

## The Warren Court and the Constitutional Revolution of the 1960s

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The Civil Rights and Anti-Vietnam War movements largely characterize the 1960s, respectively. However, the historically significant political mobilizations have often overshadowed the constitutional revolution that took place in the United States Supreme Court during the same time. The Supreme Court responsible for the aforementioned constitutional revolution was known as the Warren Court. Headed by Chief Justice Earl Warren between 1953 and 1969, the Warren court was the most impactful Supreme Court in United States history. Earl Warren's influence dominated the Supreme Court and the seventeen men that alongside him during his sixteen-year tenure.<sup>1</sup> The majority of the Warren Court Justices maintained an innovative and socially responsible mindset towards constitutional legal thinking. Furthermore, the Warren Courts' strong-willed support of civil rights laws adhered to the needs of a modernizing and increasingly secular American population.<sup>2</sup> Leigh Ann Wheeler, author of *How Sex Became a Civil Liberty*, writes "the Supreme Court, presided over by Chief Justice Earl Warren, was known for its eagerness to employ judicial review to overturn state statutes that violated the bill of rights".<sup>3</sup> This statement captures the essence of the Warren Court, and serves as a symbolic mission statement for what Warren and his fellow Justices were trying to achieve while presiding over some of the most influential cases in United States history. Important cases that the Warren Court presided over include: *Loving V. Virginia*, which saw the legalization of marriage between persons of different ethnicities; *Brown v. Board of Education*, resulted in the desegregation of schools nation-wide; *Reynolds v. Sims*, received a ruling which mandated the reapportionment of state legislatures- giving voting power to urban and diverse cities; *Miranda v. Arizona*, resulted in the formation of the Miranda Rights, which mandated police officers to recite a list of basic legal rights to perpetrators during arrest; *Gideon v. Wainwright*, which ensured that all American's receive a court-appointed attorney during their legal proceedings.<sup>4</sup> These cases represent significant

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<sup>1</sup> Melvin Urofsky, *The Warren Court: Justices, Rulings, and Legacy* (Santa Barbara, CA: California Press: 2001), 29.

<sup>2</sup> Morton J. Horwitz, "The Warren Court and The Pursuit of Justice," *Washington and Lee Law Review* 50, no. 1 (1993): 1.

<sup>3</sup> Leigh Ann Wheeler, *How Sex Became a Civil Liberty* (Oxford: Oxford University Press, 2014), 102.

<sup>4</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).; *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).; *Reynolds v. Sims*, 377 U.S. 533 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

innovations in the realms of civil rights, human liberties, women's rights, black civil rights, and the impact that federal laws have on states and municipalities.

In the history of the American judiciary, two Supreme Courts have instigated constitutional revolutions. The first was the New Deal Court, which in 1937 fundamentally restructured the relationships between the government, the states, and the economy.<sup>5</sup> The New Deal Courts' successes came through mechanical jurisprudence, that was less a revolution towards socially inclusive modernity, as it was a strict reliance upon neutral concepts derived from a static understanding of the constitution, primarily focused on economic re-development.<sup>6</sup> Between 1953 and 1969, the Warren Court instigated a constitutional revolution through two key conceptions that were centered around modernizing the core values of American constitutional law. The first conception was to implement a *living constitution*.<sup>7</sup> The philosophy of a *living constitution* is, as author and legal scholar Bernard Schwartz writes, "Underlying the courts approach to justice, was the belief that the constitution was a living document, and that the Justices had a responsibility to facilitate its evolution and development."<sup>8</sup> The Courts' interest in a *living constitution* came from a desire to evolve with changing values and circumstances, rather than reiterating static and outdated constitutional laws that could not grasp the scope of modern situations.<sup>9</sup> The second conception was to reinvigorate the *discourse of rights* as a dominant fixture of constitutional law.<sup>10</sup> Earl Warren was essential to the reinvigoration of the Supreme Court's effect on American society, however strong backing from multiple influential Justices bolstered Warren's efficacy as Chief Justice.

The most senior Justice on the Warren Court was Hugo Black.<sup>11</sup> Black was a well-educated lawyer and career politician prior to his tenure on the Warren Court.<sup>12</sup> Black was also a member of the Ku Klux Klan before he was a Supreme Court Justice. Black publicly opposed the groups' racist activities. His membership, however, greatly benefitted his chance of being elected to the United States Senate as the representative of Alabama - a state in which the group had large

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<sup>5</sup> Horwitz, "The Warren Court and The Pursuit of Justice," 1.

<sup>6</sup> *Ibid.*

<sup>7</sup> Bernard Schwartz, *The Warren Court: A Retrospective* (Oxford: Oxford University Press: October 10, 1996), 299.

<sup>8</sup> *Ibid.*

<sup>9</sup> Horwitz, "The Warren Court," 2.

<sup>10</sup> *Ibid.*, 3.

<sup>11</sup> "Hugo L. Black," *Oyez*, accessed 26 November 2020, [https://www.oyez.org/justices/hugo\\_l\\_black](https://www.oyez.org/justices/hugo_l_black).

<sup>12</sup> *Ibid.*

political sway.<sup>13</sup> Despite Black's resignation from the KKK in 1925, he retained close connections with Klan leaders to protect his political career, a fact which justly creates concern for his motivations and influences within the Supreme Court. Despite the reputation and continued relationship with the KKK, Black was a vocal champion of bills that favoured civil liberties, and racism did not impinge upon his legal practices.<sup>14</sup> The second most senior Justice on the Warren Court was William Douglas.<sup>15</sup> Douglas' early life was plagued by financial troubles that, during his tenure a Supreme Court Justice, inspired him to advocate on behalf of people of low-economic status.<sup>16</sup> Douglas was a blunt and strong willed proponent of New Deal legislation, particularly in regard to individual rights, free speech, the rights of illegitimate children, labour laws, and the regulation of markets.<sup>17</sup> The third most senior and Chief Justice of the Warren Court was Earl Warren.<sup>18</sup> Like Douglas and Black, Warren was a lawyer. In his youth, he had witnessed crime and violence which, upon personal reflection, he deemed was due to the countenance of a corrupt government and judiciary.<sup>19</sup> Warren also served as the district attorney of California for thirteen years.<sup>20</sup> During his time as district attorney, Warren never had a conviction overturned by a higher court.<sup>21</sup> In reference to the tenure of Earl Warren as Chief Justice, author Melvin Urofsky sings his praises, stating "presiding over a judicial battlefield, Earl Warren clearly deserves to be ranked among the strong chief Justices."<sup>22</sup> Warren was appointed Chief Justice of the Supreme Court in 1953 by President Dwight D. Eisenhower, a position he maintained until his retirement in 1969.<sup>23</sup>

In the late eighteenth century, the consensus understanding of constitutional legal thinking was that it should be in accordance with religious ideologies, and remain fixed in a precise way that would never need changing.<sup>24</sup> However, this static idea of constitutional law disregards any possibility that society would secularize, or that a fixed constitution could become inconsequential. Moreover, the constitution was not being rebranded under a fancy new slogan, it was being

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<sup>13</sup> "Black," *Oyez*.

<sup>14</sup> *Ibid*.

<sup>15</sup> Horwitz, "The Warren Court," 11.

<sup>16</sup> "William O. Douglas," *Oyez*, accessed 25 November 2020, [https://www.oyez.org/justices/william\\_o\\_douglas](https://www.oyez.org/justices/william_o_douglas).

<sup>17</sup> "Douglas," *Oyez*.

<sup>18</sup> Horwitz, "The Warren Court," 11.

<sup>19</sup> Urofsky, *The Warren Court: Justices, Rulings, and Legacy*, 20.

<sup>20</sup> *Ibid*.

<sup>21</sup> "Earl Warren," *Oyez*, accessed 27 November 2020, [https://www.oyez.org/justices/earl\\_warren](https://www.oyez.org/justices/earl_warren).

<sup>22</sup> Urofsky, *The Warren Court: Justices, Rulings, and Legacy*, 29.

<sup>23</sup> "Earl Warren," *Oyez*.

<sup>24</sup> Horwitz, "The Warren Court," 10.

critically reviewed and expanded upon in order to fit the times.<sup>25</sup> For example, *Lochner v. New York* forced the Supreme Court to expand upon the parameters of contract law in the constitution because they did not account for corporate industrialization.<sup>26</sup> *Lochner v. New York* was a proto-revolutionary case in U.S constitutional history because it identified faults in the American constitution's ability to provide accurate legal consult without expansion.

When the Warren Court began to exercise its full judicial power, they were heavily criticized by racist conservatives for trying to reorient certain constitutional laws to protect African-American citizens.<sup>27</sup> The Warren Court was taking the power of certain constitutional laws that conservatives had leaned on to further racist agendas.<sup>28</sup> There are two important instances wherein the Warren Court relied upon the 14<sup>th</sup> Amendment to the constitution to provide rulings that were beneficial to civil rights. The 14<sup>th</sup> amendment guarantees all American citizens equal protection of the law.<sup>29</sup> However, as seen in *Dred Scott v. Sanford*, the notion of equal protection of the law had been violated because slave-owners believed the enslaved to be property and not people.<sup>30</sup> Having realized that certain constitutional amendments has been manipulated by racist ideologies, the Warren Court alternatively sought to do the same but with an emphasis on promoting civil rights. By recognizing the ambiguous way that certain constitutional rights were being exercised to restrict the mobility of African Americans, the Warren Court promptly began interpreting the constitution as a fluid and living document that could benefit all Americans, not just white Americans.

Accordingly, this reformation process saw the Warren Court develop constitutional law into a more fluid, modernized legal institution. An important fixture of bringing constitutional law into modernity would be through reopening human rights as a dominant mode of discourse. In 1954, the Warren Court made its first major ruling that was sympathetic to the African-American struggle. Justice Warren declared that the notion of 'separate but equal' had no place in modern America.<sup>31</sup> Warren denounced segregation as unconstitutional because there was simply no way that black students could attend segregated schools and not have a lesser quality education. The

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<sup>25</sup> Schwartz, *The Warren Court: A Retrospective*, 200.

<sup>26</sup> *Lochner v. New York*, 198 U.S 45 (1905).

<sup>27</sup> Fred Rodell, "The 'Warren Court' Stands Its Ground," *The New York Times*, 27 September 1964, SM23.

<sup>28</sup> *Ibid.*

<sup>29</sup> 14<sup>th</sup> Amendment, United States Constitution, 1868.

<sup>30</sup> *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

<sup>31</sup> Robert Longley, "The Warren Court: Its Impact and Importance," *ThoughtCO*, 13 August 2019.

subsequent Supreme Court case was *Brown v. Board of Education*, which the Warren Court presided over and ultimately ruled that racial segregation violated the Equal Protections Clause of the 14<sup>th</sup> Amendment.<sup>32</sup> As a result, public schools in America were mandated to desegregate. Author and scholar Robert Longley writes, “the unanimity Warren achieved in *Brown v. Board* made it easier for congress to enact legislation banning racial segregation and discrimination [...] Warren clearly established the power of the courts to stand with the executive and legislative branches.”<sup>33</sup> Such an unprecedented move in favour of civil rights and against racist structures was a defining moment in the Warren Court’s proactive effort to help govern the nation.<sup>34</sup>

The overarching significance of the Warren Court comes from their expansion of constitutional legal thinking, the living constitution, and the reopening of the rights discourse. The Warren Courts’ impact upon American society was furthered by coinciding with the Civil Rights Movement, and the presidency of Lyndon B. Johnson. Johnson assumed the Presidency after the assassination of President John F. Kennedy. Johnson was quick to pick up where Kennedy left off, and on November 27<sup>th</sup>, 1963, Johnson clarified the importance of passing the *Civil Rights Act* and the tax bill that had been focal points of the Kennedy administration prior to his death.<sup>35</sup> Johnson became the Oval Office’s champion on civil rights in the place of Kennedy.<sup>36</sup> In conjunction with the Warren Court, Johnson would end state laws that were discriminatory and racially biased.<sup>37</sup> Building off the previous ruling of *Brown v. Board*, the Civil Rights Movement was able to garner substantial attention from the American congress in regard to the legitimacy of their struggle and the necessity of racial equality.<sup>38</sup> In 1964 the *Civil Rights Act* was passed, and in 1965, the *Voting Rights Act* was passed.

The Warren Court facilitated the widespread success of the *Voting Rights Act* by removing voting impediments placed on African-Americans, abolishing state poll taxes, removing mandatory residency qualifications, and allowing third party political groups on to the voting ballot.<sup>39</sup> Furthermore, the Warren Court upheld the *Voting Rights Act* by cancelling complicated

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<sup>32</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>33</sup> Longley, “The Warren Court: Its Impact and Importance”.

<sup>34</sup> *Ibid.*

<sup>35</sup> Ted Gittinger and Allen Fisher, “LBJ Champions the Civil Rights Act of 1964,” *Prologue Magazine; The National Archives* Vol. 36, no. 2. (2004).

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> “Reynolds v. Sims,” *Oyez*, accessed 10 December 2020, <https://www.oyez.org/cases/1963/23>.

and unnecessary literacy tests that racist deep south states forced upon African-Americans. The *Voting Rights Act* greatly boosted African-American voting power by ensuring protections at the polls, and protection from state tampering.<sup>40</sup> Additionally, Earl Warren was a proponent of the 'One Man, One Vote' system.<sup>41</sup> Hinging from Warren's belief in equal representation, in 1964 the Supreme Court began taking state reapportionment cases.<sup>42</sup> The same year, *Reynolds v. Sims* was passed by the Warren Court, and the ruling sanctioned the reapportionment of state legislatures.<sup>43</sup> This meant that state legislatures would have to apportion in accordance with population instead of geographical area.<sup>44</sup> Reapportionment took voting power away from rural areas where racism was more prevalent, and placed it in more densely populated urban cities that were representative of the diversifying American population.<sup>45</sup> All of this success on behalf of the Civil Rights Movement stems from the first major ruling by the Warren Court - *Brown v. Board*. Had it not been for the Warren Courts' ruling of *Brown v. Board*, there is a strong possibility that the Civil Rights Movement would have had a substantially harder time gaining sympathy from legislators, governors, senators, or the White House.

Beyond race and poverty, the Warren Court also strongly advocated on behalf of women's rights. As author Mortin J. Horwitz writes, "the Warren Court was the first Supreme Court that identified with the stigmatized ... not only blacks, but women, religious minorities, political dissenters, poor people, and prisoners."<sup>46</sup> In other words, the Warren Court was the first in constitutional history to value the expansion of rights to all Americans. In 1962, a Connecticut activism group approached the American Civil Liberties Union urging them to help substantiate a reform on contraception laws.<sup>47</sup> This case became *Griswold v. Connecticut*, and the Warren Court presided over its ruling in 1965. Previously, in 1959, the Court had worked on *Poe v. Ullman*, which had opened a discourse on behalf of privacy, contraception, and sexuality.<sup>48</sup> The ACLU cited *Poe v. Ullman* to contest legal inconsistencies, like men being allowed to openly purchase condoms, when women were not allowed to purchase diaphragms.<sup>49</sup> Furthermore, the ACLU

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<sup>40</sup> "Voting Rights Act," 1965.

<sup>41</sup> "Earl Warren," *Oyez*.

<sup>42</sup> *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> "Earl Warren," *Oyez*.

<sup>46</sup> Horwitz, "The Warren Court," 10.

<sup>47</sup> Wheeler, *How Sex Became a Civil Liberty*, 114.

<sup>48</sup> *Ibid.*, 102.

<sup>49</sup> *Ibid.*

referenced record breaking numbers in teen pregnancy and poverty as a strong point for the inclusion of female contraception as a right. Equally, the ACLU used the research done by Alfred Kinglsey which stipulated abstinence as not a viable solution for married couples to stop having children.<sup>50</sup> The reality of growing poverty pressured the government, as did the mainstream media's routine publishing about couples that used contraception.<sup>51</sup> True to form, the Warren Court ruled in favour of *Griswold v. Connecticut*, and lead to the legalization of contraception. The Warren Court deemed it a violation of marital privacy to designate contraception and birth control illegal, or to impose regulations upon a man and wife's sexual freedom.<sup>52</sup> The favourable ruling of *Griswold v. Connecticut* opened the door for many female rights issues, but it did not guarantee federal funding, a fact that re-divided liberal politics based on fear regarding breaches of privacy, black rights, and women's rights.<sup>53</sup> In 1971, the ruling on *Griswold* directly affected the proceedings of one of the biggest Supreme Court cases in American history: *Roe v. Wade* (1971). The Warren Court's strong-willed advocacy of civil liberties deeply aided the struggle of oppressed women.

Some further instances where the Warren Court won on behalf of civil liberties by using the 14<sup>th</sup> amendment include *Gideon v. Wainwright* and *Miranda v. Arizona*. In 1962, *Gideon v. Wainwright* served as a ground-breaking Supreme Court case in regard to the federal government's protection of indigent peoples of all backgrounds and ethnicities.<sup>54</sup> Justice Douglas, who had suffered great financial troubles, had grown determined to be on the side of the downtrodden American people. The ruling of *Gideon v. Wainwright* made it into law that all Americans in need of legal counsel would have it appointed to them by the court, regardless of their ability to pay for it.<sup>55</sup> The results of this ruling are two-fold: American citizens achieved protection under their court system, and federal laws began to impact the proceedings of lower level or state court trials. *Miranda v. Arizona* (1966) implemented laws on behalf of the fifth amendment which addresses criminal procedure.<sup>56</sup> The ruling of *Miranda v. Arizona* is the embodiment of the mission statement of the Warren Court: protecting and developing rights in adherence to a living interpretation of the

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<sup>50</sup> Wheeler, *How Sex Became a Civil Liberty*, 102.

<sup>51</sup> *Ibid.*, 103.

<sup>52</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>53</sup> Wheeler, *How Sex Became a Civil Liberty*, 165.

<sup>54</sup> Jerold H. Israel, "Gideon v. Wainwright: The Art of Overruling," *Sup. Ct. Rev.*, 1963.

<sup>55</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>56</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

constitution. Through what are now commonly known as the ‘Miranda Rights,’ the Warren Court made it federal law that all police officers performing arrests must make the perpetrator aware of their rights, otherwise their information cannot be used in a court of law.<sup>57</sup>

The Warren Court capitalized on an opportunity to advocate on behalf of the American people. Instead of adhering to conventional legal practice, the majority of the Warren Court used their power of judicial review to overturn legislation that violated civil liberties and breeched constitutional amendments. Furthermore, the notion of a *living constitution* separated the Warren Court from outdated constitutional deliberation, which had previously been commonplace in previous Supreme Courts. In turn, the court modernized the Supreme Court and re-defined its role in the American judiciary. Earl Warren, Douglas Williams, and Hugo Black were the most senior justices on the Warren Court, and were themselves strong proponents of civil, indigent, and women’s rights. Collectively their Supreme Court tenure oversaw some of the most important cases, trials, and rulings of the twentieth century regarding American civil, gender, and racial equality. The Warren Court adhered to an increasingly secular American population that needed laws which could apply to changing modern situations. Accordingly, the Warren Courts’ secular approach to the practice of constitutional law allowed them to review and overturn constitutional vagaries that racist, southern conservatives had used to defend their actions. The Warren Court propelled United States constitutional law into a state of on-going evolution that works and adapts with the American people. As a result of the Warren Courts’ actions as a rational and innovative Supreme Court, it deserves to be heralded as the most influential Supreme Court in American history.

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<sup>57</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).



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