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Eisenhower vs. Warren : the Battle for Civil Rights and Liberties (2018)

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EISENHOWER VS. WARREN

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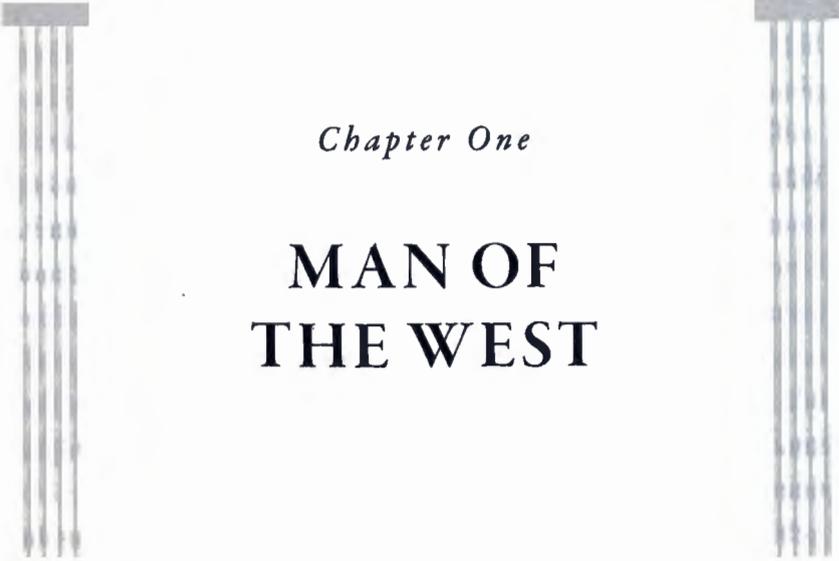
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Chapter One

MAN OF THE WEST

THE CALM, CONFIDENT FACE OF CALIFORNIA'S GOVERNOR Earl Warren beamed from the cover of *Time* magazine on January 31, 1944. *Time* considered this "Man of the West"¹ the front-runner for the Republican Party's vice-presidential nomination, presumably on the ticket with New York governor Thomas E. Dewey in their party's challenge to President Franklin D. Roosevelt in November. *Life* magazine went further, suggesting in a flattering story on Warren and his large, photogenic family that the California governor might even head his party's presidential ticket. Warren, fifty-two years old, had become a star on the national political stage barely a year after he had been elected to his first gubernatorial term.

The appeal of a Dewey-Warren ticket was obvious. Both men led large states from opposite coasts with a treasure trove of electoral college votes. Both had earned reputations as fearless prosecutors who had sent scores of corrupt officials, bootleggers, con men, and murderers to prison. Both were dedicated family men without a scintilla of scandal in their private lives. And they represented the moderate middle of their party, not as liberal as the party's 1940 standard bearer, Wendell

Willkie, but more progressive than the leader of the conservative wing of the party, Ohio senator Robert A. Taft.

Warren offered a contrast in style and personality to Dewey. Whereas Dewey tirelessly promoted his image as an intrepid racket buster, Warren was more low-key, though he, too, cultivated reporters. Dewey was combative, while Warren seemed "to radiate goodness and warmth," impressing visitors with his "relaxed good nature" and "his evident simplicity."² *Time* reported that Warren's many admirers considered him not only to be "a perfect political candidate," but also the forerunner in U. S. politics to a new era of friendly men to succeed "the recent era of angry men."

Nothing in Warren's speeches during his twenty-five years in public office could explain the adulation. He was neither scintillating in style nor original in policy. But his patient, indefatigable work ethic produced impressive results. In a mere seventy-one days of the state legislative session, Governor Warren had pushed through bills that reduced the state sales tax, increased old-age pensions, established a postwar reconstruction and reemployment commission, and earmarked \$43 million of state funds for postwar development.

EARL WARREN'S FATHER, Methias "Matt" Warren, was an infant when his family emigrated to the United States in 1866 from southern Norway. Like many Scandinavian families in the mid-nineteenth century, the Warrens (anglicized from Varran) sought the open spaces of the upper Midwest that most resembled their native land. Matt's father, a small farmer in Norway, attempted to resume his occupation in rural Illinois and later in Eagle Grove, Iowa. The family grew—five boys and

* *Time's* examples of "angry men" included Louisiana's late senator Huey Long and New York City's mayor Fiorello LaGuardia.

three girls—but the meager farm income could not support them. Matt and his older brother, Ole, therefore, were parceled out to neighboring farmers, earning their room and board by doing chores. After Matt completed the seventh grade, he and Ole moved to Chicago where Ole died of tuberculosis in his brother's arms. Penniless and alone, Matt vowed that he would never be broke again.

Earl Warren was born on March 19, 1891, on what was then called "Dingy Turner Street," in a poor neighborhood of Los Angeles. Methias had moved to Southern California from the Midwest a year earlier and begun working for the Southern Pacific as a repairman and car inspector. On his modest income he struggled to support his wife, Chrystal, a Swedish immigrant, their daughter, Ethel, four years old, and their infant son. Soon after Earl's birth, Methias went out on strike with other railroad workers in sympathy for the nationwide Pullman strike and, as a result, was blacklisted by the railroad's Los Angeles office. He moved his family to the dusty, desolate town of Sumner, California, outside of Bakersfield in the Joaquin Valley, where he again found employment with the Southern Pacific. Although the railroad was Methias's employer for thirty years, he told his son that the corporation did not respect its workers or treat them fairly. Earl, like his father, witnessed the railroad's indifference to workers' debilitating injuries and the instant dismissals of unneeded workers without warning or severance. The experience ingrained in both father and son an enduring suspicion of large corporations.

"Earl, saving is a habit like drinking, smoking, or spending," Methias Warren told his only son when he was growing up in the small town of Sumner.³ "Always save some part of what you earn." Thrift was one of the important lessons that Earl Warren learned from his father, who was the greatest influence in his life. Methias also valued education, insisting that Earl graduate from high school in Bakersfield, when the children of most railroad workers had dropped out. Despite Methias's modest income, he saved enough to pay for his son's college and law school education at the Berkeley campus of the University of California.

The Warren family lived in a small row house across the street from the railroad yard in Sumner, a town of a few hundred people, a scattering of stores, saloons, gambling dens, and small hotels. The hotel patrons were usually itinerant railroad workers, known as "boomers," or French and Basque sheep herders who came to town to market their livestock in the winter. This rugged frontier town seemed especially ill-suited for the intense, teetotaling Methias Warren. Unlike the rootless boomers, he was a devoted family man who adhered to a strict moral code and believed in perpetual self-improvement. He took correspondence courses in accounting and mechanics and taught Earl to read and write before he was five years old.

When Earl was in elementary school, he earned money delivering baked goods in a covered wagon in the early morning hours and carrying blocks of ice to homes in the summer heat that soared above 100 degrees. Working for the railroad as a teenager, his favorite job was as a "caller,"³⁴ responsible for finding and rousing boomers to make sure they boarded departing trains for their next job. He searched for them in saloons and gambling dens, and, if unsuccessful, in their rooming houses and hotels. He proudly recalled that he never failed to find his man.

He also had fun, especially riding his burro, Jack, chasing jackrabbits, and trapping squirrels. His most exciting adventure occurred in April 1903, after he heard the news of a shootout between a notorious bandit named Jim McKinney and the Bakersfield marshal and his deputy, both of whom had been killed.* The boy rode his burro to the scene of the crime, a Chinese gambling house.† Later, when another deputy, not the bandit, was accused of the murder of the two lawmen, young Warren attended the trial, his dramatic introduction to

* The murdered deputy was Bert Tibbet, the father of Lawrence Tibbet, the famous Metropolitan Opera baritone.

† The Chinese population of Bakersfield was comprised of laborers who had been brought in to build and maintain the railroad.

his future career as a prosecutor. The defendant was found guilty and later slit his own throat in the local jail.

When the mesmerizing orator Russell Conwell delivered his inspirational "Acres of Diamonds" sermon in Bakersfield, young Warren listened intently and, decades later, recalled the details of the address. Greatness, said Conwell, was found in small deeds—providing better streets and sidewalks, schools and colleges, "more happiness and more civilization."⁵ Highly moralistic in tone yet practical in advice, Conwell's lessons shaped Warren, who would later set his own moralistic, practical agenda as district attorney of Alameda County, attorney general and governor of California, and Chief Justice of the United States.

Warren was a good if uninspired student in high school, who in his graduating class "will" bequeathed "his ability to slide through, doing as little work as possible."⁶ His most vivid memory from high school was not of a favorite teacher or class, but of his triumph in being reinstated after his principal suspended him shortly before graduation. He and two other seniors had been rehearsing for the senior play into the early morning hours, overslept, and missed the final graduation rehearsal. The principal suspended them for their truancy, but they appealed their suspensions to the school board and were allowed to graduate. It was not the last time that Earl Warren would take satisfaction in challenging authority that he considered unjust.

WARREN THOROUGHLY ENJOYED his six years at Berkeley, but by his own admission he was not a serious student. "I had no intention of failing," he wrote, "but neither did I have a burning desire for knowledge."⁷ Shortly after arriving on campus, he joined the La Junta Club, a local fraternal organization, and spent his happiest hours talking, eating, playing cards, and drinking beer with his fraternity brothers. While at Berkeley, he grew to his adult height of over six feet tall and put on thirty pounds to weigh two hundred. He was an enthusiastic

reader outside of class, and listed Kipling, Dickens, and the California author Jack London among his favorites. He and his fraternity brothers spent memorable evenings at the First and Last Chance Saloon, an Oakland waterfront bar frequented by London, where the author regaled them with tales of his adventures in the frozen North and the South Seas.

Although Warren was not active in campus politics, he took a particular interest in a moralistic, reform-minded young prosecutor named Hiram Johnson, who soon successfully ran for governor of California. As governor, Johnson instituted a series of progressive measures, making government more transparent and responsive to the voters and curbing the political and economic power of large corporations like the Southern Pacific. When Warren was elected governor more than three decades later, he hung only one photograph in his office, that of Hiram Johnson.

In Warren's senior year, he entered the law school at Boalt Hall but did not find the school's theoretical case method, patterned on Harvard's, stimulating. "This did not appear to me to be a practical approach to becoming a lawyer," he recalled.⁸ To learn practical legal skills, he spent a few hours a day in a Berkeley law office, in violation of the law school's regulations. At the law firm, he served papers and "did anything of a nontechnical character that was asked of me."⁹ Almost a half century later, Chief Justice Warren's judicial opinions reflected the practical approach that he had preferred as early as law school.

AFTER GRADUATION, Warren accepted a job in the law department of a small oil company in San Francisco. He remembered his boss, Edmund Tauske, as an irascible old man who never addressed him by name. Tauske ordered the young attorney around like a petty clerk, constantly criticizing his work and taking credit for anything Warren did that he found useful. Worst of all, he humiliated him by

sending him downtown on personal errands, often to buy his favorite cigars. Warren left his job after a year, even though he had not found another. Before departing, he reprimanded his boss for running an office with "no human dignity."¹⁰

Shortly after leaving Tauske's firm, Warren was hired by the Oakland firm of Robinson and Robinson, where he kept the court calendar for the entire office, served as legman to the courthouse on minor matters, and researched cases for the senior partner.

After the United States entered World War I in April 1917, Warren volunteered for the army officers' corp, but was turned down twice, first due to the flood of applicants and later because of hemorrhoids and ether pneumonia. Finally he enlisted, rising to the rank of first lieutenant, and was sent as a bayonet instructor to Camp MacArthur in Waco, Texas, two days before the Armistice was signed.

He remained intensely patriotic throughout his life. In 1941, when he was fifty years old and the attorney general of California, he planned to accept a commission in the army after the Japanese bombed Pearl Harbor. He changed his mind only after being persuaded to run for governor. And in 1963, when he first resisted President Lyndon B. Johnson's entreaties to head the commission investigating the assassination of John F. Kennedy, LBJ successfully appealed to his patriotism. At Warren's request, he would be buried in Arlington Cemetery with full military honors.

Warren was still wearing his military uniform when he returned to California in January 1919. Thanks to the recommendations of two friends who had been elected to the state legislature, he was hired as clerk of the judiciary committee of the state assembly at six dollars a day. Though he held the job for only a few months of the 1919 legislative session, his most indelible memories were of corrupt legislators who lined their own pockets instead of doing the people's business. Some, he recalled, could be bought by lobbyists for "a steak, a potato, or a girl."¹¹ Others specialized in so-called cinch bills, in which they

introduced legislation calculated to hurt vulnerable businessmen, then withdrew the bill at a price to the targeted victim.

The sobering experience did not deter him from public service. Indeed, that clerkship was the beginning of a career in government that spanned a half century. For the next five years, he worked as a deputy city attorney in Oakland and as assistant district attorney in the office of Ezra Decoto. During that time, he also met his future wife, an attractive young widow named Nina Meyers, a Swedish immigrant who was raising her son while managing a woman's specialty shop in Oakland. Though Warren worked long hours, he found time to court Nina, taking her to dinner and the theater on Saturday evenings. They were married in 1925 and raised a family of six children.

In Decoto's office, Warren became "a sort of Jack-of-all-trades"¹² who tried criminal cases, handled lawsuits against county officers, advised boards of education, and assisted the chief deputy in advising the Board of Supervisors. He worked day and night and, before long, became Decoto's indispensable top assistant. In 1925, when Decoto retired, Warren succeeded him. As district attorney of Alameda County for the next fourteen years, Warren was praised as "the most intelligent and politically independent district attorney in the United States" by Columbia University political scientist Raymond Moley, who was also a member of President Franklin D. Roosevelt's brain trust.¹³

DISTRICT ATTORNEY WARREN consciously modeled himself on his progressive hero, Hiram Johnson, constantly battling waste, crime, and corruption in government. Although he respected his predecessor, Warren made the DA's office more efficient, independent, and aggressive in the pursuit of law and order. Decoto had relied heavily on veteran deputies who were comfortable with the status quo. War-

ren hired young attorneys fresh out of law school or World War I veterans, demanding hard work and absolute loyalty. Whereas Decoto and his deputies maintained a private law practice, Warren forbid it to avoid any conflicts of interests. He kept a close eye on every facet of the office's business, meeting weekly for an hour with each department and with the entire staff on Saturday mornings. He tightened the schedule between arraignments and trial, then successfully prosecuted bunco artists, bootleggers, murderers, and corrupt officials. He also cultivated the press, sometimes inviting reporters or photographers to join him to make an arrest or take a hatchet to an illegal still.

Once he sniffed official corruption, he drove himself and his staff relentlessly until the schemes were fully exposed in court and the defendants convicted. One of his greatest triumphs came in 1930, when he warned Alameda County sheriff Burton Becker that he would face prosecution unless he stopped taking bribes for protecting bootleggers, brothel owners, and organized crime figures. "You take care of your business," Becker defiantly replied, "and I will take care of mine."¹⁴ Warren responded, "That's exactly what I will do."

As promised, Warren brought charges against Becker, but the prosecution was complicated and prolonged. At the outset, the sheriff's grand jury presented a special challenge for Warren, since seven members, like the sheriff himself, belonged to the Ku Klux Klan. When Becker invoked the Fifth Amendment, pleading that his testimony might incriminate himself, Becker's fellow Klan members told Warren to prepare the indictment. Warren's staff looked in vain for more than a year for a key witness, an automobile dealer alleged to have collected payoffs for Becker. Finally, a reporter for the *San Francisco Examiner* told Warren that he knew where to find him. In exchange for the information, the DA agreed to take two of the newspaper's reporters with him for the arrest. On the evening before his scheduled testimony in court, the witness changed his mind and said he would not testify.

Warren gave him a choice: either testify or face charges of larceny. He testified. Becker was convicted of "willful and corrupt misconduct" and sent to San Quentin State Prison.

In 1936, Warren prosecuted his most celebrated and controversial case. It began with the brutal murder of George Alberts in his cabin on the freighter *Point Lobos*, docked on the Oakland waterfront. Alberts, the ship's chief engineer, had been a vocal opponent of unions and an outspoken anti-Communist, while many of the crew were members of a local union that was reputed to harbor Communists and other political radicals. At a news conference five months after the murder, Warren announced the arrest of four members of the union, linking the murder to labor unrest and to "a campaign of terrorism and sabotage for Communists to gain complete control of the waterfront unions."¹⁵ After the defendants' indictments, Warren said the crime was a "paid assassin's job, and the basis of the plot was communistic."¹⁶

Labor protesters supporting the defendants picketed the courthouse during the trial as well as Warren's home. The DA was branded anti-union, though he had been sympathetic to workers since childhood and, as a teenager, had joined the musicians' union when he played clarinet in the town band. But he viewed the *Point Lobos* murder as a labor conspiracy inextricably linked to Communist influence in West Coast maritime unions. He prosecuted the defendants with single-minded determination.

In building the case for trial, Warren sometimes took unfair advantage of the defendants in ways that he, as the future chief justice, would have condemned. He approved of the secret and prolonged questioning of one of the defendants without counsel present, which resulted in a confession, later challenged as coerced. His deputies broke into a San Francisco hotel room to install a hidden microphone and used it to listen to conversations between one of the defendants and another union official. They also surreptitiously recorded the defendants' conversa-

tions while in custody. In the press, Warren pronounced the defendants guilty of murder before they had even been indicted.

None of these irregularities were unconstitutional at the time, though they were the subject of widespread criticism by defense attorneys and the labor movement on the West Coast. In addition to questionable prosecutorial conduct, Warren acted in other ways that were patently unfair to the defendants. In selecting a grand jury, he sought the recommendations of local bankers, lawyers, and other businessmen who were unlikely to be open-minded in a case involving violence and Communist influence in maritime labor unions. He also intervened personally in selecting the judge, Frank Ogden, who had worked for five years as his assistant in the DA's office before his judicial appointment, which was made with Warren's strong endorsement.

The jury deliberated less than five hours before convicting all four defendants of second-degree murder, and those convictions were upheld on appeal. In his memoirs, Warren maintained that there could be no doubt about the defendants' guilt. But in 1941, the state parole board, under pressure from Democratic governor Culbert Olson, paroled three of the convicted men. At the time, Olsen, a strong supporter of labor unions, viewed Warren, then the state's attorney general, as a potential political opponent. Warren lashed out at the pardons. "The murderers are free today, not because they are rehabilitated criminals but because they are politically powerful communistic radicals," he said. "Their parole is the culmination of a sinister program of subversive politics."¹⁷

IN FEBRUARY 1937, more than a year ahead of the election, Warren announced his candidacy for attorney general of California. He cross-filed on all three political lines—Republican, Democratic, and Progressive—and promised to impose even-handed justice on those

who violated state laws with the same tenacity that had characterized his tenure as Alameda County's district attorney.

Shortly before the state primaries, Warren received the shocking news that his beloved father, Methias, had been murdered in the living room of his Bakersfield home, his skull crushed by a half-inch pipe. The intruder had apparently entered through the back door, which was open during the warm May evening. Only Methias's wallet was missing. Warren wept openly at a news conference after hearing the news and dispatched members of his staff to assist in the investigation. The murder was never solved. "My father's death must go down in history as one of the thousands of unsolved murder cases that plague our nation every year," Warren later wrote.¹⁸ His speeches during his campaign were delivered in his familiar flat, controlled tone, though he might have used Methias's violent death to indulge in heated law-and-order rhetoric. He won an overwhelming victory in November.

On his first day in office, January 2, 1939, Attorney General Warren began to institute reforms similar to those that he had made as DA. He hired young, eager attorneys and discouraged the private practice of law. Under his tight management style, he supervised every aspect of the AG's office, and expanded its portfolio, targeting organized crime activities—gambling, bootlegging, and prostitution.

Barely six months after he assumed office, Warren dramatically demonstrated his resolve. With the cooperation of the Los Angeles district attorney and sheriff, Warren organized a flotilla of twenty boats and about three hundred officers to raid four offshore gambling ships floating a few miles off the Southern Californian coast. Three of the ships immediately capitulated, and their gambling proceeds and paraphernalia were confiscated. But the fourth ship, the *Rex*, owned by Antonio Stralla, a notorious underworld figure who had flouted the law for years, resisted. The *Rex*'s crew turned fire hoses on the flotilla while refusing officers' entry to the ship. An undaunted Warren, watching the confrontation through binoculars at a beach headquar-

ters, ordered a blockade of the *Rex*, forbidding the ship's customers from leaving. Eventually the *Rex* surrendered and was towed to port, where its gambling devices and proceeds were seized.

Warren did not hesitate to use the power of his office to oppose those he perceived to be political radicals, like Professor Max Radin, an outspoken liberal on the Berkeley law faculty, who was nominated by Governor Olson to the California Supreme Court in June 1940. Radin, whose father was a rabbi in Poland, had immigrated with his family to the United States when he was four. Educated in New York public schools, he received his undergraduate degree from the City College of New York at the age of nineteen, a law degree from New York University, and a doctorate in classical languages from Columbia. He taught Latin in the New York public schools and lectured on Roman law at CCNY and Columbia before his appointment to the Berkeley law faculty. An extremely popular teacher at the law school, Radin's scholarship ranged widely, from Roman law and jurisprudence to the Bill of Rights and a layman's guide to law, *The Law and Mr. Smith*.

Warren did not challenge Radin's academic credentials or the quality of his publications. What roiled the attorney general was Radin's support for left-wing causes, especially his support for the *Point Lobos* defendants. Warren was also suspicious of Radin's other affiliations. He had been a close associate of his political archenemy, Governor Olson, and had aligned himself with the governor's liberal causes, including FDR's New Deal, organized labor, and civil liberties.*

The fate of Radin's nomination rested with the Commission on Judicial Qualifications, comprised of the chief justice of the California Supreme Court, the senior presiding judge of the California District

* In contrast to Olson, Attorney General Warren advocated expulsion of public school students who refused to salute the American flag, a requirement that was later declared unconstitutional by the Supreme Court. See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

Courts of Appeal, and Warren, who as attorney general also served as the commission's secretary and presiding officer. Since Warren had been secretary of the commission, its practice had been to ask a committee of the California State Bar Association to submit a factual report on the nominee's qualifications. At the direction of the association's president, Gerald Hagar, a conservative Republican, the committee called witnesses, including Radin, on his alleged connections with the Communist Party and his support of the *Point Lobos* defendants. Radin denied that he had ever been a member of the Communist Party, but admitted that he believed that one of the *Point Lobos* defendants was innocent.

In its report, the bar association took no position on the nomination but recommended that the Commission on Judicial Qualifications make "the closest inspection and examination" of all the documents produced by its fact-finding committee.¹⁹ On the same day that the bar association forwarded its report, the California Board of Governors, which had played no previous substantive role in judicial nominations, formulated two new principles to be applied to the Radin nomination: a nominee should not be confirmed if he had "given just ground to a substantial number of the public for believing that he is a member of, or in sympathy with, subversive front party organizations" and, secondly, that he had "given just cause for a substantial number of the public to believe that he is lacking in financial or intellectual integrity."²⁰

Radin's nomination was defeated by a commission vote of 2-1, with Warren casting the decisive negative vote. After the failed Radin nomination, Warren refused to release copies of the evidence considered by the commission, nor would he disclose his vote or that of the other members. But one of Warren's closest friends, Robert Sproul, president of the University of California, wrote a memorandum to his files on a conversation that he had with Warren in December 1940 in which the attorney general "launched forth in a vigorous denunciation of

Professor Radin" who, he said, "constantly gives aid and comfort to Communists and other radicals."²¹ Warren did not mention the Radin controversy in his memoirs.

Warren's serene public persona made him appear above partisan controversy. But behind that bland countenance was a shrewd, skillful political infighter, as Max Radin could attest.

AFTER THE BOMBING of Pearl Harbor, Warren attributed to Japanese Americans the same evil intent that he had previously reserved for Communists, other political radicals, and known organized crime figures. In January 1942, he declared that "the Japanese situation" in California "may well be the Achilles' heel of the entire civilian defense effort."²² At first, he recommended that only the state's alien Japanese residents be evacuated. He quickly expanded the group to Japanese American citizens, but he did not make comparable demands on German American and Italian American citizens living in the state. When dealing with "the Caucasian race," he said, there were methods to test their loyalty. The Japanese were different. "If the Japs are released," he said, "no one will be able to tell a saboteur from any other Jap."²³

Warren wholeheartedly supported the federal government's massive relocation program that uprooted more than 100,000 Japanese Americans from the West Coast to eastern California and six other states to live as prisoners in spare wooden barracks behind barbed wire. How could this future chief justice, later so sensitive to civil rights and liberties, enthusiastically implement a shameful, racist policy that swept away individual rights for tens of thousands of Japanese Americans?

In part, the explanation can be traced to Warren's upbringing in California. He adopted the prevailing nativist attitude toward outsiders, especially those of Japanese descent. By state law, they were excluded from trade unions, attended segregated schools, and lived in segregated neighborhoods. Hiram Johnson was openly hostile to Jap-