

Court and Compassion

The changing attitudes of the Supreme Court are glaringly reflected in its 6-to-3 decision upholding Texas welfare provisions which allocate lower benefits to dependent children than to the needy aged and disabled.

The Texas system condemns children growing up on public relief to live on benefits that give them only three-quarters of what the Government itself regards as the minimum needed for subsistence. Unquestionably, this system reflects a widespread tide of popular resentment against the high cost to taxpayers of maintaining youngsters brought into the world by indigent mothers, many of them out of wedlock. Whether or not the differential is also motivated by racial prejudice, as its challengers charged before the Court, its plain effect is to discriminate against poor children and to diminish their already limited opportunities to grow up healthy.

For all the labored statistical explanations offered in the majority opinion by Justice William H. Rehnquist, what was at issue before the Court was not the legalistic dispute over strict or permissive construction of the Constitution but rather whether the Court should be more concerned with buttressing the power of the state or with protecting individual rights—and particularly the rights of the powerless.

Former Chief Justice Earl Warren, in his new book, "A Republic, If You Can Keep It," wrote: "The Supreme Court of the United States more and more has been compelled to focus its attention upon the rights of the poor and underprivileged in a free society. . . . Most Americans have social compassion. . . . But what is also imperatively needed is a political conception of compassion."

It is open to argument whether, in this time of angry divisions and economic strain, the social compassion of the American majority is sufficient to stand the test of adversity. It is under the stress of economic retrenchment and competitive backlash that the concept of political compassion, far from being the do-gooders' sentimental luxury, is most needed as the cement that prevents the nation from disintegrating.

Justice Rehnquist has argued that children are better able than the old and infirm to face the hardships of substandard living conditions because they have greater hope "of improving their situation in the years remaining to them." If this is the spirit of the "new" Court, it assigns depressingly low priority to the Court's role as guardian of the "political conception of compassion." It augurs a dangerous retreat from the Warren Court's concern for social justice, an indispensable underpinning of a viable democracy.