

Equal Justice Under Law: The Enduring Legacy of the Warren Court, 1953-1969

Thursdays, 6pm to 8 pm (2012)

Class 1: Introduction and Overview (February 9)

What are the hallmarks of the Warren Court? How did it influence the nation's rights, politics and perceptions of the Court? What are leading theories about its impact and legacy? Who were the members of the Court and how did they interact?

Readings:

- The Warren Court and American Politics, Lucas A Powe Jr. (p. 485-501)
- The Warren Court: Justices, Rulings and Legacy, Melvin I. Urofsky (p. 29-75)
- The Supreme Court Under Earl Warren, Michal R. Belknap (p. 262-279, 306-314)
- Justice Brennan: Liberal Champion, Seth Stern & Stephen Wermiel (p. 180-181)

Class 2: Equal Protection and Race (February 23)

Before the Warren Court, the equal protection clause of the Fourteenth Amendment was not widely used, either for what we think of today as equality principles, or as a source of individual rights. What transformation took place and how?

Readings:

- The Warren Court and American Politics, Lucas A Powe Jr. (p. 27-74, 157-175, 209-238)
- Justice Brennan: Liberal Champion, Seth Stern & Stephen Wermiel (p. 142-152)
- *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241 (1964)
- *Katzenbach v. McClung*, 379 U.S. 294 (1964)
- *Cooper v. Aaron*, 358 U.S. 1 (1958)
- *Brown v. Board of Education*, 347 U.S. 483 (1954).

Class 3: Finding Substantive Rights (March 1)

From privacy to voting to marriage to travel, the Warren Court paved new ground in defining rights in the Constitution. This began as an awkward process, suffering the lingering effects of the *Lochner* era repudiation, but it opened the door to substantive due process, ushering in a new rights consciousness in the nation.

Readings:

- The Supreme Court Under Earl Warren, Michal R. Belknap (p. 109-129, 172-178, 181-186, 200-205, 297-300)
- Justice Brennan: Liberal Champion, Seth Stern & Stephen Wermiel (p. 183-192, 279-287)

- *Shapiro v. Thompson*, 394 U.S. 618 (1969)
- *Reynolds v. Sims*, 377 U.S. 533 (1964)
- *Loving v. Virginia*, 388 U.S. 1 (1967)
- *Katzenbach v. Morgan*, 384 U.S. 641 (1966)
- *Griswold v. Connecticut*, 381 U.S. 479 (1965)
- *Baker v. Carr*, 369 U.S. 186 (1962)

Class 4: Criminal Procedure (March 8)

Dubbed a revolution by both admirers and critics, the criminal procedure decisions of the Warren Court shifted the legal focus to protecting the rights of the accused and shifted the political focus to a debate over “law and order.”

Readings:

- The Warren Court and American Politics, Lucas A Powe Jr. (p.379-444)
- The Unpublished Opinions of the Warren Court, Bernard Schwartz (p. 401-411)
- *In Re Gault*, 387 U.S. 1 (1967)
- *Gideon v. Wainwright*, 372 U.S. 335 (1963)
- *Terry v. Ohio*, 392 U.S. 1 (1968)
- *Mapp v. Ohio*, 367 U.S. 643 (1961).
- *Katz v. United States*, 389 U.S. 347 (1967)

Class 5: Freedom of Speech (March 22)

First considering free speech in the context of the McCarthy era and then in the context of the civil rights movement, the Warren Court took the principles of earlier period and transformed them into broad, but by no means absolute, protections for speech.

Readings:

- The Warren Court and American Politics, Lucas A Powe Jr. (p.303-357)
- Justice Brennan: Liberal Champion, Seth Stern & Stephen Wermiel (p. 120-125, 220-227, 252-264, 318)
- *New York Times v. Sullivan*, 376 U.S. 254 (1964)
- *Brandenburg v. Ohio*, 395 U.S. 444 (1969)
- *Roth v. United States*, 354 U.S. 476 (1957)
- *United States v. O’Brien*, 391 U.S. 367 (1968)
- *Speiser v. Randall*, 357 U.S. 513 (1958)

Class 6: Freedom of Religion (March 29)

From prohibiting official, organized school prayer to requiring accommodation of religious practices, the Warren Court put religious rights squarely in the limelight in a way that had never happened before in this country. What were the ramifications then and now?

Readings:

- The Supreme Court Under Earl Warren, Michal R. Belknap (p. 130-149)
- Justice Brennan: Liberal Champion, Seth Stern & Stephen Wermiel (p. 172-176)
- *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963)
- *Sherbert v. Verner*, 374 U.S. 398 (1963)
- *Board of Education v. Allen*, 392 U.S. 236 (1968)
- *Engel v. Vitale*, 370 U.S. 421 (1962)
- *Epperson v. Arkansas*, 393 U.S. 97 (1968)

Supplemental Materials

- What Really Happened in Brown v. Board of Education, Mark Tushnet & Katya Lezin (Columbia Law Review, December 1991, p. 1867)
- Perspectives on Brown, Dennis J. Hutchinson (Green Bag, Autumn 2004, p. 43)
- Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958, Dennis J. Hutchinson (Georgetown Law Journal, Vol. 68:1, p. 2)