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Justice for All: Earl Warren and the Nation He Made, by Jim Newton

Jamie Cameron

Osgoode Hall Law School of York University, jcameron@osgoode.yorku.ca

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Justice for All: Earl Warren and the Nation He Made

by Jim Newton

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I. "NEITHER GENIUS NOR SAINT"¹

Earl Warren was not a man of commanding intellect or compelling style. In many ways, he was no match for the notorious personalities that surrounded him at the United States Supreme Court: forceful men who displayed the elegant brilliance of Robert Jackson, the driving bravado of Felix Frankfurter, the caustic ego of William O. Douglas, the firebrand spirit of Hugo Black, the patrician intellect of John Harlan, the feisty liberalism of William Brennan. Earl Warren was the colourless member of this cast; avuncular and understated in demeanour, Warren was so lacking in distinction he did not have a middle name.² Yet he managed the cacophonous clashes which erupted between men who were gifted but impossible. When he retired as Chief Justice of the United States, Senator Edward Kennedy observed in simple but accurate terms that "[a]s Earl Warren led the Court, the Court led the Nation."³ One paradox of his legacy is that a man of such modest ability attained singular achievement; an earlier biographer described it as a case of "low gear greatness."⁴ Warren's genius lay in what he did, not who he was.

1. Irving Stone, *Earl Warren. A Great American Story* (New Jersey: Prentice-Hall, 1948) at 169. Writing of Warren as Governor of California, Stone went on to say that "[l]ike all active men he has made his quota of mistakes, but they are mistakes of the head and never of the heart." He added that one of Warren's toughest Democratic opponents had admitted that "[y]ou can get Earl Warren in the ring, but at the end of fifteen rounds he comes out with his hair unmussed."
2. Jim Newton, *Justice For All: Earl Warren and the Nation He Made* (New York: Riverhead Books, 2006) at 16. Newspapers dignified this omission by assigning a fictitious middle initial of C or J to his name. See Jack Harrison Pollack, *Earl Warren: The Judge Who Changed America* (New Jersey: Prentice-Hall, 1969) at 17.
3. Senator Edward Kennedy, *Tributes to Honorable Earl Warren, Chief Justice of the United States: To Commemorate the Occasion of his Retirement from the Supreme Court, June 23, 1969* (Washington: United States Government Printing Office, 1970) at 93.
4. Pollack, *supra* note 2 at 338. In Chapter 1, titled "The Warren Paradox," Pollack, at 3, excerpts a passage from John Gunther's *Inside USA*, which states that Warren "has the limitations of all Americans of his type with little intellectual background, little genuine depth or coherent political philosophy." Gunther went on to describe Warren, in 1947, as "a man who has probably never bothered with an abstract thought twice in his life" and as "no more a statesman in the European sense than Typhoid Mary is Einstein."

Earl Warren's public life can be neatly bisected into two periods: elected office in the state of California followed by appointment to the United States Supreme Court. As a young man Warren rose quickly in state politics and, after serving as Attorney General, became Governor of California. A master in the art of nonpartisan politics, he held office from 1943 to 1953 and would be the first person in state history to be elected to a third term in office. Ever a presidential hopeful at this time, Warren came closest in 1948, when the Dewey-Warren ticket nearly won the election.⁵ It was fateful that his bid for the Republican nomination failed in 1952, because it prompted Eisenhower—as the President-Elect—to make a rash promise that the next U.S. Supreme Court nomination would go to Warren.⁶

When Chief Justice Fred Vinson died suddenly in September of 1953—between the Court's two hearings in *Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.*⁷—Warren ruthlessly held Eisenhower to the promise. Once sworn in as the fourteenth Chief Justice of the United States, he would preside over the Supreme Court from 1953 to 1969. Fear was the watchword of the 1950s, as the American public struggled with McCarthyism and the desegregation of institutions which had practised “separate but equal” for more than half a century.⁸ The 1950s gave way to the 1960s, the hopes and dreams of the civil rights movement, and the waves of protest caused by an unpopular war being fought abroad. As Chief Justice of the United States, Warren administered the oath of office to four presidents—Eisenhower, Kennedy, Johnson, and Nixon—and otherwise kept a high profile as head of the commission which investigated the assassination of President Kennedy and produced the report which bears his name.⁹ Meanwhile, he led the Supreme Court as no other Chief Justice ever has, either before or since his time, and was once dubbed “the Norman Rockwell” of the judicial system.¹⁰ His would be “[t]he age of judicial heroism”¹¹ and by the time Warren retired, the Court had engineered a judge-made revolution which transformed the meaning of the Constitution.

5. A Republican victory was so widely anticipated in 1948 that the *Chicago Tribune* carried the erroneous headline, “Dewey Defeats Truman” in its early edition election news. Newton, *supra* note 2 at 214.
6. *Ibid.* at 6–7. Eisenhower reportedly placed the call to Warren in December 1952 to let him know, “I am back here selecting my Cabinet, and I wanted to tell you I won't have a place for you on it.” He continued by saying, “[b]ut I want you to know ... that I intend to offer you the first vacancy on the Supreme Court.” When Warren acknowledged his generosity, Eisenhower replied: “That is my personal commitment to you.” See Bernard Schwartz, *Super Chief: Earl Warren and the Supreme Court—A Judicial Biography* (New York: New York University Press, 1983) at 2 [Schwartz, *Super Chief*].
7. *Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.*, 347 U.S. 483 (1954) [*Brown I*], and *Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.*, 349 U.S. 294 (1955) [*Brown II*].
8. *Plessy v. Ferguson*, 163 U.S. 537 (1896) was the United States Supreme Court's infamous “separate but equal” decision, which legitimized segregated facilities until the Court declared the separate school system unconstitutional in *Brown I*, *ibid.*
9. Chapter 22 of Newton, *supra* note 2 at 409–50, entitled “The Longest Year,” covers the assassination of Kennedy, Warren's eulogy to Kennedy, and his leadership of the President's Commission on the Assassination of President John F. Kennedy (“the Warren Commission”).
10. David Halberstam, “Earl Warren and his America” in Bernard Schwartz, ed., *The Warren Court: A Retrospective* (New York: Oxford University Press, 1996) 12 at 16 [Schwartz, *The Warren Court*].
11. Anthony Lewis, “The Legacy of the Warren Court” in Schwartz, *The Warren Court*, *ibid.*, 398 at 406.

Invariably, what is written of his life and legacy is admiring.¹² Most of the biographies concentrate on the Supreme Court years, and certain decisions have generated a literature of their own.¹³ Against an extensive body of work, one wonders what another full-scale biography can add at this point in time. Unlike so many of Warren's biographers, Jim Newton, the author of *Justice For All: Earl Warren and the Nation He Made*,¹⁴ is neither an academic nor a former law clerk; he is not even a lawyer. As a long-time reporter, editor and bureau chief at the *Los Angeles Times*, Newton writes from the perspective he knows—that of a journalist.

Whether serving as Governor of California or Chief Justice of the United States, politics was the driving force which seamlessly defined Earl Warren's life. Attempts to shoehorn him into a more academic mold as a jurist come up short, because that is not who he was. Warren's approach to law was informed by the ideas, values, and goals of his political career, and leadership skills that were forged in the world of politics enabled him to embed those values in the law of the Constitution. Under this interpretation of Warren's character there is little discontinuity in his two careers: he was, first, foremost and always a politician. That is one reason why Newton's approach, which understands the man in this way, suits the Warren legacy so well.

Justice For All is not an intellectual history of the Warren Court, nor is it a book about the philosophy of law or the legitimacy of review. Earl Warren, "the least abstract of men" and "in no way a man of theory,"¹⁵ did not fret about the dilemmas or boundaries of review. As an earlier biographer suggests, he was less complex and more consistent than some supposed. Far from being an enigma, Warren was simply "an old-fashioned American humanist who happened to believe with all his heart that 'law floats in a sea of ethics,'"¹⁶ and who maintained—as Chief Justice of the United States—that "[t]he ordeal of judgment cannot be shirked."¹⁷ It was a combination which, in the time, place, and manner of his life, would make him one of the most important Americans of his generation.

12. See e.g., Lucas Powe Jr., *The Warren Court and American Politics* (USA: Harvard University Press, 2000); Schwartz, *Super Chief*, *supra* note 6; G. Edward White, *Earl Warren: A Public Life* (New York: Oxford University Press, 1982); Pollack, *supra* note 2; Schwartz, *The Warren Court*, *supra* note 10. See also Stone, *supra* note 1; Richard B. Harvey, *Earl Warren: Governor of California* (New York: Exposition Press, 1969). Not to be overlooked in this body of literature are Warren's memoirs. See Earl Warren, *The Memoirs of Chief Justice Earl Warren* (New York: Doubleday, 1977).
13. Two of the best known are Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Knopf, 1975), widely considered the leading treatise on *Brown v. Board of Education*; and Anthony Lewis, *Gideon's Trumpet* (New York: Random House, 1964). See also "Brown v. Board of Education: A Selected Annotated Bibliography" (2004) 96 Law Libr. J. 245.
14. Newton, *supra* note 2.
15. Halberstam, *supra* note 10 at 15.
16. Pollack, *supra* note 2 at 367.

II. GREAT IDEAS WITH LITTLE MEANS

The Kern County High School Class of '08 in Bakersfield, California wrote a will which included this entry from one of its graduates: "I, Earl Warren, will to Lorraine K. Stoner my ability to slide through, doing as little work as possible."¹⁸ If Warren was often or easily underestimated he did not mind, because he knew it gave him a strategic advantage.¹⁹ Though as Newton reveals, the man who was considered intellectually ordinary harboured a lifelong interest in poetry and, as a septuagenarian, was willing to read Eldridge Cleaver's *Soul on Ice*—albeit at his grandson's request.²⁰ Whatever his academic limits may have been, Warren understood the power of words, and he knew how to speak from the heart. The essence of the man, his ideals, and his humanity are captured in this well-known passage from Warren's book, *A Republic, If You Can Keep It*:

Where there is injustice, we should correct it; where there is poverty, we should eliminate it; where there is corruption, we should stamp it out; where there is violence we should punish it; where there is neglect, we should provide care; where there is war, we should restore peace; and wherever corrections are achieved we should add them permanently to our storehouse of treasures.²¹

Warren's family was a haven of stability for a young boy growing up in Bakersfield, California, a frontier town which Newton describes as "chaotic and free-wheeling."²² As a child, Earl Warren saw and felt what it was like to be less privileged, and that background was the template for the humanity which would be constant throughout his public life. Though the source of Warren's ambition was less clear, Newton points to one event in his young life that made a formidable impression. One day his father, Methias, took Earl to hear *Acres of Diamonds*, an inspirational lecture by the well-known platform orator, Russell H. Conwell.²³ Newton describes Conwell's delivery as "[r]eligious in fervor, moral in tone, and yet practical in its advice."²⁴ His lesson to listeners was that "[g]reatness consists not in the holding of some future

17. *Trop v. Dulles*, 356 U.S. 86 (1958) at 104.

18. John D. Weaver, *Warren: The Man, The Court, The Era* (Toronto: Little, Brown and Co., 1967) at 19.

19. Halberstam, *supra* note 10 at 16.

20. Newton, *supra* note 2 at 499. As for *Soul on Ice*, Warren reportedly told his grandson that "I understand the man's anger" and added, "[w]hat a shame that our generation and past generations have created a world that promotes such rage." Warren, who took great pride in being "square," earnestly asked his grandson, "[h]ow can you respect a man who uses such bad language?" Newton also notes, at 37–38, that as a university student at Berkeley, Warren founded a poetry society.

21. *Ibid.* at 516–17.

22. *Ibid.* at 19.

23. Conwell was the founder of Temple University, a lawyer, a Baptist minister and an orator whose "Acres of Diamonds" lecture was delivered more than 6000 times in towns and cities across the United States. See *ibid.* at 22.

24. *Ibid.*

office, but . . . in doing great deeds with little means.”²⁵ In the case of at least one member of that audience, the message was prescient. Conwell maintained that “[h]e who can give to [his] city better streets and better sidewalks, better schools and more colleges, more happiness and more civilization, more of God, he will be great anywhere.”²⁶ “Of all the lectures I heard in my youth,” Earl Warren would declare many years later, “this one made the greatest impression on my young mind.”²⁷

III. “OUT-NEW DEALING THE NEW DEAL”²⁸

Readers who are anxious to reach the Supreme Court years should not skim the chapters on Warren’s career in state politics. The roles may have been different, but whether as Governor of California or Chief Justice of the United States, Earl Warren was much the same man. In state politics he implemented policies that were so progressive at times he seemed Republican in name only.²⁹ At his first inaugural address, on January 4, 1943, Governor Warren stated his “adherence . . . to a policy in all government activities which reflects a sincere desire to help men, women and children and to unfold the best that is within them.”³⁰ He highlighted the nonpartisan approach he would take by pronouncing that “[n]o clique, no faction and party holds priority on all the rights of helping the common man.”³¹ Newton reports that no member of the majority Republican legislature applauded a single line in his speech.³² The same year, in describing Warren to Franklin Delano Roosevelt, Robert Kenny boasted that “[e]verything we have in California is better than it is anywhere else” and added—in reference to Warren—that “[e]ven our Republicans are better than Republicans anywhere else.”³³

Warren was unquestionably a great ameliorator, but he was also a man of unrequited political ambitions. He was on the Republican ticket in 1948 and ran an unsuccessful campaign for the party nomination in 1952. Toward the end of Eisenhower’s first term when it was unclear whether the president would seek re-

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

28. *Ibid.* at 185. Assemblyman George Collins stated, “[Warren is] trying to out-New Deal the New Deal.”

29. Harvey, *supra* note 12 at 23–24 states, “[p]erhaps his major objective was to ameliorate, by the most appropriate means, those everyday concerns facing the California populace,” such as health insurance, higher old age pensions, improved protection for workingmen, and education; in short, he believed in “moderate but steady improvement for persons of modest means through state action.”

30. Newton, *supra* note 2 at 168.

31. *Ibid.*

32. *Ibid.*

33. Weaver, *supra* note 18 at 95. Newton, *supra* note 2 at 195–97 notes that Kenny later ran against Warren for the Democrats, in 1946, and was clobbered.

election, he toyed briefly with the thought of running in 1956. But by then, he had become Chief Justice of the United States, some say, by sheer force of will. As noted above, after passing him over for the cabinet late in 1952, Eisenhower promised Warren the next vacancy on the Supreme Court. It was fortuitous that Warren had already announced his decision not to seek re-election in California and was preparing for a move to Washington, where he had agreed to serve as Eisenhower's solicitor general, when Fred Vinson died. It is part of the legend around Warren's appointment that Eisenhower never contemplated or intended that Warren be named Chief Justice. Undeterred, the Governor let it be known, through determined lobbying carried out on his behalf, that "[t]he first vacancy means the first vacancy."³⁴ If it overstates the point to say that Warren bullied the president, at the least it is clear that Eisenhower resented being held to the bargain. The president was "stuck" with a Chief Justice whose decisions were a constant irritant during the years of the Eisenhower administration.³⁵

While looking after his own ambitions, Warren took pleasure in the failures of others, most notably Richard Nixon. Though the two men detested one another, their careers were intertwined, first in state politics and then in Washington, where Nixon served as vice-president in the Eisenhower administration before being elected president of the United States, some years later, in 1968. From Nixon's first bid for congressional office in 1946 to the day Warren died—which, ironically, was the same day Warren learned that the Supreme Court had voted to decide against Nixon in the Watergate tape case³⁶—the relationship between the two men was characterized by "Nixon's resentment of Warren and Warren's contempt for Nixon."³⁷ In documenting the details over the years, *Justice For All* shows the depth and extent of the animosity between these men. A telling example is the moment of camaraderie and *schadenfraude* Kennedy and Warren shared aboard Air Force One while travelling to Eleanor Roosevelt's funeral. Nixon had just lost the gubernatorial election in California and made a speech which blamed the press for his loss. The Chief Justice pulled a handful of press clippings from his pocket, showed them to Kennedy, and the two laughed "like schoolboys" about Nixon's defeat.³⁸

34. Newton, *ibid.* at 9.

35. Two examples are *Brown I*, *supra* note 7, and the Court's "Red Monday" decisions, as noted by Newton. See *ibid.* at 314–15 and 354–55.

36. Justices Brennan and Douglas paid Warren a visit in the hospital on the day the case was heard. After Warren stated to Douglas that "[t]he old Court you and I served so long will not be worthy of its traditions if Nixon can twist, turn, and fashion the law as he sees fit," the two men assured him that he would not be disappointed in the Court. *Ibid.* at 514. Warren died later that day, on July 9th, 1974. The Court rendered its historic decision on August 5th and Richard Nixon resigned the presidency four days later, on August 9th 1974. See *United States v. Nixon*, 418 U.S. 683 (1974).

37. Newton, *supra* note 2 at 199.

38. *Ibid.* at 397.

IV. SUPER CHIEF

Justice William Brennan, Jr., reportedly enjoyed baiting his law clerks by asking them to name the most important law and then listening, for a moment, as they ventured their guesses. At a certain point he would raise his “tiny hand” and exclaim, in triumph, “[f]ive! The law of five.” With five votes you “can do anything around here.”³⁹ Perhaps in part because Warren was truly a master of Supreme Court *realpolitik*, Brennan coined the nickname “Super Chief” for him.⁴⁰ If it was unimaginable that all members of the Court would sign the desegregation opinion in *Brown I*,⁴¹ it was hardly less remarkable that the Warren Court rendered so many landmark decisions, across so many controversial issues. In doing so, the Court was often divided, but Warren—like Brennan—knew exactly how “the law of five” worked.

Felix Frankfurter was known to disparage Warren as “[t]hat Dumb Swede,” and once complained that reading one of the Chief Justice’s opinions was akin to “eating rancid butter.”⁴² In kinder terms, an outside observer described each Warren opinion as “a morn made new—a bland, square presentation of the particular problem in that case almost as if it were unencumbered by precedents or conflicting theories.”⁴³ Newton agrees that “nontechnical justice” might be the best way to describe Warren’s approach to decision-making.⁴⁴ The craftsmanship was not as important to Warren as the result, and “[o]pposition based on the hemstitching and embroidery of the law appeared petty in terms of Warren’s basic value approach.”⁴⁵

Warren’s was the age of judicial heroism, and to read *Justice For All* is to be reminded how many landmark decisions there were, and how much they changed the law of the Constitution.⁴⁶ Never one to overcomplicate matters, Earl Warren had lit-

39. *Ibid.* at 428. The legend is told in more detail, in Jeffrey Toobin, *The Nine: Inside the Secret World of the Supreme Court* (New York: Doubleday, 2007) at 85.
40. According to William J. Brennan, Jr., “[t]o those who served with him, Earl Warren will always be the Super Chief.” Schwartz, *Super Chief*, *supra* note 6 at frontispiece.
41. *Supra* note 7.
42. Newton, *supra* note 2 at 347, adding that the opinion in question amounted to “crude, heavy-handed, repetitive moralizing.”
43. White, *supra* note 12 at 217 (quoting commentator Anthony Lewis).
44. Newton, *supra* note 2 at 476, describing Warren’s dissenting opinion in *Time, Inc. v. Hill*, 385 U.S. 374 (1967), and rhapsodizing that Warren was “always in search of ‘nontechnical justice,’ always touched by the real lives of those whose conflicts brought them to his Court, the real struggles of parents, the real consequences of law; his strong intuition for people, honed in his years of politics, allowed Warren to appreciate the underlying human consequences” of the litigants’ struggle, in *Hill*, against *Life* magazine.
45. Bernard Schwartz, “Earl Warren,” in Schwartz, *The Warren Court*, *supra* note 10, 256 at 273 (quoting Supreme Court Justice Abe Fortas).
46. A selective list of the best known cases includes: *Brown I*, *supra* note 7; *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Brown II*, *supra* note 7; *National Association for the Advancement of Colored People v. Alabama* 357 U.S. 449 (1958); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Baker v. Carr*, 369 U.S. 186 (1962) [*Baker*]; *Engel v. Vitale*, 370 U.S. 421 (1962); *National Association for the Advancement of Colored People v. Button*, 371 U.S. 415 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963) [*Gideon*]; *Reynolds v. Sims*, 377 U.S. 533 (1964) [*Reynolds*]; *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); *Katzenbach*

the difficulty naming his own favourites. His choices, in order, were *Reynolds*,⁴⁷ *Brown I*, and *Gideon*.⁴⁸ Though each case spoke to values that were especially important to Warren—egalitarianism, democratic inclusion, equality and fairness—Warren was particularly fond of the voting rights cases and his own line in *Reynolds* that “[l]egislatures represent people, not trees or acres.”⁴⁹

On retiring from the Court, Warren described his conception of the Court’s role in simple and compelling terms. “[W]e have no constituency,” he said. “We serve no majority. We serve no minority. We serve only the public interest as we see it, guided only by the Constitution and our own consciences.”⁵⁰ To that, he added, “[a]nd conscience is sometimes a very severe taskmaster.”⁵¹ When asked what his major frustration had been during his time on the Court, Warren replied that he could not think of any, because it had not been a frustrating experience.⁵² When asked how he would like his Court to be remembered, he replied “[a]s the People’s Court.”⁵³

Though much of the terrain in *Justice For All* is familiar, Newton brings the dynamics of the era straight into the story. In retelling the stories of how major cases were decided he consulted all available sources. These accounts typically portray Warren as calm and even “Gibraltarlike”⁵⁴ in the fray of a fractious and obstinate brethren. Nor does Warren lose his humanity and his compassion for those not treated fairly or equally. Newton tells the story of an overnight retreat Warren took into Virginia while the segregation cases were pending. When his chauffeur returned to the hotel the next day to pick him up Warren realized that the man had spent the night in the car. The Chief Justice was embarrassed and ashamed when he realized that his driver could not get a room because of segregation.⁵⁵

Newton leaves arid debates about judicial review to the scholars and relies, instead, on his instincts and training as a reporter. In doing so, he allows readers to see Warren and his Court as a force in the sweep of history. He juxtaposes key decisions, like *Gideon*,⁵⁶ with key events like Martin Luther King Jr.’s *Letter From the*

v. McClung, 379 U.S. 294 (1964); *New York Times Company v. Sullivan*, 376 U.S. 254 (1964); *Griswold v. Connecticut*, 381 U.S. 479 (1965) [*Griswold*]; *Miranda v. Arizona*, 384 U.S. 436 (1966); *Loving v. Virginia*, 388 U.S. 1 (1967); *Tinker v. Des Moines Community School District*, 393 U.S. 503 (1969); *Brandenburg v. State of Ohio*, 395 U.S. 444 (1969).

47. *Reynolds*, *ibid.* Newton, *supra* note 2 at 425, states, “*Reynolds* stood on its own, and it, along with *Baker v. Carr*, came to be the opinions that Warren valued above all others.”

48. *Gideon*, *supra* note 46. See Newton, *supra* note 2 at 493.

49. *Reynolds*, *supra* note 46 at 562, cited in Newton, *ibid.* at 424.

50. Pollack, *supra* note 2 at 294.

51. *Ibid.*

52. *Ibid.* at 295.

53. *Ibid.*

54. Newton, *supra* note 2 at 391 (quoting Brennan’s description of Warren’s support for him during internal debate about *Baker*, *supra* note 46).

55. *Ibid.* at 315.

56. *Supra* note 46.

Birmingham Jail.⁵⁷ Far from being an onlooker, Warren's Supreme Court is on the front lines in this book; it has immediacy and presence, and it plays a role in shaping the events of its time, many of which unfolded from the Court's own decisions.

V. WE ARE ALL YOUR STUDENTS

John F. Kennedy admired Earl Warren and the two men had a short, but intimate, relationship before Kennedy was killed. On Warren's birthday in 1963, months before he was assassinated, the President sent a fond birthday message to the Chief Justice: "Although [it is] not possible for all of us to be your clerks," he wrote, "in a very real sense we are all your students."⁵⁸ *Justice For All* also recognizes that there is much to admire in Warren's life, but gamely draws attention to some of the man's lesser moments.

Newton emphasizes that despite being Attorney General at the time, Warren was never held accountable for the wartime internment of Japanese Americans. Nor did he consider it imperative, despite being asked repeatedly to do so, that he apologize or even comment. Newton also chronicles the controversy and resistance that accompanied the Warren Court's jurisprudence, which prompted movements to impeach the Chief Justice, and found expression in a nasty cross-burning episode.⁵⁹ Still, he presents the reaction to Warren as part of the current of history, and not in the service of deeper reflections on how he used his powers as Chief Justice to promote the values he held dear. Newton cites with approval the words of Warren himself, who once said, "[i]t is the spirit and not the form of law that keeps justice alive."⁶⁰

An earlier biographer suggested that if Warren "took occasional liberties with his judicial prerogatives, as some detractors contend, this criticism will fade in time."⁶¹ Yet as subsequent events show, it was optimistic to predict that opposition to the Warren Court's activism would fade over time. Jeffrey Toobin's recent book, *The Nine*, chronicles the rise of a conservative majority at the Court and its power, at this moment, to undermine or overrule the iconic precedents of liberal constitutionalism.⁶² While some of the precedents at risk are Warren Court decisions, others, such as *Roe v. Wade*,⁶³ were decided by the Burger Court but are anchored in the work of

57. Newton, *supra* note 2 at 397–400.

58. *Ibid.* at 405.

59. *Ibid.* at 385–87 (describing the John Birch Society's efforts to impeach Warren). At 342, Newton reports that crosses were burned at the Warrens' residential hotel and the home of Felix Frankfurter, among others, in protest of the Court's decisions.

60. *Ibid.* at 516.

61. Pollack, *supra* note 2 at 368.

62. *Supra* note 39.

63. 410 U.S. 113 (1973) [*Roe*]. *Roe* was based on *Griswold*, *supra* note 46, a key decision of the Warren Court on privacy rights.

the Warren Court. It may be no accident that Newton has written uncritically, and with a certain longing, of Earl Warren and the Warren Court legacy. *Justice For All* brings that legacy back to the present, at a time when its values are being threatened.

The larger point is that what many celebrated as an age of judicial heroism with Earl Warren at the helm has evolved, according to some, into an era of judicial villainy under his successors. From this vantage it appears that each generation of American constitutional history is destined to re-learn the lesson that a Chief Justice and his or her court can exercise their powers for liberal or not-so-liberal reasons. President Kennedy was correct in declaring that we are all Warren's students and we continue to this day to be students of his Court's work. But we are students, not only of the liberalism for which his Court is so famous and so greatly admired, but more importantly of the power of review itself. In that regard, *The Nine* concludes with the compelling observation that the Court is a product of U.S. democracy and it represents, "with sometimes chilling precision, the best and worst of the people."⁶⁴ That, it seems, is as true of his predecessors and his successors as it was of Chief Justice Earl Warren.

Jamie B. Cameron
Professor
Osgoode Hall Law School
York University

64. *Supra* note 39 at 340.