

balances and of distribution of power between national and state governments one branch of one government—the Supreme Court—should attain the immense, and in many respects, dominant, power which it now wields.

“We believe that the great principle of distribution of powers among the various branches of government and between levels of government has vitality today and is the crucial base of our democracy. We further believe that in construing and applying the Constitution and laws made in pursuance thereof, this principle of the division of power based upon whether a matter is primarily of national or of local concern should not be lost sight of or ignored, especially in fields which bear upon the meaning of a constitutional or statutory provision, or the validity of state action presented for review. For, with due allowance for the changed conditions under which it may or must operate, the principle is as worthy of our consideration today as it was of the consideration of the great men who met in 1787 to establish our nation as a nation.

“It has long been an American boast that we have a government of laws and not of men. We believe that any study of recent decisions of the Supreme Court will raise at least considerable doubt as to the validity of that boast. We find first that in constitutional cases unanimous decisions are comparative rarities and that multiple opinions, concurring or dissenting, are common occurrences. We find next that divisions in result on a 5 to 4 basis are quite frequent. We find further that on some occasions a majority of the Court cannot be mustered in support of any one opinion and that the result of a given case may come from the divergent views of individual Justices who happen to unite on one outcome or the other of the case before the Court.

“We further find that the Court does not accord finality to its own determinations of constitutional questions, or for that matter of others. We concede that a slavish adherence to *stare decisis* could at times have unfortunate consequences; but it seems strange that under a constitutional doctrine which requires all others to recognize the Supreme Court’s rulings on constitutional questions as binding adjudications of the meaning and application of the Constitution, the Court itself has so frequently overturned its own decisions thereon, after the lapse of periods varying from one year to seventy-five, or even ninety-five years. (See the tables appended to Mr. Justice Douglas’ address on *Stare Decisis*, 49 Columbia Law Review 735, 756-758.) The Constitution expressly sets up its own procedures for amendment, slow or cumbersome though they may be.

“These frequent differences and occasional overrulings of prior decisions in constitutional cases cause us grave concern as to whether individual views of the members of the court as from time to time constituted, or of a majority thereof, as to what is wise or desirable do not unconsciously override a more dispassionate consideration of what is or is not constitutionally warranted. We believe that the latter is the correct approach, and we have no doubt that every member of the Supreme Court intends to adhere to that approach, and believes that he does so. It is our earnest hope which we respectfully express, that that great Court exercise to the full its power of judicial self-restraint by adhering firmly to its tremendous, strictly judicial powers and by eschewing, so far as possible, the