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informed by diverse political visions, preexisting facts reframed by new ones, it fulfills its function and operates as a governing triad. In doing so, the Court becomes a political actor, as significant as its actions. In this meaning, the articulation of what William Bradford Hu (him) called a "public philosophy." It reflects the preferences. There is more to this than meets the eye. Kahn gets this and has taught it. His work is the Court's major role in *constituting* the American polity (Greenstone 1988).

Contestation over where the principles—substantive commitments and their meaning—is constitutive of that contestation in part because there is "no precedent" for a particular court decision." These are the questions the Court has to apply polity and rights in a social, economic, and political environment and in studying "the link between social, economic, and political world and constitutional law and the

### III.

My complete assent to Kahn's proposal for its application. I have particular problems in applying his general model to particular cases and coordinated groups under the Equal Protection Clause of an antiegalitarian conservative. These are the means by which Kahn has influenced constitutional development.

It seems to me that Kahn tells us that conservatives facing facts as they really are, in their first inclinations, in the more liberal world, should be moving. The facts, the direction and, although the ride is not perfect, is the best of all possible worlds.

Kahn's assumptions concerning the Court are resplendent in the bright light of

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*Plessy v. Ferguson*, 163 U.S. 537 (1896)

*Roe v. Wade*, 410 U.S. 113 (1973)

*Schachter Poultry v. U.S.*, 295 U.S. 49

*U.S. v. Butler*, 297 U.S. 1 (1936)

*Wisconsin v. Yoder*, 406 U.S. 205 (1967)

Supreme Court

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