sions unconstitutionally delegate legislative *war powers for up to ninety days and give presidents a dangerous blank check to start wars without congressional consent (see DELEGATION OF POWERS).

Champions of executive supremacy, including all presidents except Jimmy Carter, claim that the act unconstitutionally invades independent foreign policy and war powers of the president. Law aside, pragmatists criticize automatic deadlines as inflexible and formalistic. Congress, they say, should act overtly, not by inaction; and channels of consultation are less problematic than balancing practical needs for speed and secrecy with Congress's inability to organize itself for more effective participation.

The consensus is that the guidelines have not worked well. Since 1973, they have been used most when needed least—quick rescue missions rather than open-ended commitments of armed forces. Though President Gerald Ford sought Congress's approval before evacuating refugees from Vietnam (1975), presidents have mostly ignored prior consultation. "Act now, inform later" was the style during the invasions of Grenada in 1983 and Panama in 1989 as well as the deployments after Iraq invaded Kuwait in 1990.

Reporting also has been grudging. President Ford tardily reported the rescue of the *Mayaguez* crew in 1976. President Ronald *Reagan refused to report sending military advisers to El Salvador in 1981 on the grounds that hostilities were not imminent. He said the same on sending Marines to Lebanon in 1982, thus avoiding the clock until bloodshed prompted a negotiated extension of eighteen months. Separate intelligence and neutrality laws ostensibly covered the mining of Nicaraguan harbors in 1984 and the bombing of Libya in 1986. Sharply criticized for destroying Iranian oil rigs in the Persian Gulf without consultation in 1987, Reagan garnered support for similar attacks the following year by consulting legislative leaders and promising to report. Still, presidents have typically asserted that reports were merely "consistent with" rather than pursuant to the War Powers Act. They continue to base deployments on their autonomous powers as chief executive and commander in chief. The act hardly figured in the Persian Gulf crisis of 1990–1991, the most massive engagement of armed forces since the *Vietnam War. President George Bush, reporting by a letter "consistent with" the act, avoided the clock by claiming that hostilities were not imminent. Congress acquiesced until it passed a joint resolution, at the president's request, approving the use of force against Iraq under United Nations mandates.

Enforcement of the act is clearly weak. The Supreme Court's invalidation of *legislative vetoes in *_Immigration and Naturalization Service_ v. _Chadha_ (1983) probably nullifies Congress's power to end deployments by concurrent resolution. While the justices have yet to rule on the issue, *lower federal courts declined to review as *political questions alleged violations of the act in the *Mayaguez*, El Salvador, Grenada, Nicaragua, and Iranian oil rig episodes, at least until Congress exhausted political remedies. Self-enforcement having failed, effective enforcement depends on mobilizing Congress politically. The dilemma thus remains: it takes two-thirds of both houses to stop a presidential war but only "one-third plus one" in either house to sustain one.

As a framework for executive-legislative relations in a government of shared authority, the War Powers Act may condition interbranch negotiation, as in Lebanon. Experience suggests, however, that the joint consensus essential to sustain effective warmaking depends less on formal machinery than on *comity and the political will of both branches in any situation.

(See also PRESIDENTIAL EMERGENCY POWERS.)

□ Louis Fisher, *Constitutional Conflicts between Congress and the President* (1985). Michael J. Glennon, *Constitutional Diplomacy* (1990). J. Woodford Howard, Jr.

Warren, Charles (b. Boston, Mass., 9 Mar. 1868, d. Washington, D.C., 16 Aug. 1954), lawyer, authority on American constitutional law and history. Warren graduated from Harvard Law School and served as assistant attorney general in the Department of Justice during World War I. In that office he helped draft the Espionage Act of 1917 and the Trading With the Enemy Act of 1917 (see ESPIONAGE ACTS). He retained an interest in international law throughout his career.

Warren's most lasting contribution was as a historian. His three-volume book, *The Supreme Court in the History of the United States* (1922), won the Pulitzer Prize for History in 1923 and established him as a preeminent authority on the Court. A strong nationalist and conservative, Warren rejected Charles *Beard's economic interpretation of the formation of the Constitution as well as Beard's critical analysis of the Supreme Court. He agreed with Beard, however, that *judicial review was so well known and normal a function of courts in 1787 that the Framers took it for granted. In *Congress, the Constitution, and the Supreme Court* (1925), Warren urged, however, that Congress free itself from the constitutional straitjacket the justices had imposed on it. Justice Louis *Brandeis, a close friend of Warren's, cited an article Warren published in 1923 on the *Judiciary Act of 1789 as authority for the decision in *_Erie Railroad_ v. _Tompkins_ (1938), which overruled almost a century of decisions based on *_Swift_ v. _Tyson_ (1842).

(See also HISTORY, COURT USES OF.)

Kermit L. Hall

Warren, Earl (b. Los Angeles, Calif., 19 Mar. 1891; d. Washington, D.C., 9 July 1974; interred Arlington National Cemetery), chief justice

Earl Warren

1953–1969. Earl Warren presided as chief justice of the United States during one of the most turbulent times in our nation's history, during which the Court forged new doctrines regarding civil rights and civil liberties and the nature of the political system.

Warren was born in Los Angeles but grew up in Bakersfield, where his father worked as a railroad car repairman on the Southern Pacific Railroad. Bakersfield was then a rough, semi-frontier town with more than its share of saloons and brothels. In his *Memoirs* (1977), Warren recalled that he witnessed "crime and vice of all kinds countenanced by a corrupt government" (p. 31), and that left an indelible impression on him. Summer work on the railroads also left him with knowledge about working people and their problems, as well as with the anti-Asian racism then rampant on the West Coast.

Warren attended the University of California at Berkeley and its law school, served a brief stint in the army during World War I, and then joined the district attorney's office in Alameda County for what he thought would be a brief stint. But he stayed for eighteen years, thirteen as district attorney. During that time Warren proved an effective, tough prosecutor. But Warren also proved sensitive to the rights of the accused and personally fought to secure a public defender for indigents. A 1931 survey concluded that Earl Warren was the best district attorney in the United States, a fact often ignored by critics who claimed he had little trial experience and was "soft" on criminals.

In 1938 Warren successfully ran for attorney general of California, a post he held until 1942, when he was elected governor. In his one term as attorney general, Warren modernized the office but is remembered primarily for his role in demanding the evacuation of Japanese from the West Coast. Throughout his life Warren maintained that at the time, it seemed the right and necessary thing to do, and not until his memoirs were published posthumously did he acknowledge that it had been an error. (See WORLD WAR II.)

A popular three-term governor, Warren seemed headed for some national office. He ran as the Republican vice-presidential candidate with Thomas Dewey in 1948 and played a key role in securing Dwight Eisenhower's nomination in 1952. For that, Eisenhower promised him the first appointment to the Supreme Court. Warren had, in fact, already accepted an offer to become the solicitor general when Chief Justice Fred *Vinson unexpectedly died on 8 September 1953. Although Eisenhower seemed reluctant to name Warren to head the Court, the Californian reminded Attorney General Herbert Brownell of the earlier promise.

Although some people questioned whether Warren had either the ability or stature to be *chief justice, his record shows a sure-footed instinct in mastering the mechanics of the institution and in what Chief Justice William Howard *Taft described as "massing the Court." Unfamiliar with the Court's procedures, Warren asked Hugo *Black, as the senior associate justice, to preside over the conferences until he could familiarize himself with his duties, a task that took him only a few weeks. His political experience also proved invaluable. Warren took over a Court deeply divided between the judicial activists, led by Hugo Black and William O. *Douglas, and strong advocates of judicial restraint, led by Felix *Frankfurter and Robert H. *Jackson (see JUDICIAL ACTIVISM; JUDICIAL SELF-RESTRAINT). Among the four Truman appointees, only Tom *Clark displayed any mental acuity. Within a short time Warren had established himself as the Court's leader, a man who, according to Potter *Stewart, "was an instinctive leader whom you respected and for whom you had affection" (Schwartz, p. 31).

Warren took the *center chair at the opening of the October 1953 term with the Court confronting one of the most significant issues in its history, the constitutionality of racial segregation. Cases challenging school segregation had been argued the preceding term and then set for reargument with counsel asked to address specifically the applicability of the *Fourteenth Amendment's *Equal Protection Clause. Within the Court the justices stood divided; even some of those who personally opposed racial segregation doubted if the Court had the authority under the Constitution to overturn it. Warren, moreover, had to tread carefully; he held only an interim appointment until Congress convened in January 1954; at that

time the *Senate Judiciary Committee, with powerful southern members, would have to confirm him.

In *Brown v. Board of Education* (1954), Warren displayed all of the skills that would earn him the reputation as one of the great chief justices in the nation's history. He personally made up his mind on the issue quickly and announced in the first conference following the oral argument that one could not sustain racial segregation unless one assumed blacks to be inferior to whites, and he did not accept that premise. But he also recognized the political volatility of the issue, and that how the Court framed its opinion would be as important as what that decision held.

Throughout the winter and early spring of 1953–1954 Warren kept the issue open, letting the justices talk it out and review the options. Gradually all but one member of the Court, Stanley *Reed, came to agree on reversing **Plessy* v. *Ferguson* (1896), and confronted by that situation, *Reed signed on. Warren then circulated drafts of his opinion that carefully distinguished between the principle that racial segregation violated the Equal Protection Clause and that remedies to this situation would be determined in the future (see RACE AND RACISM). He wanted to give the southern states a chance to digest the fact that segregation would end, give moderates a chance to calm the inevitable passions that the decision would arouse, and then invite the southern states to join in framing an equitable decree to implement the decision.

The decision in *Brown*, announced on 17 May 1954, held racial segregation unconstitutional and triggered the massive civil rights revolution of the 1950s and 1960s. But aside from its immediate holding, *Brown* can also be seen as a major shift in the role of the Supreme Court in American life. For the previous century, the major issues before the Court had been economic, questions concerning the rights of *property, and the Court, in defending property, had for the most part told Congress and the states that they could not take certain actions.

The chief issues before the Court since World War II have concerned individual rights, and in defending and expanding those rights, the Court has often told the states and Congress that they would have to change their practices, that they would have to act differently in the future than in the past. Rather than a barrier to legislation, the Court became an active partner in the governing process. This is in essence the "activism" of the Warren Court that upset so many conservatives, but Earl Warren at all times considered the defense and enforcement of individual rights a proper role for the courts; he never saw the role of the judiciary as passive, or as somehow inferior to that of the other branches.

Warren's opinion in *Brown* has been criticized for its lack of rigorous constitutional analysis, and this too is a reflection of the man. Warren never claimed to have a great legal mind, but he believed common sense, justice, and fairness to be more important than doctrinal hairsplitting. In *Brown* the key finding is based not on appeal to precedent or even to the history of the Fourteenth Amendment, but on the belief that racially segregated facilities were not equal, could never be equal, and had a detrimental effect on African-American children. Warren based his conclusions on contemporary social perceptions rather than on doctrine, which also damned him in the eyes of critics.

As one of Warren's biographers has noted, Warren intended to fuse constitutional interpretation with a search for justice, finding in provisions such as the Equal Protection and *Due Process Clauses the basis for squaring the Constitution with the contemporary demand for increased individual rights. *Brown* thus previewed the Warren Court's "activism," its commitment to social justice and protection of the individual against the power of the state. The case did not, of course, turn the Court around all at once; it would take several terms before the "Warren Court" emerged with its activist commitment to social justice.

Not all members of the Court agreed with this approach, and Felix Frankfurter energetically fought any departure from what he considered the strictures of judicial restraint. Although Frankfurter had supported Warren in the desegregation cases, he and the chief justice soon parted company. Frankfurter considered Warren a mere politician, who should be grateful for the instruction in the law and in the proper role of the Court that Frankfurter stood ready to provide. Warren, however, had been a successful district attorney, state attorney general, and governor, and although he tried to be polite to Frankfurter, the chief justice soon chafed at the incessant barrage of memos and words from his colleague, a situation that the pedantic Frankfurter exacerbated.

Two members of the Court, Black and Douglas, had already moved to the position that Warren would take, namely, that the Constitution gave the Court sufficient authority to remedy injustice. Although he would get on well with both of them, the man who became Warren's closest confidant and chief ally would be William J. *Brennan, Jr., whom Eisenhower appointed to the Court in 1956. In many ways, Brennan served as Warren's theoretician and technician, framing the judicial arguments to carry out Warren's strategy. Frankfurter, who had welcomed his one-time pupil onto the Court, was soon in despair at his seeming apostasy, especially since Brennan, unlike Warren, could parse a constitutional argument with the best. Before long Brennan and Warren began the practice of meeting together before the conference, to frame out judicial argument and political strategy.

The Warren-led activists became dominant

with the appointment of the open-minded Potter Stewart in 1958 and the openly liberal Arthur *Goldberg in 1962, and before long, the barriers that Frankfurter and the conservatives had erected began to tumble. A key set of cases involved the justiciability of challenges to state legislative apportionment. In 1946 Frankfurter had declared that a *"political question" and warned the courts to stay out of the *"political thicket."

In 1962, with Brennan writing the majority opinion in *Baker v. Carr*, the Court held that it did have jurisdiction, and two years later Chief Justice Warren delivered the Court's opinion in a series of cases that, taken together, required a complete overhaul of the nation's state legislative apportionment schemes based on the criterion of one person, one vote (see REAPPORTIONMENT CASES). In response to Justice John M. *Harlan's dissent that the Court ignored history and precedent, Warren made clear that the Constitution mandated democracy and justice. "Citizens, not history or economic interests cast votes," he declared in *Reynolds v. Sims* (1964). "People, not land or trees or pastures vote" (p. 579).

This commitment to democratic procedures, to justice and to individual liberties, marks the core of Earl Warren's jurisprudence, and also its weakness. He believed that in the Constitution and the *Bill of Rights, the Founders had erected barriers against majoritarian rule to protect the individual, whether in the exercise of political rights or the expression of unpopular opinions or as a shield against vengeance in criminal prosecutions. The will of the majority expressed itself in the laws of the Congress and the actions of the Executive; the Court, in turn, had been assigned the critical role of ensuring that the elective branches did not ride roughshod over individual liberties. When Governor Orville Faubus challenged the Court's authority to bind the states to its interpretation of the Constitution, Warren massed the Court behind Brennan's opinion in *Cooper v. Aaron* (1958), one of the strongest statements in the Court's history affirming its role as the final arbiter of what the Constitution means.

Whether one looks at the Court's record in matters of free speech, separation of church and state, apportionment, racial discrimination, or criminal procedure, Warren and his Court essentially asked the same questions: Is this fair? Does this protect the individual, especially the one with unpopular views? Does this impose the power of the state where it does not belong? Warren was not antigovernment or anti–law enforcement, but he believed that the Constitution prohibited the government from acting unfairly against the individual. This can be clearly seen in two cases involving criminal procedure. In 1963, to general approbation from state attorneys general, the Court extended the *Sixth Amendment right to counsel to the states in the landmark decision of *Gideon v. Wainwright*. Three years later, in one of the most criticized of all the decisions during his tenure, Warren attempted to set up clear rules governing police procedures. His opinion in *Miranda v. Arizona* required that at minimum, a person accused of a crime would be informed of his or her rights (see COUNSEL, RIGHT TO). Warren recognized, and empirical studies have since confirmed, that the *Miranda* warnings do not hamper effective police work; they serve as a prophylactic to make sure both the state and the individual are treated fairly.

Warren also had no trouble supporting the activist bloc when it read bold new rights into the Constitution, such as in the landmark case of *Griswold v. Connecticut* (1965), which proclaimed a right to *privacy.

Warren predictably came under criticism from conservatives who opposed judicial activism and his broad interpretation of the Bill of Rights, but even some of his admirers questioned his judgment in 1963 when he accepted the chairmanship of the special commission to investigate the assassination of John F. Kennedy (see EXTRAJUDICIAL ACTIVITIES). The chief justice did not want to take the assignment, believing that extrajudicial assignments tended to undermine the work of the Court and violated *separation of powers. But he found himself no match against Lyndon Johnson's powers of persuasion and the president's appeal to Warren's patriotism. Although Warren did not participate actively in the commission's work, he kept himself apprised of its progress, and took a hand in shaping its final report.

As several scholars have noted, it was not a happy experience for the chief justice, whose instincts for candor and justice collided with his recognition of the political implications of the report and his desire, for reasons similar to that in *Brown*, to have the report endorsed unanimously. The commission and its report have been under continuous criticism from one group or another ever since; while there can be little question that a man of Warren's integrity would not participate in a blatant coverup, evidence does suggest that even if the commission's ultimate findings are correct, it did not have access to important FBI and CIA files. Warren should have followed his initial instincts to turn the assignment down.

In June 1968, Earl Warren went to the White House to inform the president that he intended to retire, but left the date open until the confirmation of his successor. Johnson named Abe *Fortas, whose views coincided closely with those of Warren, but the Republicans smelled victory in 1968, and determined to deny Johnson the chance to name the next chief justice. Then came revelations of alleged financial misconduct by Fortas, and in October Fortas asked Johnson to withdraw the nomination. Warren agreed to stay on until the next president, his old political foe, Richard M. *Nixon, named his successor.

In his last term, however, Warren still had one more civics lesson to deliver. Warren's valedictory came on 16 June 1969 in *Powell v. McCormack; the chief justice ruled that the House of Representatives had exceeded its authority in denying a seat to the flamboyant African-American representative from Harlem, Adam Clayton Powell, Jr. Although a "textually demonstrable constitutional commitment" gave each house the power to judge its members' qualifications, Warren read this clause narrowly. "The Constitution leaves the House without authority," he declared, "to *exclude* any person duly elected by his constituents, who meets all the requirements for membership expressly prescribed by the Constitution." Any other rule, he held, would deprive the people of their right to elect their own representative (p. 522).

The *Powell* opinion, like that in the apportionment cases, reaffirmed Warren's faith in the democratic process; but it also, like the opinion he had helped to craft in *Cooper*, reasserted the Court's primacy in interpreting the Constitution. One week later, he stepped down after sixteen terms as chief justice. In his retirement he worked on his memoirs (which tell very little about the Court years) and opposed the proposal to create a new intermediate appeals court to reduce the Supreme Court's jurisdiction, a proposal he believed aimed at minimizing the Court's ability to remedy injustices. He maintained a fairly active schedule until he began to suffer from congestive heart failure in early 1974, a condition from which he died on 9 July of that year.

In evaluating Warren, scholars are in general agreement that as a jurisprude he does not rank alongside *Brandeis, Louis Black, or even Frankfurter. The chief justice's opinions were not always clear, and they rarely involved complex or sophisticated legal analysis. Warren's strengths, however, lay in his belief that the Constitution embodied certain natural rights that the Court had the power to articulate and that in doing so it was always under the obligation to protect individual liberties and to ensure justice.

Conservatives believed this an inappropriate philosophy and called for a restricted view of judicial activity. Yet the fact remains that Warren's ideas struck a responsive chord in the minds of many Americans. Shortly after Warren's retirement, Professor Joseph Bishop of Yale remarked that nothing would have made the Court's major decisions in such sensitive areas as race relations and criminal procedure "palatable to a large segment of the population, including a great many highly vocal politicians. . . . But in these areas it is my judgment . . . that (1) the Court was right, and (2) most people knew it was right" (M. I. Urofsky, *A March of Liberty*, 1987, p. 852). This sense of law as morality, often derided as an anachronism, showed, in Earl Warren's hands, that it could still be a powerful tool in forging public policy.

□ Jack Harrison Pollack, *Earl Warren: The Judge Who Changed America* (1979). Bernard Schwartz, *Super Chief: Earl Warren and His Supreme Court—A Judicial Biography* (1983). Earl Warren, *The Memoirs of Earl Warren* (1977). John D. Weaver, *Warren: The Man, The Court, the Era* (1967). G. Edward White, *Earl Warren: A Public Life* (1982).

Melvin I. Urofsky

Wartime Seizure Power involves the U.S. government's power to seize the *property of enemy aliens and citizens during time of *war. The authority of Congress to pass seizure statutes derives from Article I, section 8, clause 11, of the Constitution, which gives Congress power, among others, to "declare war" and "make rules concerning capture on land and water."

The power of Congress to authorize seizure of enemy property in the United States has long been recognized. During the *Civil War, Congress enacted two confiscation acts directed at the property of Confederate supporters. In *Stoehr v. Wallace* (1921) the Supreme Court upheld the seizure of the property of a German corporation under the Trading with the Enemy Act of 1917. The Court sustained the act's mechanism for executive determinations of the government's title in alien enemy property, specifically concluding that prior judicial determination of enemy status was not required.

Seizures of German property in the United States also occurred during *World War II, when Congress passed the first War Powers Act (1941). In *Silesian-American Corp. v. Clark* (1947), the Court declared, "Unquestionably to wage war successfully, the United States may confiscate enemy property" (p. 475). The Court later confirmed in *Uebersee Finanz-Korp. v. McGrath* (1952) that the government can take alien property in the United States without having proved or asserted actual use of the property for economic warfare against the United States.

Governments have also temporarily seized domestic property during wartime. At the beginning of the Civil War, President Abraham *Lincoln ordered the seizure of railroad and telegraph lines between Washington, D.C., and Annapolis, Maryland, without advance legislative authorization. He did so in order to restore communications between the capital and the North, which had been interrupted by southern sympathizers who destroyed railway and telegraph facilities. The seizure was later ratified by the Railroad and Telegraph Act of 1862. The Supreme Court in *Miller v. United States* (1871) confirmed the constitutionality of the seizures.

During *World War I, Congress authorized seizure of domestic transportation systems in the Army Appropriations Act of 1916 as well as the seizure of plants that manufactured necessary military supplies (or that could be readily transformed to such use) in the National Defense Act of 1916. Under such authorization, the government seized railroads, telegraph lines, and vari-