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How did the Warren Court use judicial review to protect the rights of citizens?

As we have previously discussed the sixties were a time of great turbulence. Protest became a part of American life as we sought to define ourselves in a new, modern era. Part of this process involved a movement away from the authority and infallibility of government and law enforcement. The ideas of individuals rights was became more important. As is often the case these battles were fought in the courts. The Supreme court led by Chief Justice Earl Warren made several controversial decisions that changed the nature of law enforcement.

I. Rights as defined by the Warren Court

A. How does the constitution protect our rights?

1. The constitution allows citizens to vote and choose a government of their liking.
2. In the beginning voting rights were understood to be limited to white, male landowners.
3. Voting rights were eventually extended by constitutional amendment:
 - Amendment 15 - Extend right to vote to Blacks.
 - Amendment 19 - Extended right to vote to Women.
 - Amendment 24 - Outlawed Poll Taxes
 - Amendment 26 - Lowered voting age to 18.

B. What are some key Amendments that protect peoples rights.

- Amendment 1: freedom of religion, separation of church and state; freedoms of speech, press, assembly, petition the govt.
- Amendment 2: Right to bear arms
- Amendment 4: Protection against unreasonable search and seizure
- Amendment 5: Capital crimes charges must be leveled by a grand jury, no self incrimination.
- Amendment 6: Fair and speedy jury trial, right to have the assistance of counsel for defense.
- Amendment 7: Trial by jury in civil suits exceeding 20 dollars.
- Amendment 8: No excessive bail, no cruel and unusual punishment.
- Amendment 14: Equal protection under the law, due process of law.

C. What cases were tried during the Warren Court years (1960's)and how did

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they impact on rights in America?

Brown V, Board of Education, Topeka Kansas - 1954 - Civil Rights

Linda Brown, a student in the segregated Topeka Kansas school district had to walk 5 miles to school each day. Across the train tracks from her house there was a white school she was unable to attend. Oliver Brown enlisted the help of the NAACP to ensure that his daughter was able to go to the best school possible. Thurgood Marshall, then head of the NAACP, challenged the segregation of the school claiming that the laws violated the 14th amendment to the Constitution that said that all citizens were to receive "equal protection under the law." The state argued that Plessey v Ferguson had set the precedent and that the laws was clear on this point.

The court affirmed the position of Marshall and the Brown family and overturned the precedent set by the Plessey decision. Justice Earl Warren claimed that "in the eyes of the law, justice was color-blind." In ruling in favor of Brown the court ordered the integration of America "with all deliberate speed." The civil rights movement had begun!

Mapp v Ohio - 1961 - Search and Seizure

Dorlee Mapp was suspected of having information in her home that would implicate a suspected bomber. The police came to her home and asked if they might search the residence. Ms. Mapp called her lawyer and was advised to ask for a warrant. They police did not have a warrant and were asked to leave. Hours later the police returned and forcibly entered the residence. Mrs. Mapp demanded to see the warrant and a piece of paper was waved in her face. Mrs. Mapp grabbed the paper and tucked it in her blouse. A struggle ensued where Ms. Mapp was knocked to the ground as police retrieved the supposed warrant. Outside Ms. Mapp's attorney arrived on the scene but was prevented from entering the residence. The police found pornographic materiel in the house and Ms. Mapp was arrested for possession of lewd materials. Ms. Mapp was convicted of this crime. Ms.. Mapp appealed her conviction on the grounds that the search of her home was in violation of her rights.

The court ruled that the evidence obtained in the search was inadmissable because it was seized in an illegal search. In ruling this way the court created the "exclusionary rule" which makes illegally obtained evidence inadmissable in court. This ruling upheld the principles of the fourth amendment.

Betts v Brady - 1942 - Right To Counsel *Not a Warren Court case - this case is the precedent overturned by the***

Guaranteeing the same Rights to all Citizens

Following two cases; Escobedo and Gideon.

Betts was indicted for robbery and detained in a Maryland jail. Prior to his trial, he asked for counsel to represent him. This request was denied and he was soon convicted. While incarcerated, Betts filed a habeas corpus petition in the lower courts. After they rejected his petitions, he filed a certiorari petition with the Supreme Court, which agreed to hear his case. Bett argued that his 6th Amendment right to a fair trial was violated because of his lack of counsel. The State of Maryland held that most states did not require the appointment of counsel in non-capital cases and the circumstances of this particular case did not require it. Although the Court found in favor of Betts, it decided that the right to counsel must be decided on a case- by-case basis. This ruling was upheld for 20 years until it was overturned by *Gideon v. Wainwright* in 1963.

Gideon v. Wainwright - 1963 - Right To Counsel

Gideon was accused of breaking into a poolroom. Gideon, an ex con, was too poor to pay for a lawyer and asked the court to appoint one for him. The court refused to grant his request stating that lawyers were only provided for those accused of committing capital crimes like murder, rape, etc. Gideon was tried and was forced to defend himself. While in Prison Gideon hand wrote a plea to the Supreme Court and was granted a hearing. At this point he received representation from lawyers who were attracted to his case. Gideon argued that his right to a fair trial was violated.

Gideon's position was upheld. The Court ruled that all citizens must be provided a lawyer if they cannot afford one. This is regardless of the type of crime.

Escobedo v Illinois - 1964 - Right To Counsel

Escobedo was arrested in connection with a murder and brought to the police station. He repeatedly asked to see his lawyer, but was never allowed out of the interrogation room. His lawyer even went so far as to come to the police station in search of him, but was denied access. Escobedo then confessed while under interrogation to firing the shot that killed the victim. As a result, he was soon convicted. Escobedo appealed to the Supreme Court and it overturned the conviction. The Court extended the "exclusionary rule" to illegal confessions and ruled that Escobedo's confession should not have been allowed in as evidence. The Court also defined the "Escobedo Rule" which holds that individuals have the right to an attorney when an "investigation is no longer a general inquiry...but has begun to focus on a particular suspect..." The ruling went on to detail that (Where) the suspect has been taken into custody...the suspect has requested...his lawyer, and the police have not...warned him of his right to remain silent, the accused has been denied...counsel in violation of the Sixth Amendment."

Miranda v Arizona - 1966 - Rights of the Accused

Ernesto Miranda was arrested for the kidnaping and rape of a young woman. Upon arrest Miranda was questioned for two hours. He never asked for a lawyer and eventually confessed to the crime. Later, however, a lawyer representing Miranda appealed the case to the Supreme Court claiming that Miranda's rights had been violated. Miranda was acquitted. The Court ruled that citizens must be informed of their rights prior to questioning. Any evidence or statement obtained prior to a suspect being read his/her rights is inadmissible. This has led to what is commonly referred to as one's "Miranda Rights" having to be read upon questioning or arrest. They are: "You have the right to remain silent, anything you say can, and will be used against you in a court of law. You have the right to an attorney. If you cannot afford one, one will be appointed for you." Note, Miranda was later killed in a barroom brawl, stabbed to death.

Engle v Vitale - 1962 - Separation of Church and State

In the late 1950's the New York State Board of Regents wrote and adopted a prayer which was supposed to be nondenominational. The board recommended that the prayer be said by students in public schools on a voluntary basis every morning. In New Hyde Park Long Island a parent sued the school claiming that the prayer violated the first amendment of the constitution. The school argued that the prayer was nondenominational and did not attempt to "establish or endorse" a religion and thus that it did not violate the establishment clause.

The court ruled against the school district and upheld the establishment clause of the first amendment. Prayer in schools was to be considered unconstitutional.

Abington v Schempp - 1963 - Separation of Church and State

This case involved a Pennsylvania law requiring that at least ten Bible verses be read in public schools at the beginning of each day. The Schempps, a family in Abington, sued the school district for violating the first amendment of the constitution. Just as in Engle v Vitale, religious instruction in school was deemed to violate the 1st amendment of the constitution.

Tinker v Des Moines - 1969 - Symbolic Speech

Several students and parents in Des Moines organized a protest of the Vietnam war. Students were to wear black arm bands to school in protest. When the school found out they warned all the students and parents that anyone wearing the armbands would be suspended. The Tinker children wore their armbands to school

(they were the only ones of the group to do so) and were suspended. Mr and Mrs. Tinker filed suit claiming that the school violated the children's right to freedom of speech and expression. The school claimed that the armbands were disruptive.

The court ruled against the school district saying that "students do not shed their constitutional rights at the school house gates. In doing so the court protected what has come to be known as "symbolic speech."

Olmstead v United States - 1928 - Search and Seizure (Wiretaps) ***This is not a Warren Court case. It is the precedent that was overturned by the next case, Katz v United States.*

Roy Olmstead, a bootlegger, had a good business going during the prohibition years. He sold liquor illegally in violation of the 18th amendment and the Volstead Act. The government in searching for evidence used a new technology and tapped into Olmstead's phone lines. They recorded evidence against Olmstead, arrested him and he was convicted using that evidence. Olmstead's lawyer appealed arguing that the police had violated his right to privacy by listening in on his phone conversations. He further argued that the evidence used to convict him should be thrown out because it was obtained without a warrant.

Olmstead's conviction was upheld as the court ruled that right to privacy and the need for a search warrant did not apply to telephone conversations. Attorney Louis D. Brandeis, later to become Supreme Court Justice argued in defense of Olmstead to no avail. Later, when Brandeis sat on the bench he helped to overrule that precedent in the case of Katz v United States.

Katz v. United States - 1961 - Search and Seizure (Wiretaps)

Katz was arrested for illegal gambling after using a public phone to transmit "gambling information." The FBI had attached an electronic listening/recording device onto the outside of the public phone booth that Katz habitually used. They argued that this constituted a legal action since they never actually entered the phone booth. The Court, however, ruled in favor of Katz, stating the Fourth Amendment allowed for the protection of a person and not just a person's property against illegal searches. Whatever a citizen "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

If one looks at the trend of the Warren Court it is clear that this was a liberal, activist court dedicated to extending and protecting rights.

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