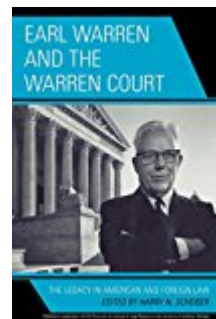


Harry N. Scheiber, ed.. *Earl Warren and the Warren Court: The Legacy in American and Foreign Law*. Lanham: Lexington Books, 2007. xii + 368 pp. \$30.00, paper, ISBN 978-0-7391-1635-7.



Reviewed by David Stebenne

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Fifty years after Earl Warren was appointed to the U.S. Supreme Court (in September 1954), the legacy of the Warren Court was celebrated by a conference held at his alma mater, Boalt Hall School of Law at the University of California-Berkeley. Harry N. Scheiber, the Stefan A. Riesenfeld Professor of Law and History at that school, has published a revised and edited collection of the papers given at that conference. Contributors include some well-known names in American constitutional and legal history, such as Jesse Choper, Yale Kamisar, and William Van Alstyne. As Scheiber makes clear in his helpful introduction, contributors to this edited volume tend to view the Warren Court's legacy in positive terms. No effort was made to include the views of those who view Warren's legacy as chief justice negatively.

What is truly new and most interesting in this volume are the essays that deal with the Warren Court's influence on other (i.e., foreign) legal systems. The comparative approach has thus far mostly been lacking in studying the Warren Court, and this collection makes a serious start on filling

in that gap in the scholarly literature. *Earl Warren and the Warren Court* includes essays by Javier Couso on Latin America, Thomas Ginsburg on East Asia, Edward Greenspan on Canada, Eivind Smith on Europe, and Kjell Ake Moder on Scandinavia. Of these, the ones dealing with the Warren Court's influence on Latin America, East Asia, and Europe are especially illuminating.

Couso, an assistant professor of law and political science at the Universidad Diego Portales in Santiago, Chile, argues persuasively that during the 1980s and 1990s, Latin American reformers were influenced by the Warren Court's legacy. Historically, the Latin American Left largely had viewed the legal system and especially national constitutions as unresponsive to reformers' aspirations. However, following the massive violations of human rights that took place in many Latin countries during the 1970s, reformers began looking to the courts as a way to secure a measure of redress. The influence of American nongovernmental organizations (NGOs), such as Amnesty International and Human Rights Watch, on their Latin American counterparts was crucial. The

Warren Court's landmark rulings had led U.S. NGOs to resort regularly to the courts to protect and advance human rights. Word of this was transmitted to Latin American NGOs by a critical mass of Latin American lawyers and legal activists, many of whom earned graduate law degrees at American law schools, such as Columbia, Harvard, Stanford, and Yale. Couso concludes that "this experience gave liberal legality a more attractive face, even to groups [in Latin America] who had historically dismissed it" (p. 249). Significant successes through the courts in Argentina and Chile, in particular, encouraged Latin American NGOs to reinvent themselves, Couso contends, as organizations that fought for the people through the courts in ways the Warren Court rulings of the 1960s had encouraged.

In East Asia, the pattern was somewhat different. Thomas Ginsburg, an associate professor of law and director of the Program in Asian Law, Politics, and Society at the University of Illinois, Urbana-Champaign, chose three places (Japan, South Korea, and Taiwan) as case studies. These cases suggest that in East Asia, the Warren Court's rulings in the area of criminal procedure, and especially the rulings formulating the exclusionary rule (*Mapp v. Ohio* [1961]) and finding the right to counsel for criminal defendants (*Gideon v. Wainwright* [1963]) in state courts, have had the biggest impact. Other landmark Warren Court rulings, such as *Brown v. Board of Education* (1954) and *Baker v. Carr* (1962), have had much more limited influence there, Ginsburg finds.

In Europe, the pattern is different from either Latin America or East Asia. Eivind Smith, a professor and director of the Department of Public and International Law at the University of Oslo, argues that the European legal systems have tended to view the Warren Court's innovations "much more as products of political activism than of 'law'" (p. 323). European lawyers and judges were aware of what the Warren Court was doing, Smith suggests, but they saw its major rulings as the

products of a different legal system in which the possibility of constitutional amendment was much more limited than in most European countries. The greater obstacles to using the amendment process, European legal experts believed, placed more pressure on the American judiciary to play an essentially political role.

The study of the Warren Court (and American legal history generally) would benefit if these sorts of comparative approaches became more common in the scholarly literature. The contributors to this collection take what has become in some ways a rather static discussion about the history of the Warren Court and open it up in illuminating, analytically powerful ways. *Earl Warren and the Warren Court*, and its comparative essays especially, ought to be required reading for serious students of this topic.

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