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informed by diverse political visions, preexisting facts reframed by new norms. It fulfills its function and operates as a guiding triad. In doing so, the Court becomes what Justice Brandeis recognized, is as significant as its actions. It articulates what Justice Brandeis (him) called a “public philosophy.” It reflects the preferences. There is more to this than what Justice Brandeis gets this and has taught it. His is the Court’s major role in *constituting* the nation (Greenstone 1988).

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

III.

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

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

Kahn’s assumptions concerning the Constitution are resplendent in the bright light of

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Plessy v. Ferguson, 163 U.S.

Roe v. Wade, 410 U.S. 113

Schachter Poultry v. U.S., 297

U.S. v. Butler, 297 U.S. 1

Wisconsin v. Ioder, 406 U.S.

Supreme Court

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