At least he did at the oral argument in Connecticut v. AEP yesterday:

> [Lawyer for the state plaintiffs Barbara] Underwood, pressed to cite past court cases that might show this particular lawsuit could work in court, had no close parallels to rely upon. Chief Justice John G. Roberts, Jr., had pressed her to come up with an answer to Solicitor General Katyal's argument that the Court, in 222 years, "had never heard a case like this before."

Uh — that's an easy one. How about, oh, *Brown v. Board of Education*, which involved injunctions throughout more than a dozen states and required judicial management that lasts until this day (although if Roberts has anything to do with it, it won't)? How about *Baker v. Carr*. which held that state redistricting could be challenged under the Equal Protection Clause, and continually spawns lawsuit after lawsuit? How about, for that matter, *Arizona v. California*, which required the high court to appoint a special master, legendary lawyer Simon Rifkind, who conducted hearings fox more than six years on the matter.

This notion that the judiciary cannot handle complex problems is one of the most traditional and pernicious myths in American jurisprudence. Courts are hardly perfect — but if you don't like them, try a legislature or the magic of the free market. Millions of mortgage borrowers might be able to tell you a thing or two. Cries of judicial incompetence usually come from interested advocates who want a case to go away in order to preserve the status quo. But, at least as compared with other institutions, they have little basis in history.