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### To P.B.K. for Four Decades

Gerhard Casper

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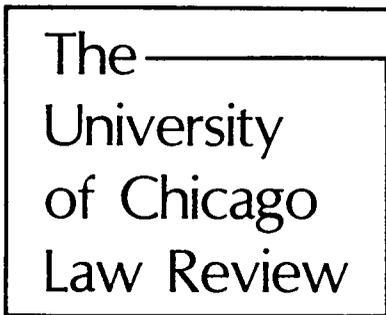
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## DEDICATION

### **To P.B.K. for Four Decades**

*Gerhard Casper*†

*The Supreme Court Review*, founded by Phil Kurland, began publication in 1960. Phil dedicated the first two volumes to the Justices of the Supreme Court. As is so frequently the case with Phil, he was both ironic and serious when he added to the dedication the formula "May It Please the Court." Starting with the 1962 volume, first Phil and, then, his collaborators and successors expressed their affection and admiration for family members and a few friends by presenting them with "their" volume of the *Review*. In 1962, at the occasion of Justice Frankfurter's retirement from the Court, Phil inscribed that year's volume to Frankfurter, for whom Phil had clerked in 1945-46. When Dennis Hutchinson and I, in 1989, were looking for words to fit Phil, who had resigned his editorship in order to be relieved of its burdens, we had an easy

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time agreeing on the very quotation Phil had chosen to capture what to him were essential qualities of Felix Frankfurter: “. . . a truly civilized man . . . confiden[t] in the strength and security derived from the inquiring mind . . . unafraid of the uncertainties.” And, if I may be permitted to travel down this road a little further, there is one other dedication that strikes me as particularly befitting Phil himself. Phil chose the text to accompany the 1987 inscription to Paul Freund: “Who embodies law’s mission ‘to impose a measure of order on the disorder of experience without stifling the underlying diversity, spontaneity and disarray.’” May it please Phil.

Few constitutional scholars of this century have as consistently as Phil Kurland thought about and worried about the Constitution as a complex system that cannot be reduced to one of its components. Majority rule, separation of powers between the national government and the states, separation of powers within the national government, the system of checks and balances, the Bill of Rights, and, last but not least, the independence of the judiciary, he has never viewed as separate topics that can be treated in isolation, but as the Framers’ interdependent devices for the restraint of brute power, however disguised, and the minimization of force. It is therefore especially appropriate that the editors of *The University of Chicago Law Review* have decided to dedicate this particular issue to Phil Kurland on the occasion of his seventieth birthday. I know of no other conference to celebrate the bicentennial of the Bill of Rights whose contributions match those that follow in their focus on governance in the modern state.

Few constitutional scholars of this century have as consistently as Phil Kurland thought about the Constitution as posing issues about the relationship between law and reason. Phil Kurland as a scholar has therefore never been satisfied with the merely legal dimension of constitutional questions. At the University Phil is rightly seen as at home in many disciplines. He has led an intensely interdisciplinary existence because for him the law is an intellectual discipline. Again, it is therefore especially appropriate that this particular issue of the *Law Review* be dedicated to him given the conference participants’ wide-ranging concern for the contributions of other fields to our understanding of the role and limits of constitutional law.

Phil came to The Law School from the Northwestern faculty in 1953, allegedly because Dean Levi had promised him that he never again would have to teach commercial law. His career at the University has been distinguished indeed and has been so recog-

nized formally by the University through the attribute "distinguished service" in the name of the William R. Kenan, Jr. Professorship that he has occupied. A graduate of the Harvard Law School, he clerked for two of the greatest judges this country has had: one—Jerome Frank—a graduate of this school; the other, as mentioned, Felix Frankfurter. Born in Brooklyn, Phil practiced law in New York City before he turned to teaching and scholarship. His writings have been wide ranging and influential. Among his books are *Religion and the Law* (1962), *Politics, the Constitution, and the Warren Court* (1970), *Mr. Justice Frankfurter and the Constitution* (1971), *Watergate and the Constitution* (1978), and *The Founder's Constitution* (with Ralph Lerner, 1986). To his own scholarship we must add what he has contributed as editor of *The Supreme Court Review* to the work of others. Phil established a pattern of excellence in "sustained, disinterested, and competent criticism of the professional qualities of the Court's opinions" that has remained unmatched. His editorship displayed to the fullest how "unafraid of the uncertainties" he is and what strength he derives "from the inquiring mind."

Phil's qualities of mind and judgment have been widely acknowledged. For seven years he served as chief consultant to Senator Ervin's subcommittee on separation of powers of the Senate Judiciary Committee. He is a Fellow of the American Academy of Art and Sciences and a member of the American Law Institute, a recipient of the Research Award of the Fellows of the American Bar Foundation, the Gordon J. Laing Prize of The University of Chicago Press, and the University's Llewellyn John and Harriet Manchester Quantrell Award for Excellence in Undergraduate Teaching. Phil himself, if given a chance, refers to honors he has as "second orders of chastity" and makes light of what has been well deserved.

Phil and his wife, Mary Jane Kurland, have been among the most dedicated members of the University community, in hard times as well as good times. Some of these times have been trying, and sometimes Phil has been trying, as we worried about the state of this university, and American universities in general. Charles Wegener, his colleague in the New Collegiate Division, summed it up some years ago:

In the University Kurland enjoys a very special position not by the assiduous practice of academic politics or by occupying posts of power but by a passionate devotion to the University as an intellectual community and a most uncommon understanding of the commitments entailed by that devotion.

Mary Jane and Phil have been exemplary citizens of The University of Chicago, never self-seeking, always ready to help in the best traditions of public service. They have extended their great capacity for friendship and affection to students, colleagues, and collaborators, to old neighbors and new arrivals. They have even listened to deans, provosts, and presidents of the University vent their frustrations and disappointments in private. Those who have been the beneficiaries of their friendship cherish it.

Phil is very fond of quoting—not as a display of learnedness, but to honor those who have said it before, and, in this case, only very occasionally better. I may therefore be permitted to conclude by quoting Phil Kurland quoting, in a tribute to Felix Frankfurter, Learned Hand speaking about Louis Brandeis:

He believed that there could be no true community save that built upon the personal acquaintance of each with each; by that alone could character and ability be rightly gauged; without that “neighborly affection” which would result no “faith” could be nourished, “charitable” or other. Only so could the latent richness which lurks in all of us come to flower.

Phil and Mary Jane have brought latent richness to flower and nourished a faith, secular and fragile as it may be. For that their “neighbors” must, and, perhaps, do indeed thank them.

#### In Memoriam: M.J.K.

In 1978 Phil and I dedicated the *Supreme Court Review* to our wives, Mary Jane and Regina. As our text we chose the opening lines of Bertolt Brecht’s “A Song About the Good People”: “The good people one knows by their becoming better as one knows them.” Mary Jane Kurland died on March 7, 1992, of cancer, leaving in tears all her friends who knew how good she was. She had seen the draft of this dedication just before her final stay in the hospital. She understood that the last two paragraphs were meant for her as much as for Phil.