). They kept the diminutive heads alive, much as the Russians kept the dogs' heads alive in the 1950s. Take note of Dr. Adam's retort to criticism:

> Once society's declared the fetus dead, and abrogated its rights, I don't see any ethical problem. . . . Whose right are we going to protect, once we've decided the fetus won't live?[27]

In making a national law on abortion in *Roe* v. *Wade,* the Supreme Court assumed a power to legislate. Bob Woodward and Scott Armstrong clearly recognized the legislative implications of *Roe* in their book, *The Brethren:*

> The clerks in most chambers were surprised to see the Justices, particularly Blackmun, so openly brokering their decision like a group of legislators. There was a certain reasonableness to the draft [opinion], some of them thought. But it derived more from medical and social policy than from constitutional law. There was something embarrassing and dishonest about this whole process. It left the Court claiming that the Constitution drew certain lines at trimesters and viability. The Court was going to make medical policy and force it on the states. As a practical matter, it was not a bad solution. As a constitutional matter, it was absurd. The draft was referred to by some clerks as Harry's abortion.[28]

The fact that the Supreme Court as well as the lower federal courts make legislation through court decisions is disturbing when the Constitution in Article 1 gives the authority to make laws only to the federal legislature. In describing the Supreme Court as a "Legiscourt" Dean Forrester states:

> We have failed to see that the Supreme Court has evolved into a new institution—one that is even more unique and unprecedented than commonly supposed. Indeed, the institution can no longer be

> described with accuracy as a court, in the customary sense. Unlike a court, *its primary function is not judicial but legislative. It is a governing body* [emphasis added] in the sense that it makes the basic policy decisions of the nation, selects among the competing values of our society, and administers and executes the directions it chooses in political, social, and ethical matters. It has become the major societal agency for reform.[29]

Forrester goes on to note that this power "is legitimate because it has been accepted implicitly or at least acquiesced to by the American people as well as by the other departments of government and the states."[30] If the majority agrees, according to Forrester, then an unconstitutional act is made legitimate.

Finally, in Forrester's analysis he states, "note well that it is not an act of condemnation or disapproval to say that the institution is not primarily a court. It is a matter of healthy recognition that a new kind of governmental institution has evolved—one probably unique in the history of governmental institutions."[31] Thus Forrester, too, approves the usurpation of power he describes.

Such power is wrong historically. It runs contrary to the philosophy of such men as William Blackstone and John Marshall. It is a return to something closely akin to the divine right of kings, wherein the king's word was law—except now it is not the king but a different elite, the Court, acting arbitrarily. The implication is that law becomes law for the sake of the elite.