

## POLITICS &amp; GOVERNMENT

*Balancing Act*

"The Warren Court—It Still Lives" by Stephen Gillers, in *The Nation* (Sept. 17, 1983), P.O. Box 1953, Marion, Ohio 43305.

The nine-member U.S. Supreme Court is now dominated—at least, numerically—by the appointees of conservative Republican presidents. Yet, for years now, the Court has confounded predictions that it would take a sharp Right turn.

The days of the liberal Warren Court nominally ended when Chief Justice Earl Warren retired in 1969 and was replaced by Warren Burger, a Nixon appointee. President Nixon later named three other Justices (Harry A. Blackmun, Lewis F. Powell, Jr., and William H. Rehnquist); Presidents Ford and Reagan each chose one (John Paul Stevens and Sandra Day O'Connor, respectively). Counting Byron R. White, a Kennedy appointee and conservative Democrat, a conservative majority of seven evolved, on paper, to face liberals William J. Brennan, an Eisenhower appointee, and his Johnson-appointed colleague, Thurgood Marshall.

Yet the Burger Court "appears conservative only when compared with its predecessor," writes Gillers, a New York University law professor. It has restricted capital punishment, upheld affirmative action and abortion, and allowed lower courts to impose sweeping remedies for constitutional violations, notably in cases of prisoners' rights.

Why? Some of the Republican appointees simply did not turn out to be very conservative (Blackmun) or were not selected on ideological



Justice Potter Stewart's June 1981 resignation, opening a vacancy for a Reagan appointee, stirred new predictions of a conservative Supreme Court.

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grounds (Stevens). That allowed the two liberals—Brennan and Marshall—to forge majorities in 31 of 57 close decisions during the 1981 and 1982 terms, albeit on fairly narrow grounds.

But Gillers attributes the Court's failure to go Right mostly to Brennan's intellectual leadership. Brennan shaped or authored many key Warren Court decisions, establishing precedents that today's Court must consider, and he has special qualities—"clarity, a willingness to listen, flexibility, and perhaps a gentle persistence"—that help him persuade his new colleagues to share his point of view.

Yet Brennan, like Marshall, Burger, Blackmun, and Powell, is already well into his 70s. Conservative contenders who might lead the Court to the Right are waiting in the wings. They stand a good chance of winning appointment, particularly if President Reagan seeks and wins re-election in 1984.

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**FOREIGN POLICY & DEFENSE**


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### *War and Peace And the Public*

"Why the Right Gets it Wrong in Foreign Policy" by William C. Adams, in *Public Opinion* (Aug.-Sept. 1983), American Enterprise Institute for Public Policy Research, 1150 17th St. N.W., Washington, D.C. 20036.

For all his talents as a "Great Communicator," Ronald Reagan has had difficulty rallying support for his stoutly anticommunist foreign policy.

Conservatives blame the lukewarm popular response on the influence of the liberal national news media or the public's "post-Vietnam syndrome." Actually, writes Adams, a professor of public administration at George Washington University, tough foreign policy talk in peacetime makes Americans uneasy: Critics in the news media are more in tune with majority sentiments.

Americans, he argues, have no first-hand experience with the kind of centuries-old people-to-people enmity that divides, for example, the Russians and the Poles. They distrust Soviet *leaders*, but not ordinary citizens. And they believe that any U.S. president "genuinely interested in peace is always prepared to talk" to anyone. It is no accident that among President Richard Nixon's most popular moves, as measured by public opinion polls, were his 1972 trip to Communist China and reaching a (short-lived) *détente* with Moscow. Anti-Soviet rhetoric strikes a few responsive chords, but White House appeals for "mutual understanding" strike even more.

Moscow's oppressive domestic policies reinforce the public's antipathy towards communism. But Americans oppose human rights violations "wherever they occur," says Adams. Thus, White House calls for aid to heavy-handed Third World regimes fighting Marxist rebels (e.g., in El Salvador) are likely to rouse little enthusiasm.