

A Concern for Justice

By James E. Clayton

EARL WARREN: A Political Biography. By Leo Katcher. McGraw-Hill. 502 pp. \$8.50.

Earl Warren has had a major part in the history of our era. He has been a national figure for 25 years and an international figure for more than 10. He is respected, even loved, by millions of people. He is detested, even hated, by millions more. His name is permanently linked with one of the roughest periods in the history of the Supreme Court. And he has had a major role in the Court's reshaping of public policy in three important areas—desegregation, legislative reapportionment and criminal law.

Despite all this and despite the fact that he has been a public official for more than 45 of his 76 years, we know little about Earl Warren. There has been no great biography of this man, and the nation deserves a great biography of any Chief Justice who has played such a role in its history. Perhaps such biographies, like those on Marshall, Taney, Hughes and Stone, cannot be written during the subject's lifetime, but on Chief Justice Warren we do not even have a good start.

This is a man whose public life—and he has had virtually no other—is full of paradoxes. He supported, perhaps led, the campaign to move all Japanese from the West Coast in 1941, a position totally out of keeping with his later record on civil rights for minorities. As a tough California prosecutor, he did things in the 1930s that he would surely condemn if others did them in the 1960s. As Governor, he opposed the theory of one-man, one-vote in legislative apportionment, but as Chief Justice he has advocated it. He was once the darling of California's right wing and was despised by the left as a man who confused socialism with communism, understood neither, and played politics with anti-communism—a bit of history that must be totally incomprehensible to the John Birchers of today.

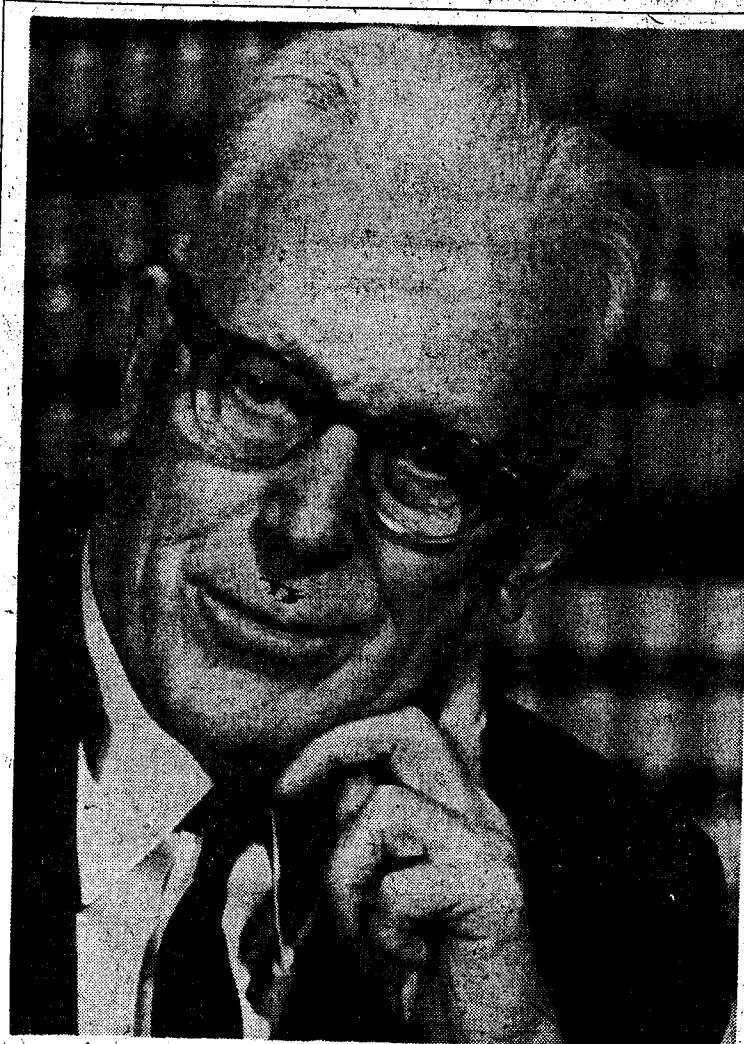
Some of these paradoxes, but not all of them, are explained through the intellectual growth that time and experience bring. Ascending the bench of the Supreme Court and acquiring that black robe does do something to a man. Forced to think about issues and about philosophy as other men in public life rarely have the time or the need to do, a Justice often discovers that his previously held views do not stand the test

of careful analysis and thought. But one can read too much into such a theory of why Justices sometimes disagree with the things they stood for earlier. I opened Katcher's book hoping that it might unlock some of the puzzling aspects of Mr. Warren's public record.

Earl Warren: A Political Biography is described as an unauthorized biography, meaning that the Chief Justice knew it was being written but did not cooperate with its author. It is clear, however, that Katcher was able to get many of the Chief's old friends and associates, as well as some members of his family, to recall the past. As a result, the first two thirds of the book, devoted to Warren's life prior to his arrival in Washington in 1953, makes interesting and informative reading. Unfor-

tunately, the same cannot be said of the last third which deals with Warren's most important contributions to American life; Katcher is almost as lost when he is dealing with law and jurisprudence as he seems at home when he is dealing with California history and politics.

Katcher has followed Warren's career through California in considerable detail and seemingly with great care. It is a fascinating career. Born of immigrant parents who eked out a living on the railroad, Earl Warren did nothing in his early years to mark him as a comer in either politics or law. His virtues were honesty, fairness and hard work, not brilliance or intuition. The same virtues, plus a remarkable ability to build and to hold a political following,



Earl Warren

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remained throughout his years in California. His first break in politics came in 1925 when John Mullins, a supervisor of Alameda County, broke with the machine that elected him and voted for Warren's appointment as district attorney. Warren never forgot and Mullins, promptly driven out of politics, has a picture on his wall inscribed, "To John F. Mullins, the first sponsor, and for thirty years the most loyal supporter in public life of his friend, Earl Warren."

After that start, Warren built his career as a crusader for law enforcement. Katcher describes his battles with corrupt bondsmen and public officials in Alameda County, with big-time gamblers and corrupt officials as attorney general of California, and with the entrenched interests in Sacramento when he was governor. It is worth remembering that the Chief Justice was the complete politician; he never lost an election except for Vice President in 1948. Many Californians still think of him as Governor, an office to which he was elected three times, once winning the nominations of the Republican, Democratic and Progressive parties. Even today, the old politician in Earl Warren pops out from time to time.

Katcher's version of what happened to Earl Warren on the national political scene is sympathetic and sheds some light on the relationship between the Chief Justice and former Vice President Nixon. Katcher says Governor Warren was caught between the Eisen-

hower forces, with Nixon as their leader, and the Taft forces, with Senator Knowland as their leader, in California's pre-convention maneuvering in 1952, tried to play his role as head of the delegation straight, and came out of it convinced that Nixon had done in his chance to be a compromise candidate if the Convention could not agree between the two front-runners. As a result of his efforts in the campaign that followed, Warren believed he had been promised the next appointment to the Supreme Court, Katcher says, and bulled his way into it when the Eisenhower Administration was debating between him, Chief Justice Arthur T. Vanderbilt of New Jersey and Federal Judge Orin E. Phillips.

But, while Katcher has told us the interesting tale of how Earl Warren got to Washington, he has failed to tell us what it meant once he got there, either in political or legal terms. Katcher's failure to come to grips with constitutional law or with the real meaning of what happens in the Supreme Court stands in his way. He does not grasp the difference between the constitutional arguments put forward about the 14th Amendment by Justice Black and Justice Frankfurter or how the Chief Justice fitted into them and how he brought his practical experience as a prosecutor to bear on the Court's problems. He is wrong again and again on details that make a difference. (The Slaughterhouse Cases of 1873 did not involve Baltimore, and the Court did not hold that "parts of the Bill of

Rights, at least, could be invoked in behalf of corporations, but denied these to individuals." Justice Cardozo did not first advance the theory of a preferred position for First Amendment rights. The Jencks case did not hold that the defense must be given all the information in FBI files.)

And Katcher's dislike of Felix Frankfurter, who he says "never fully understood [Justice] Holmes as a jurist—or, rather, Holmes's approach to jurisprudence," leads him to miss a key part of the Chief Justice's work on the Court. Katcher argues that in minor cases, Frankfurter "unlike Warren . . . could not understand that if the case was not important to the *corpus juris*, it was of great moment to the plaintiff." The dispute between the two had nothing to do

with the importance of a case to a particular person but to the role of the Supreme Court. Frankfurter saw it as a Court in which only principles were established; Warren often sees it as a place where justice is done.

Much of the Chief Justice's early career seems to be related directly to this view of the Court's role. It was his concern with the need to deal with problems of people that led him farther and farther away from his early sponsors in California politics, closer and closer to the libertarian views he now espouses, and, perhaps, cost him a shot at the Presidency because both the conservatives and the liberals were unsure of him. It is this same concern that has marked his record as Chief Justice. ■