The 'Warren Court' Era

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WASHINGTON, June 21—Shortly after Earl Warren became Chief Justice of the United States in 1953, the term "Warren Court" began to be used to describe the bold, liberal look that the Supreme Court acquired.

That look inspired praise from liberals and hate from the right, even billboards that read, "Impeach Earl Warren."

The basic premise of the new spirit on the Court was that enlightened constitutional decisions from the top could make the wheels turn in the United States, that progressive rulings could release liberal social forces and improve the lot of the ordinary man.

This theme was symbolized by Chief Justice Warren's first major opinion, in Brown v. Board of Education, May 17, 1954, which declared segregation in the public schools unconstitutional.

It was the force of the new Chief Justice's personality that welded together the unanimous decision on what was then a radical legal departure.

But once announced by the Supreme Court, the principle of racial equality spread and eventually transformed the relationship of the races at all levels.

The Chief Justice, writing the opinion of the Court in

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the Brown Case, said:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship.

"Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these day, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

"To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

Last week, when Chief Justice Warren announced a major decision, there was a poignant hint that the Warren Court was near its end.

Chief Justice Warren was writing to explain why the Supreme Court felt compelled to approve the power of the police to "stop and frisk" dangerous-looking persons on suspicions, without evidence of guilt.

Pragmatism the Key

He conceded and deplored the fact that the power might be used to harass Negroes. But he explained that this grave and complex problem — the frequently acrimonious relationship between the policeman and the citizen in the streets — could not be solved by constitutional rules of conduct handed down in advance by the Supreme Court.

"When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm," he wrote.

"We cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for arrest."

"No judicial opinion can comprehend the protean variety of the street encounter," he sadly concluded.

But between the school desegregation ruling and the current shift toward great national issues that do not lend themselves to resolution by judges, the Warren Court served as the focal point of progressive reform. Earl Warren's personality was always dominant.

The touchstone of the Warren Court was pragmatism. The Court overruled earlier precedences with what some observers viewed as cavalier abandon. Uusually concentrating more on the effects of the law in practice than on legal reasoning.

Critics of the Warren Court and the Chief Justice often focused on the Court's style, rather than on the results.

Justice John M. Harlan, the most consistent dissenter against the Warren majority, frequently summed up the majority's process of opinion writing as "ipse dixit"—"It's so because I say it's so."

Chief Justice Warren was not so frequently faulted on this score as some of his liberal colleagues, but on a few notable occasions the charge was made with some foundation.

In his opinion in 1964 in the Colorado reapportionment case, he laid down the one-man, one-vote doctrine in its most definitive terms. Critics charged that he had brushed aside the dissidenters' historical and factual arguments without facing up to them.

Later, when he wrote the Court's opinion in Miranda v. Arizona, the Chief Justice gave the Fifth Amendment's self-incrimination clause a drastically different meaning from the interpretation the last 175 years.

A National Standard

The opinion said that voluntariness would no longer be the test for the admissibility of confessions and that the police must warn suspects of their rights before questioning them. It was one of the longest opinions in recent years, but dissenting Justices complained as recently as two weeks ago that they still did not know upon what principle it was based.

This pragmatism of approach was apparent in Chief Justice Warren's demeanor during courtroom arguments.

With his robed bulk and horn-rimmed glasses creating the impression of a great black owl, the Chief Justice would peer over the bench down toward the attorneys and ask a barrage of questions.

His questioning often set the direction that the discussion of cases would take, yet there are courtroom regulars who cannot remember the Chief Justice ever citing a case. He was not concerned that a lawyer could not connect his client's conduct with some Supreme Court decision, but he frequently interrupted a lawyer's explanation to demand:

"Yes, yes — but were you fair?"

This concentration on fairness revolutionized the function of the Supreme Court. Thirty years ago, about 2 per cent of the cases in any term concerned an issue of civil rights or civil liberties. Now, about one-half of the Court's cases are of this type.

In deciding them with a compassion for the individual in his brushes with the state, the Warren Court issued decisions that prompted some observers to call this "the Warren Revolution."

Under his leadership the Court strengthened the legal safeguards of civil rights and civil liberties with apparent secondary concern for federalism.

The Court's method of protecting the rights of criminal suspects usually took the form of applying to the states the major provisions of the Bill of Rights. This gave defendants such protections as the Fourth Amendment's guarantee against unreasonable searches and seizures, the Fifth Amendment's privilege against self-incrimination and the Sixth Amendment's guarantee of counsel and a speedy trial.

But it also had the effect of forcing the states to conform to a national standard of criminal procedure. Local procedures had to conform in most instances to the procedures that had been developed in the Federal system.

The Court also refused to permit meaningful local flexibility in apportionment, and it upheld Congress in passing a series of civil rights statutes that scooped huge areas of power from the states. Despite the controversies and dissents within the Court, federalism and states rights were rarely mentioned and almost never determined the outcome.

Chief Justice Warren had the ability to run a happy Court with a firm hand. There were strong differences, some of them personal—especially when peppery Felix Frankfurter, who retired in 1962, was aboard.

But in recent years there were fewer signs that the divisions had flared into hurt feelings behind the scenes, and in the recent Court there was a norticeable falloff in the number of 5-to-4 rulings.

Despite his easy manner, the Chef Justice was known to want things done his way, and they were. For a former politician he was astoundingly weak on names and faces, and he seemed to want to confine the Supreme Court safely within its familiar confines.

He gave the press a wide berth, and his clerks and other Court personnel understood that they were to do the same. The Warren Court remained a tight Court that spoke almost exclusively through its opinions, and newsmen who pressed for freer communication between the Court and the outside world were told that such changes would not be forthcoming so long as Chief Justice Warren was there.

Gauge of Effectiveness

An obvious gauge of the effectiveness of the Warren Court is the docket of cases for the next term, which begins in October.

There is a remarkable dearth of the type of towering law

reform issue that the Warren Court took as its responsibility. As past terms ended, there would always be crucial questions looming in the near future that the closely divided Court would soon have to resolve.

Many observers of the Court felt that this was why resignations from the Warren Court were unlikely, despite the advanced age of several members. Always there was a 5-to-4 decision of great importance soon to be faced, and the shift of one vote could mean too much.

But for the time being, at least, the major decisions have been made. The innovations of the Warren Court are secure, and Chief Justice Earl Warren, for one, has decided to call it a day.