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Chapter 1 : Judicial activism - Wikipedia

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Over the years his ability to lead the Court, to forge majorities in support of major decisions, and to inspire liberal forces around the nation, outweighed his intellectual weaknesses. Warren realized his weakness and asked the senior associate justice, Hugo L. Black , to preside over conferences until he became accustomed to the drill. Roosevelt or Truman, and all were committed New Deal liberals. They disagreed about the role that the courts should play in achieving liberal goals. The Court was split between two warring factions. Felix Frankfurter and Robert H. Jackson led one faction, which insisted upon judicial self-restraint and insisted courts should defer to the policymaking prerogatives of the White House and Congress. Hugo Black and William O. Douglas led the opposing faction that agreed the court should defer to Congress in matters of economic policy, but felt the judicial agenda had been transformed from questions of property rights to those of individual liberties, and in this area courts should play a more central role. When Frankfurter retired in and President John F. Kennedy named labor union lawyer Arthur Goldberg to replace him, Warren finally had the fifth vote for his liberal majority. Warren and Brennan met before the regular conferences to plan out their strategy. Board of Education [edit] Brown v. Board of Education U. Ferguson and finally had challenged Plessy in a series of five related cases, which had been argued before the Court in the spring of Warren, who held only a recess appointment, held his tongue until the Senate, dominated by southerners, confirmed his appointment. Warren told his colleagues after oral argument that he believed segregation violated the Constitution and that only if one considered African Americans inferior to whites could the practice be upheld. But he did not push for a vote. Instead, he talked with the justices and encouraged them to talk with each other as he sought a common ground on which all could stand. Finally he had eight votes, and the last holdout, Stanley Reed of Kentucky, agreed to join the rest. Warren drafted the basic opinion in Brown v. Board of Education and kept circulating and revising it until he had an opinion endorsed by all the members of the Court. Throughout his years as Chief, Warren succeeded in keeping all decisions concerning segregation unanimous. Brown applied to schools, but soon the Court enlarged the concept to other state actions, striking down racial classification in many areas. Under Warren the courts became an active partner in governing the nation, although still not coequal. Warren never saw the courts as a backward-looking branch of government. The Brown decision was a powerful moral statement. His biographer concludes, "If Warren had not been on the Court, the Brown decision might not have been unanimous and might not have generated a moral groundswell that was to contribute to the emergence of the civil rights movement of the s. He wanted results that in his opinion reflected the best American sentiments. Carr and Reynolds v. Sims of â€", had the effect of ending the over-representation of rural areas in state legislatures, as well as the under-representation of suburbs. For years underpopulated rural areas had deprived metropolitan centers of equal representation in state legislatures. Cities had long since passed their peak, and now it was the middle class suburbs that were underrepresented. Frankfurter insisted that the Court should avoid this "political thicket" and warned that the Court would never be able to find a clear formula to guide lower courts in the rash of lawsuits sure to follow. But Douglas found such a formula: Sims [23] Warren delivered a civics lesson: The states complied, reapportioned their legislatures quickly and with minimal troubles. Wainwright , U. Arizona , U. Warren took the lead in criminal justice; despite his years as a tough prosecutor, always insisted that the police must play fair or the accused should go free. Warren was privately outraged at what he considered police abuses that ranged from warrantless searches to forced confessions. Wainwright , and prevented prosecutors from using evidence seized in illegal searches, in Mapp v. The famous case of Miranda v. Warren did not believe in coddling criminals; thus in Terry v. Ohio he gave police officers leeway to stop and frisk those they had reason to believe held weapons. Conservatives angrily denounced the "handcuffing of the police. Controversy exists about the cause, with conservatives blaming the Court decisions, and liberals pointing to the demographic boom and increased urbanization and income inequality characteristic of that era. After the

homicide rates fell sharply. Vitale brought vehement complaints by conservatives that echoed into the 21st century. Moreover, in one of the landmark cases decided by the Court, Griswold v. Connecticut , the Warren Court affirmed a constitutionally protected right of privacy , emanating from the Due Process Clause of the Fourteenth Amendment, also known as substantive due process. Wade and consequent legalization of abortion. With the exception of the desegregation decisions, few decisions were unanimous. But with the appointment of Thurgood Marshall , the first black justice as well as the first non-white justice , and Abe Fortas replacing Goldberg , Warren could count on six votes in most cases. Douglas , Robert H. Clark , and Sherman Minton. Another vacancy took place when Reed retired in , and was replaced by Charles Evans Whittaker , and then Burton retired in , with Eisenhower appointing Potter Stewart in his place. Kennedy a chance to appoint two new members: Byron White and Arthur Goldberg. However, President Lyndon B. Johnson encouraged Goldberg to resign in to become Ambassador of the United Nations, and nominated Abe Fortas to take his place. Clark retired in , and Johnson appointed Thurgood Marshall to the court. Chief Justice Associate Justice.

Chapter 2 : The Warren Court & its critics in SearchWorks catalog

THE WARREN COURT AND ITS CRITICS The Honorable Arthur J. Goldberg For a variety of reasons the Warren Court's criminal jus-tice decisions are most vulnerable to attack.*

By all of the major provisions of the first eight amendments applied to the states as well as to the federal government. One needs to see the Warren Court decisions in the areas of civil liberties as closely related to those protecting civil rights. Some of the key speech and association decisions, such as New York Times v. Sullivan , grew directly out of the civil rights conflict. Warren Court â€" The First Amendment: For Black, the preferred position doctrine led naturally to the absolutist view, while Frankfurter, joined by John Marshall Harlan, advocated balancing. How difficult the issue could be was seen in Konigsberg v. While people had a right to say whatever they wished, in some instances society had an equally compelling reason either to limit that speech or to punish the speaker if the speech had incited certain results. Harlan detailed a lengthy list of cases in which the Court had approved limits on speech to show that historically the Court had always balanced these various interests. He believed it much better to take an absolutist stance. The doctrine acknowledged that speech and other First Amendment rights might be restricted, but required that the government show a compelling need to do so. Judges could thus use the test to keep interference as minimal as possible. It provided the balancers with a means to achieve the goals of the absolutists, while at the same time retaining flexibility to meet emergency situations. Ohio , the Warren Court responded to the criminal syndicalism statutes that Holmes and Brandeis had protested against in the s. Brandenburg, the leader of a Ku Klux Klan group, had been convicted for advocating terrorism as a means of political reform. In the per curiam opinion, the Court voided the statute because its overly vague definition of criminal activities unduly restricted both advocacy and the right to assembly. Brandenburg has been described as combining the best of Holmes, Brandeis, and Learned Hand, in that it makes freedom the rule and restraint the exception, permits restriction only where a clear connection between speech and legitimately proscribed actions can be established, and requires that the government spell out its rules clearly and in the least restrictive manner. Overbreadth also proved a useful doctrine in the various Vietnam protest cases. In the unanimous opinion, Chief Justice Warren ruled that neither public officials nor private persons could be punished for their opinions if they did not violate the law. Des Moines School District , the Court overturned the expulsion of three students for wearing black armbands to symbolize their opposition to the war. School officials claimed that the wearing of armbands interfered with proper discipline and might be disruptive. Justice Abe Fortas rejected this argument, and held that students do not lose their constitutional rights when they enter the schoolhouse. School officials had shown no proof that any disruption had occurred, and fear that a disturbance might occur could not justify repression. Symbolism had its limits, however, as the Court made clear in United States v. Four men had burned their draft registration cards at an antiwar rally, claiming that the card burning symbolized their opposition to the Vietnam War. The overbreadth doctrine, despite some whittling down during the s, remains a core ingredient of First Amendment law; its importance lies not just in these few cases, but in its wider application. It is a presentâ€"oriented doctrine, requiring judges to look not at some horrid future possibility, but at what happened in a specific set of circumstances. The United States had long ago done away with the English common law on libel and defamation of character, in which the mere publication of a defamatory statementâ€" whether true or notâ€"could be punished. American law allowed the defendant to offer evidence of the truth of the statement, which, if accepted by judge or jury, served as a complete defense. All states, however, still permitted civil actions in tort for false or malicious statements, and wide gradations existed among the jurisdictions; the Supreme Court had, with few exceptions, left libel a matter for state law. The nexus between the First Amendment and civil rights could not have been clearer. Criticizing the South, or even just reporting what happened, could prove too expensive for news organizations. Within a few years of this case, the law of libel had been effectively nationalized. If speech dealt with public officials and their conduct, it came within constitutional protection. In , a majority of the Court applied the Times rule to public figures as well as to officials in Curtis Publishing Co. Butts and Associated Press v. Obscenity

Obscenity, like libel, had long been considered outside First Amendment protection and subject to state control. Michigan, in which Justice Frankfurter threw out a state statute as a violation of freedom of the press. The law banned books containing obscene, immoral, or lewd language for their potentially harmful effect on youth. The following year the Court did try to establish a new standard in Roth v. Hicklin, which judged the material by the effect of selected passages on particularly susceptible persons. In its place the Court adopted a standard already in use in some American courts: The Brennan test, although more liberal and fairer than the Hicklin standard, still required subjective judgment as to whether the allegedly prurient material had any redeeming social value. The determination of what constituted obscenity troubled the Court for the next two decades. Not until the Burger Court refined the Roth test in did the justices finally confront the question of why the states had an interest in such controls. Board of Education , a strange five-to-four opinion in which Black had written an eloquent essay on the historical reasons for separation of church and state, going all the way back to the Virginia Statute for Religious Freedom. The first significant religion cases before the Warren Court came in and involved Sunday closing laws. Maryland, the Court upheld a state law that required most retail stores to close on Sunday, but permitted a number of exceptions for resorts and entertainment businesses. The policy, long established not only in Maryland but elsewhere, had the support of Christian groups as well as established businesses who did not want to compete with newer and aggressive retailers offering longer hours of service. Brown , Orthodox Jewish merchants pointed out that under rabbinic law they could not keep their stores open on Saturday, and since Pennsylvania forbade them to do business on Sunday, they were in a cruel situation where they had either to violate their religious beliefs or suffer severe economic hardships. The chief justice again sidestepped the real issue by claiming, as in McGowan, that the Sunday laws served only a secular purpose. Laws that had a primarily secular purpose but that imposed an indirect burden on religion did not violate the Constitution. According to Douglas, all blue laws were derived from the Fourth Commandment and not from the Constitution, and therefore all violated both the establishment and free exercise prohibitions. In a separate dissent in Braunfeld, Justice Brennan asked the questions that Warren had so carefully evaded, and yet that are essential in First Amendment cases. A Seventh Day Adventist had been discharged from her job because she would not work on Saturday, her sabbath; she could not find other work because she would not accept any job requiring Saturday work. Verner , the Court through Justice Brennan agreed with her. Brennan applied the traditional analysis he had urged in his Braunfeld dissentâ€”what compelling state interest required an infringement on religious freedom? He did not believe that granting benefits to Adventists on slightly different grounds than to Sunday worshipers constituted an establishment in favor of the Adventists. Rather, it ensured that the government would act neutrally toward all groups and not penalize one because it had a different day of rest from the others. By this case, the Court had already begun moving toward a more activist view of the religion clauses. Nearly all states had had some form of test oath prior to the Civil War, requiring an affirmation of religious belief, but most had either been wiped off the books or allowed to stagnate in the latter nineteenth century. Because the First Amendment had not applied to the states at that time, no cases testing such oaths had come before the Court prior to Torcaso, which in essence administered the coup de grace to a moribund practice. Prayer, Bible Reading, and Evolution Prayer in public schools, however, was far from moribund when the Court declared the practice unconstitutional in Engel v. Conservative religious leaders attacked the decision for promoting atheism and secularism. Southerners saw Engel as proof of judicial radicalism. Liberal Protestant and Jewish groups interpreted the decision as a significant move to divorce religion from meaningless public ritual and to protect its sincere practice. Schempp , ruling that the establishment clause prohibited required reading of the Bible. A third case following Engel and Schempp also aroused the ire of religious conservatives. As a result, the antievolution statutes in Tennessee and other states had never been subjected to constitutional scrutiny. Finally, in Epperson v. Arkansas , a unanimous Court, speaking through Justice Fortas, found the Arkansas antievolution statute in conflict with the establishment clause. Search and Seizure Aside from the desegregation rulings, few decisions of the Warren Court aroused such public debate as those nationalizing the Fourth, Fifth, and Sixth Amendments, and then expanding their reach. These three articles of the Bill of Rights deal with criminal procedure and protect against arbitrary action by government officers. While it sets limits

on what the police may do, the amendment recognizes the legitimacy of reasonable search and seizure and does not erect insurmountable obstacles to that process. But the justices split, six to three, over whether the exclusionary rule, which had been the remedy for federal violation of the warrant since , should also apply to the states. In his majority opinion, Justice Frankfurter argued that the exclusionary rule, as a judgeâ€"made remedy, did not constitute part of the Fourth Amendment and therefore could not be imposed by federal courts on the states. Justice Murphy dissented, claiming that the Fourth Amendment made no sense without the exclusionary rule; he saw the rule as implicit in the amendment. When the Warren Court came to consider this issue again in Mapp v. He stopped them and, dissatisfied with their answers to his questions, frisked them. He found revolvers on two of the men and arrested them. Counsel for the men claimed that because the officer had no warrant, he had no right to search them, and that the revolvers could not be introduced as evidence. In a long and rambling opinion, the chief justice upheld the police officer, ruling that if the police had reasonable grounds and needed to act promptly, they could stop and frisk suspects without a warrant. The Court had taken an expansive view of this right since the latter nineteenth century. United States and Counselman v. Hitchcock , it had expanded the privilege against selfâ€" incrimination to apply to any criminal case, as well as to civil cases where testimony might later be used in criminal hearings. The privilege is not absolute; persons may not refuse to be fingerprinted, to have blood samples, voice recordings, or other physical evidence taken, or to submit to intoxication testsâ€"even though all these may prove incriminating. Although an accused person may not be forced to testify, he or she may voluntarily confess, and the confession may be used in evidence. The old common law rule against confessions obtained by torture, threats, inducements, or promises had been reaffirmed as part of constitutional law by the Court in In modern times, the question of voluntariness had been refined, with the Court relying on the due process clauses of the Fifth and Fourteenth Amendments to prohibit not only physical torture but psychological brutality as well. The key case was Massiah v. The defendant had been indicted for violating federal drug laws; he had retained a lawyer, pleaded not guilty, and been released on bail. Federal agents trailed Massiah and electronically eavesdropped on a private conversation, thus securing incriminating evidence that led to his conviction at the trial. The Court, through Justice Stewart, threw the verdict out; once the accused had a lawyer, the police could not use anything he said unless he had been advised by counsel as to the effects of those words. Shortly afterward, in Escobedo v. Illinois, the Court overturned the conviction of Danny Escobedo because police would not allow him to see the attorney he had asked for until after they had secured a confession to the crime. In , a seriously divided Court handed down the landmark ruling of Miranda v. Chief Justice Warren finally gave police and the lower courts a clear test to help them determine voluntariness. A person had to be informed in clear and unequivocal terms of the constitutional right to remain silent, and that anything said could be used in court. In addition, the officers had to tell the suspect of the right to counsel and that if he or she had no money to hire a lawyer, the state would provide one.

Chapter 3 : Warren Court (â€“)

During , the Warren Court's abandonment of restraint in the reapportionment context was one of a dramatic series of doctrinal innovations expanding the scope of constitutional rights.

Chapter 4 : The Warren Court & its critics - Clifford M. Lytle - Google Books

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Chapter 6 : What Was the Warren Court? (with picture)

The Supreme Court under Earl Warren / Edited with an introd. by Leonard W. Levy. KF L39 The context of judicial activism: the endurance of the Warren Court legacy in a conservative age / Frederick P. Lewis.

Chapter 7 : Warren Court - Wikipedia

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Chapter 9 : The Legacy of the Warren Court

The Warren Court was the period in the history of the Supreme Court of the United States during which Earl Warren served as Chief www.nxgvision.com replaced the deceased Fred M. Vinson as Chief Justice in , and Warren remained in office until he retired in