

DEDICATION

A Tribute to Justice Abe Fortas

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As Justice Joseph McKenna said in *Weems v. United States*,¹ “Time works changes”² Indeed it does.

Only two justices who sat at the side of Chief Justice Warren are still members of the Supreme Court, Justices Brennan and White.

In addition to the Chief Justice, Justices Black, Douglas, Clark, Harlan, and Fortas have passed away. There remain only two former justices of the Warren Court, Justices Stewart and myself.

My reference to the Warren Court denotes the period of Supreme Court history stretching from *Brown v. Board of Education*,³ to the retirement of Earl Warren in June 1969.

Every Court is, in part, a product of its time. The Marshall Court focused on nation-building. The Taney Court wrestled with sectionalism. Chase, Waite and Fuller led Courts that largely serviced the legal needs of economic expansion. The Courts presided over by Taft, Hughes and Stone devoted much of their energy to reconciling our conventional wisdom about the role of government in economic affairs with the need to enable society to survive a worldwide economic crisis.

There were other questions for the Warren Court—whatever the predilections or views of its members.

Attention was required to long neglected issues. Concern about these problems was, in part, the result of benign neglect.

Neither the Court nor the country had dealt successfully with the aftermath of Civil War; the slaves had been made “free,” but the shackles and heritage had remained.

Business and then government had been permitted to grow and become powerful, but the rights of individual citizens had not been carefully defined or controlled. Literacy and even university education

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1. 207 U.S. 349 (1910).

2. *Id.* at 366.

3. 347 U.S. 483 (1954).

were widespread. New methods of communication turned ideas into causes and local developments into worldwide concerns.

And the technological revolution not only threatened to further weaken the privacy of the individual, but also accustomed us to more rapid change.

The Warren Court found it impossible to ignore these problems and to wait for an uncertain future. This was the milieu in which the Warren Court labored.

To me, the major accomplishments of the Court during the fifteen years in which Earl Warren was chief justice, were a translation of our society's proclaimed belief in racial equality into some measure of legal reality, the beginning of a profound change in the mechanics of our political democracy and the revolution in criminal justice, both state and federal.

The areas of advancement were varied but generally the Court sought to bring legal rulings into consonance with the human reality to which they purported to respond. Justice Fortas during his four years of tenure on the Warren Court was an able and active participant in the advances made by the Supreme Court during this period.

In his opinions and votes he joined in the effort to reject dry and sterile dogma that only served to insulate the law and the Constitution it serves from the hard world it is intended to affect.

In the *Hastings Constitutional Law Quarterly* the editors and writers have dealt, or surely will, with Justice Fortas' decisions and votes while he was on the Supreme Court. In this tribute to his memory, it is appropriate to comment that the earmark of Justice Fortas' work on the Court was the recognition that the times required a retreat from abstraction and the willingness to attach broader significance to the realized human impact of events that give rise to legal disputes and court cases.

This approach, in my opinion, was both healthy and necessary; it responded to an increasingly apparent fact of modern life—the gap, too often a chasm, between the sometimes pietistic pronouncements of our judicial system and its performance in fact.

Lawyers, teachers, judges, and others have spent decades molding and re-modeling legal doctrine, shaping it into even more refined declarations intended to protect human liberty, expand personal freedoms and enhance individual dignity. But it is of utmost importance that their words match their practice.

Justice Fortas understood this and joined Chief Justice Warren and others of his colleagues on the Court in advancing a realistic jurisprudence designed to further the goal of equal justice under law. It is perhaps a fitting testimonial to Justice Fortas' contribution to the Court that he brought to constitutional adjudication a common sense willing-

ness to deal with the hard and often unpleasant facts of contemporary life.

I wish to commend the editors of the *Hastings Constitutional Law Quarterly* for dedicating this issue on Reconstruction Era Civil Rights Acts' Litigation to Justice Fortas, an outstanding jurist and a great American.

