Judicial Character the Characters of Chief Justices John Marshall and Earl Warren

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JUDICIAL CHARACTER
THE CHARACTERS
OF CHIEF JUSTICES
JOHN MARSHALL
AND
EARL WARREN

by
Ronald G. Robinson

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Ronald G. Robinson
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MASTERS THESIS

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CHAPTER I
INTRODUCTION TO THE ANALYSIS OF
CHIEF JUSTICES OF THE
UNITED STATES SUPREME COURT
THE PURPOSE

My main purpose in this paper is to analyze the behavior of two former Chief Justices of the United States: John Marshall and Earl Warren. I will analyze these two men by using a modified typology similar to the one developed by James David Barber\(^1\) in *The Presidential Character*. He developed four categories, Active-Positive, Active-Negative, Passive-Positive and Passive-Negative, to predict and explain the behavior of the President of the United States.

I will apply these four categories to two former Chief Justices in order to explain their behavior. I will also modify his typology by including the task and social leadership concepts of David Danelski.\(^2\) The inclusion of these two concepts into Barber's typology will allow the establishment of a more refined four-fold typology directly applicable to the Chief Justices rather than to the Presidents.


The analysis will be performed using the two former Chief Justices, John Marshall and Earl Warren, to determine which particular category is relevant to their particular behavior. This exploration should help to explain the behavior of each man once on the United States Supreme Court. It may also allow the formation of a more general theory which will allow prediction of behavior that can be expected once a person reaches the office of Chief Justice.

The judicial character typology which will be developed in this chapter may be found useful by other political scientists in evaluating Chief Justices of other appellate courts, e.g., state appellate courts and/or appellate courts in other political systems. Therefore, the applicability of modified typology may not be limited to just the Chief Justices of the United States.

REVIEW OF LITERATURE

Barber's typology has not been applied to Supreme Court Chief Justices. It is my hope that this investigation will stimulate the interest of political scientists to examine other Chief Justices with the typology proposed.

An appropriate point of departure is with the pioneer in the behavior analysis of political actors, Harold Lasswell. In his book Power And Personality Lasswell described

the "Political man" (e.g., politicians and judges) as one who seeks power in order to overcome low self-estimates of himself. He further states that the "political man" will participate in the political process, e.g., seek to obtain office. He will do this when he can focus his activities on public targets, can rationalize these activities as being in the public interest and has the ability to implement these goals.

The general theory of political actors developed by Lasswell evolved into case studies of certain political actors. One major example of this kind of evolution was the study of Woodrow Wilson which was undertaken by Alexander L. George and Juliet C. George. The Georges suggested that President Wilson's refusal to compromise with Senator Henry Cabot Lodge (and his faction in the United States Senate) was a function of his psychological development. They suggested that Wilson's intransigence vis-a-vis Senator Lodge (and Dean West at Princeton University) represented a rebellion against his father's expectations. For example, his father would belittle Wilson (while a boy) for failing to achieve a level of perfection in his activities. Wilson

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would have to summarize his father's lectures perfectly. If he did not, he would have to repeat the exercise until it met his father's expectation of perfection. As a result, Woodrow Wilson felt that by giving in to such similarly assertive men as Lodge and West, he would be dominated once again. This is one experience, it would appear, that he could not psychologically endure. Thus, he had to dominate rather than be dominated. This explains why a man so cognizant of the importance of compromise as was Woodrow Wilson would sacrifice the possibility of implementing his ultimate policy objective, the participation of the United States in the League of Nations, for the purpose of world peace. Therefore, we can see the development of the psychological personality approach from the general theoretical stage of Lasswell to its application to a political actor such as was applied to Wilson by the Georges.

The psychological approach to the study of political actors was advanced by James David Barber in *The Lawmakers*. He suggested that a political actor displays a consistent pattern of behavior over a sequence of events. This indicates that he has developed a political personality which responds to his environment in a consistent predictable pattern.

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He devised two defining variables of the members of the Connecticut State Legislature: 1) level of activity and 2) willingness to return. To measure activity levels he divided legislators into categories of those whose satisfactions were met primarily by acting on the environment, e.g., political system and its participants (high activity), and those whose satisfactions depended primarily on being acted upon by environmental forces (low activity). For example, a legislator who is highly active is likely to introduce more legislative proposals than one who is less active. And, the legislator who is less active (low activity) is more likely to react to proposals introduced by the highly active legislator than to initiate them himself.

The willingness to return variable was handled by dividing into groups those for whom the legislator was perceived "as meeting temporary or peripheral needs" (low willingness to return) and legislators who perceived it as a "source of continuing deeper satisfaction" (high willingness to return). Therefore, Barber divided both of these variable 1) level of activity and 2) willingness to return, into high and low response patterns of behavior.6

Barber organized these two variables into four categories. He did so by combining one variable's range of possibilities with the others. As a result, Barber found that "Lawmakers" exhibited a high level of activity and a high willingness to return; 2) the "Advertisers" exhibited a high level of activity and a low willingness to return; 3) the "Spectators" exhibited a low level of activity and a high willingness to return; and finally 4) the "Reluctants" exhibited a low level of activity and a low willingness to return.7

Barber asserts that like Lasswell's political man, the Advertisers, Spectators and the Reluctants run for office to compensate for their low self-esteem. The Lawmaker, on the other hand, does not run for office in order to bolster his self-esteem. He runs for office because he enjoys the challenges inherent in politics.8 Barber concluded that once you are able to identify a legislator's behavior pattern, e.g., whether he is active or not or whether he is willing to return or not, you will be able to explain what type of legislator you have. For example, a legislator who

introduces many different pieces of legislation and is meticulously concerned with his constituents' interests is one who exhibits a high degree of activity in pursuing his policy goals and is one who is interested in maintaining legislative tenure (Lawmaker).

The legislator (Advertiser) who is quite active in the legislature, e.g., introducing bills while at the same time not interested in making the legislature a career, is one who is more interested in furthering his non-legislative goals than his legislative goals. The Advertiser may be more interested in advancing his political career, e.g., running for Governor or his private professional career, e.g., law by increasing his or her name recognition with prospective voters or clients. Thus, this type of legislator may not be as concerned with his constituents' needs as the Lawmaker.

The legislator (Spectator) who is not active in legislative affairs, but is interested in maintaining his seat in the legislature, will unlikely be a force in shaping the political direction of the state. He (or she) will however adhere to his (or her) constituents' interests. Thus, while you may have a legislator adept at handling constituent complaints and interests, you may also have one who contributes little or nothing to solving the state's social and financial problems.
The legislator (Reluctant) who introduces little legislation and is uninterested in holding his seat will neither have an impact on the affairs of the state nor adequately represent his constituents.

By applying Barber's typology to state legislators we are able to explain their behavior. As a result, we may evaluate whether their behavior meets the criteria that we set for our representatives.

James David Barber, in his book The Presidential Character developed a four-fold typology to apply to Presidents of the United States. The categories he developed were labeled as follows: Active-Positive, Active-Negative, Passive-Positive and Passive-Negative. His intention was to describe an individual's character in order to predict his behavior, once he assumed the office of President of the United States. Barber hypothesized that a President's character is predetermined by his background, and that the character is not subject to change once he assumes the office of President. Thus, over the years he develops certain patterns of behavior, such as a level of activity and a psychological feeling toward politics, which will dominate his behavior during his tenure in office. For example, he will set a certain pace for himself in dealing with political problems on a daily basis. He may choose to handle many different situations than normally confronts


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a President. Or he may be selective, choosing only the most pressing or important business at hand while delegating to someone else or putting off to another day, the less significant problems. He will also develop a favorable or unfavorable taste for politics prior to becoming President of the United States. He will continue to, regardless of what office he may hold. Therefore, despite the attempt by politicians to develop a new image e.g., "The New Nixon," the politician will continue to exhibit the same characteristics or patterns of behavior that he established and reinforced over his lifetime once he becomes President.

Barber states that a person's "character," consisting of his self image, his orientation toward experience, and his life and immediate family, develops during early "childhood" years. Further, the political person's "world view" will develop during his teenage period of growth. The "world view" is a person's beliefs about human nature and social causality. It is also a man's orientation toward people beyond the immediate family circle. The "style" he displays in performing his political roles ("rhetoric, personal relations, and homework" as President) will be formed during his first "independent political success." Rhetoric is an element of a President's style which consists of speaking to large audiences (either directly or

through the mass media). The President also deals personally with public officials to further his political goal. Finally, the President must devote a certain portion of his time to homework. For example, he must spend time preparing for his policy statements or reviewing legislation. A President may use one element of style to the exclusion of the other two, or he may use a combination of the three. Regardless of what combination he utilizes, he will continue to use this same style because of his belief that what worked once before will work again. Therefore, the three elements of a man's psychological state which were developed during his early years will predetermine his behavior once he becomes President.

An individual thus develops a general level of activity before reaching the office of President. He develops a capacity for a high or low threshold of work during previous work experiences such as in college, in professional life, or in previous political positions. Therefore, the level of activity he has developed over time will determine the pace he sets for himself when he becomes President. For example, a President may work as much as 18 hours a day as in the case of Lyndon Johnson or sleep over 12 hours a day as in the case of Calvin Coolidge.\textsuperscript{11}

Barber combines these elements of a person's personality in order to predict the type of behavior we can expect

\textsuperscript{11}loc. cit., p. 11.
from the man or woman elected President of the United States.

He describes the four categories as follows: 1) the Active-Positive President is a man who has high self-esteem. He has had relative success in relating to his environment. He enjoys his job. He uses his styles flexibly and rationally in order to achieve his philosophical and policy-related goals. The achievement of the latter is the main reason the Active-Positive entered politics in the first place. To achieve his primary policy and philosophical goals he must actively assert them; he must initiate proposals and actively work for their adoption.\textsuperscript{12}

2) The Active-Negative President is one who is very active in fulfilling his responsibilities. He does not feel constrained by the Constitution to do only what he is specifically authorized to do. For example, he does not feel constrained from devising and promoting his legislative program despite the fact that the Constitution grants that function to the legislative branch. As long as he is not prohibited by the Constitution from doing so, he will liken it to a specific constitutional grant of power. He may also stretch a specific grant power beyond its original intent. For example, a President may use the Commander-in-Chief clause as a basis for conducting a war without a congressional declaration of war. He is, however, compulsively active. He

\textsuperscript{12}loc. cit., p. 12.
is, however, compulsively active. He also receives little emotional reward from his activity. It seems as if the Active-Negative is trying to compensate for a low self-esteem by submerging himself in a heavy workload. He is, however, never satisfied with power once he achieves it, as he seems to be constantly struggling to keep it. He believes that his environment poses a threat to his obtaining the power and later preserving the power once he has obtained it. He is therefore very suspicious of those people who are outside of his supporting coalition. The great danger of an Active-Negative is that he may chart a course of action vital to the country and became rigid even when it is not working.\textsuperscript{13}

3) The Passive-Positive President is not as interested in achieving philosophical or policy goals as the Active-Positive. He is primarily seeking to be appreciated and loved, which is due to his low self-esteem. On the other hand, he has a hopeful attitude. When his hopeful attitude is combined with a low self-esteem, he displays a "superficial" level of optimism. As a result, his optimism is likely to be extinguished in the harsh world of policies.\textsuperscript{14}

\footnotesize\textsuperscript{13}\textit{loc. cit.}, Pp. 12-13 and 43.  
\textsuperscript{14}\textit{loc. cit.}, p. 13.
4) The Passive-Negative President does not enjoy politics, nor has he developed any overriding policy and philosophical goals. He seeks the Presidency in order to satisfy his desire to serve his country; he feels service to country as a duty or obligation. This behavior compensates for his feeling of uselessness. The Passive-Negative tends to withdraw from the political conflict. He tends to allow others to take charge of developing policy and carrying out the functions ordinarily attributed to the President. The Passive-Negative does not seem to be well respected for his ability to initiate solutions to policy problems. Furthermore, he does not exercise the needed leadership to achieve the implementation of policy solutions once they have been introduced by some other political actor.\(^{15}\)

The typology of Presidential behavior, devised by Barber, theoretically should enable us to predict more accurately what type of behavior we can expect out of a man or woman we elect President of the United States.

The study of the behavior of political actors is not limited to the executive and legislative branches of government. Certain scholars such as Glendon Schubert\(^{16}\) have applied certain attitudinal approaches to judicial behavior.

\(^{15}\)Ibid.

For example, Schubert developed a more elaborate definition of judges' philosophical leanings than a simple one-dimensional conservative-liberal scale based upon voting behavior in cases coming before them.\(^{17}\) Schubert positioned judges along a three-dimensional conservative-liberal scale of political, economic and social philosophical leanings. Schubert's typology contributes to our understanding of judicial behavior patterns in several ways. It not only helps us to understand the simple conservative-liberal as it relates to judicial voting behavior, but it also helps us to understand what may seem to be deviances in the voting behavior of one or more of the justices. For example, a judge who may abhore the increasingly centralized governmental control over our free enterprise system (an economic conservative) may also favor the civil liberties interests of individuals as opposed to the interests of the government (a political liberal). The judge who behaves in this manner is consistent in his government. He is classified as an Individualist by Schubert.\(^{18}\)

Thus, Schubert's contribution to judicial voting behavior through a three dimensional conservative-liberal scale helps to explain what may seem to be erratic judicial behavior.


voting behavior. Therefore, Schubert's contribution to judicial voting behavior will enable us to predict more accurately what type of voting behavior we can expect out of a certain judge in a given case at bar.

David J Danelski\(^{19}\) analyzes the behavior of United States Supreme Court Justices in greater detail than Schubert's attitudinal scales. He does so by delineating between Chief Justices who are task leaders from those who are social leaders, and those who are both or neither. Danelski gives us greater insight into what patterns of activity a Chief Justice develops over time to meet the leadership expectations of his own and of his colleagues which are associated with his position.

Danelski states that the task leader is the member of the court that "makes more suggestions, gives more opinions, orients the discussion more frequently and successfully defends his ideas more often than others." The task leader is "highly esteemed" and respected for his intellectual ability in the formation of "ideas" pertinent to the case at hand. The task leader is also an "intense man" who concentrates on the particular issues of the case while at the same time relegating the personal considerations of his colleagues to a lesser degree of importance. Thus, the task leader is aggressive in the assertion of his ideas at the expense of

interpersonal harmony. This leads to "conflict", tension and antagonism" between the task leader and his colleagues on the court.20

The social leader, on the other hand, takes into consideration the personal concerns of his colleagues. He is considerate of, responsive to and even solicits the opinions of his colleagues on the court. This is because of his desire to be well liked and to avoid conflict and tension. As a result, he is usually the most popular justice on the court.21

A Chief Justice may be one, both, or neither of the above. Danelski found Chief Justice William Howard Taft to be a social leader only.22 He wished to be loved and held in high esteem by his colleagues. In the process he did not assert his views at the expense of others. He allowed Associate Justice Willis Van Devanter to play the role of the task leader. Danelski's finding that Taft desired to be well liked by his colleagues and to avoid conflict is not in conflict with Barber's findings on the personality of President William Howard Taft.23

20loc. cit., p. 151.
21loc. cit., Pp. 151-152
22loc. cit., Pp. 152-156
Danelski found Chief Justice Charles Evans Hughes to be both a task leader and a social leader. He also found Chief Justice Harlan Fiske Stone to be neither a task leader nor a social leader.²⁴

Danelski further found that throughout the different decision making stages of the Supreme Court such as the decision to grant the writ of certiorari, oral argument, conferences, and in the assignment of the court's opinion, the Chief Justice has opportunity to exercise influence as to what directions the final outcome will take. His influence, though not automatic, depends on the esteem and respect he receives from his colleagues. It also depends upon his awareness of the potential impact that a Chief Justice has on the final decision of the court, and finally, it depends upon his accurate perception of the court's political location. Thus, the Chief Justice who is both a social leader (esteemed and well liked by his colleagues) and a task leader (dominates the discussion of the issues involved in a case) is able to exercise both philosophical and personal influence upon the decisions of the court.²⁵ While Danelski does not undertake to explain why these men have adopted their respective roles while Chief Justices, it is a step in the right direction from attitudinal studies of judicial voting behavior to determining the underlying psychological reasons behind a

political actors' behavior on the court. We can hypothesize that when Danelski's concepts of task and social leadership are synthesized with Barber's four-fold typology, a justice will behave in a certain predictable pattern based on the development of his personality.

MAJOR BIOGRAPHICAL SOURCES FOR THIS STUDY

The sources for John Marshall and Earl Warren were limited to a few major biographical works. The following sources seem to be the most authoritative.


The most useful sources for Earl Warren were Leo Katcher's *Earl Warren, A Political Biography*; John Weaver's *Warren, The Man, The Court, The Era*; and Luther Huston's *Pathway To Judgement: A Study Of Earl Warren*.

RESEARCH DESIGN

I decided to apply the modified four categories to John Marshall and Earl Warren. I did so because these two former Chief Justices expanded the scope of the Constitution beyond what is construed to be a strict literal interpretation.
For example, Chief Justice John Marshall and his colleagues expanded the power of the United States Supreme Court vis-a-vis the other two branches of the Federal Government in *Marbury v. Madison* (1893).\(^{26}\) He did this by invoking the doctrine of judicial review which gives the United States Supreme Court the authority to declare actions of the other two branches of the Federal Government to be unconstitutional.

The Marshall Court also enunciated the doctrine that the ultimate authority for our federal system lies within the National Government; specifically with the United States Supreme Court. He did so in such cases as *McCulloch v. Maryland* (1819)\(^{27}\) which voided a Maryland state tax on a branch of the Bank of the United States, and in *Gibbons v. Ogden* (1824)\(^{28}\) by declaring that through the Commerce Clause of the United States Constitution, the Congress, not the states, have sole authority over interstate commerce.

The Warren Court extended the jurisdiction of the Equal Protection Clause of the Fourteenth Amendment in


\(^{27}\) 4 Wheat. 316, loc. cit. Pp. 95-102.

Brown v. Board of Education (1954)\textsuperscript{29} so as to prohibit de jure segregation in public schools.

The Warren Court also expanded the rights of the indigent criminal defendants vis-a-vis the state in Gideon v. Wainwright (1963).\textsuperscript{30} It did so by applying the Sixth Amendment right to counsel to state courts through the Fourteenth Amendment.

Finally, the Warren Court extended the Equal Protection Clause of the Fourteenth Amendment to the voters in the state legislative districts Baker v. Carr (1962)\textsuperscript{31} which led to Reynolds v. Sims (1964)\textsuperscript{32} and later to United States Congressional districts in Wesberry v. Sanders (1964).\textsuperscript{33} The fundamental question involved in all these cases stemmed from the systematic underrepresentation of urban area because of failure to adjust appointment of legislatures despite the massive movement of the population from rural to urban areas. Despite the gradual redistribution of the population from the rural to urban areas, the congressional

\textsuperscript{31}369 U.S. 186, loc. cit., Pp. 72-86.
\textsuperscript{33}376 U.S. 1, loc. cit., p. 939.
and state legislative districts were not redrawn by the state legislatures to reflect the new population imbalance. The court was faced with a unique political issue as well as legal (separation of power) issues. Obviously the state legislators would not redesign the election districts to reflect equal population distribution, since to do so might have meant the end to their political careers. Thus, the Warren Court broke the stalemate by declaring that citizens (underrepresented) were being denied their constitutional right to equal protection under the law. The court ordered the state legislatures involved in the cases to reapportion the districts to reflect equal population distribution as closely as possible. Thus, the Warren Court gave new meaning to the principle of "one-man, one-vote."

As a result of the landmark decisions that took place during the respective tenures of John Marshall and Earl Warren as Chief Justice and their critical influence in the process of promulgating them, an examination of their personalities will be of interest. By applying the Barber-Danelski framework to each of these men I will demonstrate that their behavior as Chief Justices could have been explained on the basis of their background.
The four major psychological categories of Barber\textsuperscript{34} will provide the basis of classification for Chief Justices of the United States Supreme Court. For example; the Active-Positive seeks to achieve his policy and/or philosophical goals. He has high self esteem, and he enjoys politics. The Active-Negative seeks power and work, while not enjoying the psychological rewards for his activity. The Active-Negative lacks the ability to be flexible in his views. Thus, he becomes rigid and is not able to compromise in order to achieve his policy goals, as does the Active-Positive. The Passive-Positive seeks esteem and love from others. He is not as interested in enunciating philosophical doctrines. The Passive-Negative seeks to fulfill his civic duty. He does not enjoy the conflict associated with personalities and philosophical issues. I will apply these four categories to my study of the personalities of Chief Justices John Marshall and Earl Warren. It may be possible to distinguish between the four categories of Chief Justices to a greater degree than Barber did with the Presidents by applying Danelski's typology of task and social leadership\textsuperscript{35} to the level of activity engaged in by the different types of Chief Justices.

\textsuperscript{34}Barber, The Presidential Character, op. cit., Pp. 12-13.

\textsuperscript{35}Jahnige and Goldman (eds.), op. cit., Pp. 151-152.
Therefore, I will develop a more refined description of Barber's four categories with the aid of Danelski's contribution to an individual's level of activity. As a result, we will be able to explain and possibly predict what type of a Chief Justice an individual will be once he obtains that position. I believe that the delineation between social and task leadership (and the resulting different combinations of each) will fit nicely into Barber's categories of Active-Positive, Active-Negative, Passive-Positive and Passive-Negative. For example, I suggest that we will find that the Active-Positive will enjoy his job, and will have high self esteem and confidence. This will evoke from his colleagues confidence in his ability to lead. As a result, his colleagues, will hold the Chief Justice in high esteem. The Active-Positive Chief Justice will also be concerned with the justices as individuals and for their policy contributions. He will remain flexible to their suggestions, due to his understanding that public acceptance of a major policy deviation requires a unified court. Chief Justice Warren, for example, exerted influence over his colleagues to unanimously overrule Plessy v. Ferguson (1896) in order to gain public acceptance for the assertion that de jure segregation is unconstitutional. Also, a Chief Justice will remain flexible in order to find a

\[36^{36}\text{163 U.S. 537, Lockhart, et. al., op. cit. Pp. 849-854.}\]
common denominator among differing viewpoints to gain at least a 5-4 majority vote on the side of his preferences. Therefore, the Active-Positive Chief Justice who fulfills both the task and social leadership roles, as did Charles Evans Hughes, will be able to influence the final policy outcomes of the court.³⁷

The Active-Negative Chief Justice who is compulsively active in order to compensate for his low self esteem and insecurities should be a task leader, but not a social leader. He will be able to develop definite policy preferences as does the Active-Positive, however he may be suspicious of the other justices attempting to assert their viewpoints in order to gain national attention. He will be able to attract only members of the court who hold similar preferences for his position. He will not be flexible enough in his opinion to attract widespread support for his position, let alone unanimous support. This rigidity could be decisive on close 5-4 split decisions. Thus, he will lack the skills necessary to be a social leader.

The Passive-Positive Chief Justice who wishes to avoid conflict and seeks love and esteem from his colleagues will be a social leader. Such a Chief Justice will seek the admiration of his colleagues at the expense of his policy preferences. He will avoid conflicts based on policy issues.

Therefore, he will not be a task leader. Danelski's description of William Howard Taft as a social leader fits nicely into his category.\(^{38}\)

The Passive-Negative Chief Justice who does not enjoy his job and is only there to fulfill his duty to his country as the leading judge on the nation's highest court will be neither a task nor a social leader. He will likely lose control over the court as Danelski\(^{39}\) points out in the case of Chief Justice Stone. For example, in conference he will allow ideological and personal conflict to flourish. He will, as a result, not be able to develop and promote the adoption of definite policy position, even if he has any preferences. The Passive-Negative, does not have the same desire as the Passive-Positive to seek the love and admiration of his colleagues. Therefore, the Passive-Negative will neither be a task nor a social leader.

I will look at the former Chief Justices in chronological order. We will examine John Marshall first. We will trace the development of his character from what information is available on his early years of growth. We will next look at the development of his world view during his later growth period. We are able to observe the development of


\(^{39}\)loc. cit., Pp. 154-156.
his style on the basis of the style he adopted in his first major public responsibility. The style John Marshall adopted in handling legal disputes and/or problems between officers as a deputy judge advocate in the War of Independence is the same style he later used on the United States Supreme Court. We will attempt to demonstrate that his behavior on the court (whether Active-Positive, Active-Negative, Passive-Positive or Passive-Negative) reflects the development of his personality during the early years of his life. Therefore, on the basis of Marshall's background we are able to explain what type of a Chief Justice he became.

We will also attempt to explain what type of Chief Justice Earl Warren became on the basis of his background. We will trace the development of his character from his early years of growth. I will trace the development of his world view during his later growth period. I will also look at the development of the style he used on the United States Supreme Court. Warren adopted his style of handling legal disputes and/or problems in his first major public responsibility as District Attorney of Alameda County in California. I will try to demonstrate that his behavior on the court pertaining to one of the four categories reflects the development of his personality during the early years of his life.

I believe that we will demonstrate that each of the
two Chief Justices will fit into one of the four categories. While it may not be a perfect fit, the data should clearly point in the direction of one particular category.

SUMMARY

The main purpose of this study is to analyze the behavior of former Chief Justices John Marshall and Earl Warren. I will do so by applying a four-fold typology (Active-Positive, Active-Negative, Passive-Positive and Passive-Negative) similar to the one Barber used in analyzing the behaviors of Presidents of the United States, to both Marshall and Warren. I will modify Barber's typology by including within each category Danelski's task and social leadership concepts. I will use this modified typology to explain what type of Chief Justices these men made, based on their backgrounds, and why their actions as Chief Justices could have been predicted.

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41 Jahnige and Goldman (eds.) op. cit., Pp. 151-152.
CHAPTER II
THE CHARACTER OF
JOHN MARSHALL
DEVELOPMENT OF CHARACTER

John Marshall was born on September 24, 1755. His parents, Thomas and Mary Randolph Keith Marshall lived in Fauquier County, Virginia at the time of his birth.\(^1\) The Marshall's lived in a log cabin close to the frontier settlement of Germantown.\(^2\)

Ten years later, Thomas Marshall moved his family to the Blue Ridge Mountains. The Marshall's built another log cabin on the eastern slope of the Blue Ridge Mountains known as "The Hollow."\(^3\) Thomas Marshall's estates were primitive in comparison with the vast landholdings of certain Eastern Virginians, such as the Jeffereons.\(^4\) However, what the Marshall's, especially John, lacked in an aristocratic plantation life, they more than benefited from the aesthetic tranquility of the breathtaking Blue Ridge Mountains. Thus, Marshall's early years of growth, in communion with nature, were not a period of human deprivation.\(^5\)


\(^4\) Beveridge, op. cit., p. 7.

In fact, he was so enamored with this environment that while Chief Justice of the United States, he would often return to the mountains to reinvigorate himself. 6

Marshall's environment (family, cultural and physical) affected the development of his character. Marshall was the oldest of fifteen children and, as a result, he was delegated a great deal of responsibility for his family's welfare. For example, Marshall helped supplement his family's diet of herb tea and corn meal mush by hunting and fishing. He also aided his parents in raising his younger brothers and sisters. When these facts are put into perspective with the fact that the Marshall family was relatively isolated from other families, it will partially explain why Marshall's brothers and sisters idolized him. 7 The remainder of the reason why John was idolized by his siblings was due to his own personality.

The close relationship which the Marshall family enjoyed included the relationship between Marshall and his father. Marshall later spoke of his father with admiration when he said, "My father was a far abler man than any of his sons. To him I owe the solid foundations of all my success in life." 8 The solid foundations to which John referred were his physical size and his father's encouragement

6Baker, op. cit., p. 7.
7Cueno, op. cit., p. 7.
8Corwin, op. cit., p. 27.
to be physically and intellectually fit.  

Thus, while most inhabitants of the backwoods environment grew up physically strong, but illiterate, Marshall grew up both physically and intellectually strong. For, Thomas Marshall, a man of limited education but unlimited political ambition, encouraged Marshall to read as many books as were available. Marshall was able to acquaint himself with such books as the Bible, volumes of Shakespeare and Alexander Pope's *Essay On Man And Moral Essays*. In fact, he not only read these books but copied and studied them in great detail. For example, Marshall copied Pope's *Essay On Man* at the age of twelve. It should be noted that Marshall was not compelled to read and copy these books as in the instance of Woodrow Wilson. Wilson was required to copy perfectly his father's lectures. However, Marshall read these books and developed a method for retaining what he had read through the exercise of copying passages.  

Beveridge suggests that Marshall probably used Lord Fairfax's library as a source. This is due to Thomas Marshall's close friendship with George Washington who often borrowed books from Fairfax. He concludes that since Thomas Marshall had as much access to Fairfax's library as did Washington, it is likely that Marshall also used these resources.

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9 Ibid.
10 Cueno, op. cit., Pp. 4-5.
While Thomas Marshall's influence upon Marshall led to a feeling of mutual respect and admiration, Mary Marshall likewise had a positive influence upon her son.\(^\text{12}\) There wasn't very much written about the relationship between Marshall and his mother. However, limited the material, we are able to extract some information about her presence. Mary Marshall was very well educated by eighteenth century standards. Her father was educated at Marishal College in Aberdeen, Scotland to be a parson and a teacher. He transmitted to his daughter his religious and intellectual beliefs. As a result, she became deeply religious and highly intellectual.\(^\text{13}\) She, in turn, transmitted these values to her son. For example, every night of his life before he went to sleep he repeated the prayer that begins, "Now I lay me down to sleep....."\(^\text{14}\)

Therefore, both parents laid the foundations for Marshall's religious convictions and intellectual abilities.\(^\text{15}\) It might be suggested that this atmosphere of love, concern and encouragement contributed to John's cheerful disposition and his enjoyment of life.\(^\text{16}\)

\(^\text{13}\)loc. cit., p. 18.
\(^\text{14}\)Baker, op. cit., p. 10.
\(^\text{15}\)Beveridge, op. cit., p. 43.
\(^\text{16}\)Corwin, op. cit., Pp. 26 and 30.
Marshall's character was formed in this backwoods environment. His family structure provided the framework from which his character could develop. Beveridge captures this when he states . . .

"His environment and his normal, wholesome daily activities could not have failed to do its work in building the character of the growing boy. These and his sound, steady and uncommonly strong parentage must have helped to give him that courage for action, that balanced vision for judgment, and that serene outlook on life and its problems which were so notable and distinguishable in his nature and rugged manhood."

Thus Marshall's parents provided him with a loving and supportive framework within which he could develop. While he was encouraged to succeed and achieve, he did not seem to develop any compulsive qualities. When coupled with his pleasant outlook on life where life was a challenge and not a struggle, one can see the formation of an Active-Positive personality.

However, at this stage it would be unwise to suggest that Marshall was an Active-Positive. First, the development of his world view and his style must be further examined. Finally, Marshall's behavior as Chief Justice must be carefully examined before an accurate prediction as to his personality may be made.

DEVELOPMENT OF WORLD VIEW

The development of John Marshall's world view was also

17Beveridge, op. cit., Pp. 41-42.
related to his environment. The frontier was Marshall's community. The community consisted of small settlements struggling to survive from starvation and Indian attacks. This ever present danger forged the far reaching community together into a network of alliances from which arose a sense of community. This sense of community later evolved into a sense of nationalism when the colonies were threatened by the British, for they learned through common experience that in order to confront an ever-present danger, many desperate groups of people must join together in a common front. This is why we find the settlers of the backwoods expounding a theory of nationalism which would involve the thirteen colonies as a whole repelling the British, as opposed to the theory of localism thirteen independent states fighting a common aggressor, which was the stand adopted by the aristocratic owners of plantations in the lowland region of Virginia. The theory of nationalism was as firmly implanted in Marshall's mind at this early stage of growth as was the theory of localism implanted in the youthful minds of Thomas Jefferson and James Madison.18

Marshall was devoted to the nation as a whole. He knew that a country of thirteen small states could only survive if they were united. For he stated that he:

18Corwin, op. cit., 0. 26.
"... had grown up at a time when the love of the Union and the resistance to Great Britain were inseparable inmates of the same bosom; ... when the Maxim "United we stand, divided we fall" was the maxim of every orthodox American. And I had imbibed these sentiments so thoroughly that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different states, who were risking life and everything valuable in a common cause believed by all to be most precious, and where I was confirmed in the habit of considering America as my country and congress as my government."

The theory of nationalism germinated when Marshall was just a boy on the frontier. It reached full bloom while he was a soldier in the revolutionary army, and finally, the theory became constitutional law when Marshall was Chief Justice of the United States.

The development of Marshall's world view was not only affected by the environment he grew up in but also by his educational background. Marshall's formal education was limited to a little over two years. Sparse as his education was, he was able to broaden his understanding of the world and to demonstrate his high threshold for activity.

At age fourteen, Marshall embarked upon his first formal instruction. He was sent to Reverend Archibald

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Campbell's Academy in Westmoreland County, where John resided for one year. Reverend Campbell was well educated and highly respected for he had been educated in the finest Scottish Universities. Reverend Campbell's ability to teach was demonstrated by his sons becoming "men of note and influence." Mr. Campbell's tutelage increased Marshall's ability to think and study.

While staying at Campbell's Academy, Marshall met James Monroe. The friendship which developed between these two students survived the turbulent political conflicts of the early 1800's, even though they were on opposite sides of the political fence Marshall a Federalist and Monroe a Democratic-Republican.

Marshall's second fragment of formal education was under a Scottish clergyman named James Thomson. Thomson was the pastor at Marshall's church (Leeds Parish), and lived with the Marshall's for one year. As was the custom then, the boarder would return the hospitality of the family with which he boarded by teaching the eldest children, in this case Marshall, various academic subjects such as Greek and Latin. By the time Thomson left for England to be ordained a priest in the Episcopal Church, Marshall was reading Horace and Livy in Latin.

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21 ibid.
22 Beveridge, op. cit., p. 37.
24 ibid.
Beveridge \(^{25}\) states that Thomson's anti-British political viewpoints probably had an influence upon Marshall as did his recitals in Greek and Latin. Thomson would emphatically denounce British misrule in the colonies even from the pulpit.

After Thomson left the Marshall household, Thomas, a Member of the Virginia House of Burgesses, Sheriff of Fauquier County \(^{26}\) and a justice of the peace for more than a decade, purchased Blackstone's Commentaries on the Laws of England. \(^{27}\) He did so not only for himself, but for John, as well, because Thomas wanted to encourage his son to become a lawyer. Marshall, however, did not devote much time to Blackstone for he was more concerned with his own military preparedness. \(^{28}\)

The third fragment of Marshall's formal education came after the war when he attended William and Mary College for no more than two to three months to hear a series of lectures on the law delivered by George Wythe. Wythe was respected for his legal knowledge, his political leadership and for his influence upon his students which included

\(^{25}\) Beveridge, op cit., Pp. 54-55.

\(^{26}\) loc. cit., p. 51.


\(^{28}\) Beveridge, op. cit., Pp. 56-57.
Thomas Jefferson and Bushrod Washington, nephew of George Washington and later an Associate Justice on Marshall's Supreme Court.  

During his stay at William and Mary, Marshall was distracted by his romantic feelings for Polly Ambler. He would continually let his mind wander to her during lectures and would scrawl her name all over his notebook. Despite this fact, Marshall was not totally enveloped with his feelings for Miss Ambler. During this same period he was able to compile a summary of the common law of Virginia. He undertook this monumental task by arranging alphabetically each subject of the common law as was practiced in Virginia at that time from "Abatement to Limitation of Actions." These notes were not based on lectures given by Wythe or by anyone else. Marshall used outside sources when compiling the laws alphabetically with the appropriate principles listed under each topic. He used such sources as "the third edition of Mathew Bacon's New Adbridgement Of The Law. The Acts Of the Assembly Now In Force In The Colony Of Virginia, and Blackstone's Commentaries."

The significance of Marshall's romance with Polly Ambler and his common law project is its reflection of his capacity for a great deal of activity. Anyone who can complete such a vast undertaking within a period of two to three

30 Cueno, op. cit., p. 16.
months and still have time to devote his attention to Polly should not be overwhelmed by the workload associated with the United States Supreme Court.

Marshall completed his legal education by reading in the office of a Philadelphia attorney.\(^2\) It would be a mistake to limit one's analysis of Marshall's legal insight to his sparse legal education for Marshall developed legal skills in his first independent public responsibility as a deputy judge advocate during the War of Independence prior to attending William and Mary College. These skills served him well later on the United States Supreme Court.

DEVELOPMENT OF STYLE

John Marshall was appointed Deputy Judge Advocate in the Army of the United States. This was Marshall's first independent public responsibility, and it was where he first learned to reconcile differences between parties involved in a legal dispute. This responsibility foretold what type of Chief Justice he would make once he obtained that position.\(^3\)

He was appointed Deputy Judge Advocate not only because of his intelligence, but also because of his popularity among officers as well as soldiers. This is exemplified by Marshall's behavior during the darkest hours for the soldiers,

\(^2\)loc. cit., p. 66.
\(^3\)loc. cit., p. 51.
the winter of 1777 at Valley Forge. He was a source of encouragement and inspiration to his underfed and underclothed comrades. This was no small achievement when you consider the conditions of the frostbitten, bleeding, shoeless army struggling to survive the winter let alone the British.\textsuperscript{34}

Marshall's striking example was best acknowledged by the soldiers who witnessed his behavior at Valley Forge. They reported years later that he was the "best tempered man" at Valley Forge. Marshall did not despair about the lack of bread or meat, instead, he would try to comfort and cheer those who would complain about the situation. Due to his behavior, he was revered and idolized by comrades, officers and soldiers alike.\textsuperscript{35}

As a Deputy Judge Advocate Marshall demonstrated his ability to deal with different people with conflicting interests. While he could not always encourage others to agree with his judgement, he was able to encourage them to respect, understand and accept his decision.\textsuperscript{36}

Deputy Judge Advocate Marshall was able to inspire confidence from the soldiers and the officers through his ability to reach a fair and just decision. He would first listen patiently to both sides during a hearing. Secondly, he would spend a certain amount of time in contemplation of the merits of his adversaries' positions. Third and finally, he

\textsuperscript{34}Beveridge, op. cit., Pp. 118-120.
\textsuperscript{35}Baker, op. cit., p. 47.
\textsuperscript{36}ibid.

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would record his decision and the justification for it in writing. This procedure lent credibility to the proceedings and to his ability as an arbiter of disputes. The officers and soldiers not only had confidence in his ability to adjudicate disputes, but they also abided by his decisions.37

We also find that Marshall was quite active in leading the troops. In addition to being a Deputy Judge Advocate he was such a successful leader that within three years he was promoted from Lieutenant to Captain.38 His success in the army and as a Deputy Judge Advocate was as much due to his concern with the details in the matter at hand and his seeming eagerness to accept responsibility as it was due to his innate intelligence. Thus, John Marshall was not one to resist a challenge and responsibility in the revolutionary army.

When you combine Marshall’s high degree of activity as a Deputy Judge Advocate (e.g. deliberative and conscientious in his decision making process) and as an officer in the army with his ability to inspire and encourage the troops even during the most trying hours, we can see that he appears to be an Active-Positive. The pattern which developed during his early years seems to have continued into his years of service in the revolutionary army. We must authoritatively resist an iron clad commitment to the

37 Beveridge, op. cit., p. 119.
suggestion that John Marshall was an Active-Positive until we test his behavior on the United States Supreme Court. However, I will suggest at this time that the evidence would suggest to me that Marshall was an Active-Positive.

While this study does not purport to be a chronology of Marshall's life, I think it is useful to trace briefly his political background from the time he left the army until he was appointed to the Court. It is to this summary we will now turn.

POST-WAR DAYS

Upon completion of his study of the law, Marshall was admitted to the bar of Virginia on August 28, 1780. Marshall had a difficult time starting out as a lawyer. For his first years, remuneration was based primarily upon his legislative salary. However, by 1790, Marshall had become a prominent member of the Virginia bar.

Marshall officially entered politics for the first time in May of 1782. He was elected by the residents of Fauquier County to the Virginia House of Delegates. In November 1892, at the age of 27, he was so well respected that he was elected a member of the Council of State (the Governor's Cabinet). This caused such a high degree of

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39Cueno, op. cit., p. 17.
40Beveridge, op. cit., p. 176.
resentment, that he chose to resign in April, 1784. This resentment was due to his age and to the possibility of family influence in his election. Marshall chose not to run for a third term in 1785. However, he was elected to the state legislature in 1787. Marshall understood the importance of ratifying the new constitution drawn up in Philadelphia, and as a result, in June of 1788, he was elected as a Federalist to the Virginia Constitutional Convention.

Delegate Marshall was predisposed to the adoption of the Federal Constitution. For many years, he had felt that the states needed "general and radical constitutional reform designed at once to strengthen the national power and to curtail state legislative power." Marshall had observed first hand during the war the inability of the Continental Congress to levy taxes and provide supplies to the soldiers. He was further convinced of the need for a Federal Constitution by the activities undertaken by the states after the war. The actions of the states which concerned Marshall included: the lack of adherence to national treaties; tariff wars between the states; foreign trade dominated by European powers; the blatant disregard for creditors' rights by states.

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44 Corwin, op. cit., p. 34.
passing laws suspending the collection of debts; and other
dysfunctional activities undertaken by the individual states.
Thus, Marshall fought for the adoption of a national con-
stitution which would restore the integrity of private
rights as well as strengthen the only governmental body
capable of unifying a nation of thirteen disintegrative
states. Marshall's point of view prevailed. On June 25,
1787, Virginia became the tenth state to ratify the Con­
titution.  

Marshall achieved a higher level of distinction in
the legal profession between 1790 and 1799 when he was
recognized as having one of the most organized legal minds
of all. For example, he impressed legal experts by his
argument before the United States Supreme Court in Ware v.
Hylton (1796). In this case he argued that since the
state of Virginia had passed a law in 1778 allowing the
payment of depreciated Virginia currency to satisfy British
creditors prior to the adoption of the Treaty of 1783 with
Britain and the Federal Constitution, it would not be
subject to the provisions of either one. For he suggested
that the Treaty of 1783 and the Constitution would supersede
any state law passed after either one, but not one passed

45 loc. cit., Pp. 31-35.
46 Cueno, op. cit., Pp. 31-33.
48 3 Dall. 199, Corwin, op. cit., Pp. 44-45.
before their consumation. Therefore his argument was impressive even though he lost the case.

It is important to note that Marshall shied away from public life during this decade. He was more concerned with building and maintaining his private practice than with participating in the public arena.\(^4^9\) The only exception to Marshall's avoidance of public service was his decision in 1797 to accept President Adams' appointment as a special plenipotentiary to France. Adams also appointed Elbridge Gerry and Charles Cotesworth Pinckney to participate in this mission. The purpose of this unsuccessful mission was to improve Franco-American relations.\(^5^0\) After the mission was concluded Marshall returned to private life and to his law practice.

Marshall continued to refuse personal requests made by former President Washington to re-enter public life until 1799 when he relented and agreed to run for Congress. He was subsequently elected.\(^5^1\) Marshall was appointed Secretary of State by President Adams in 1800.\(^5^2\) And, finally, his re-emergence on the political scene culminated in his appointment to the United States Supreme Court as Chief Justice in January of 1801.\(^5^3\)


\(^5^1\) Baker, op. cit., Pp. 298-299.


\(^5^3\) loc. cit., Pp. 553-557.
In conclusion, it is important to note that within the years after the war and before his appointment to the Court, Marshall's political philosophy was solidified. We acted upon his position in favor of a strong Federal Government by supporting its adoption in the Virginia Constitutional Convention. The reasoning he developed to support his belief was later used in cases before the Supreme Court dealing with national supremacy. Marshall consistently ruled in favor of the Federal Government vis-a-vis the states in such cases as McCulloch v. Maryland (1819) and Gibbons v. Ogden (1824). Thus, while this period was important in terms of John Marshall's introduction to the public arena, it also foretold how he would rule in cases involving the shape of our political institutions.

It is to the examination of this to which we will now turn. We will examine his behavior on the Court in order to test my suggestion that John Marshall should be placed in the Active-Positive category.

AN ACTIVE-POSITIVE CHIEF JUSTICE

It seems that John Marshall enjoyed the position of Chief Justice or he wouldn't have stayed on the Court for thirty-five years. While on the Court, he did not undergo

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\text{\textsuperscript{55} 9 Wheat. 1, loc. cit., Pp. 111-114.}
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a change in his personality for his personality was fixed by the time he reached the Court. As a result, the Court did not enoble him. It was the other way around. Marshall ennobled the Supreme Court of the United States. It is doubtful that the Court would be a revered an institution as it is today without his influence. Without Marshall the Court would likely have been an institution like the Electoral College, a structure with very little substances. The Court today is a viable institution, although at times it is the center of controversy. The Court may even initiate solutions to problems ignored by the executive and legislative branches, and no less should be expected of an institution concerned with the interpretation of the United States Constitution.

The basis of the Supreme Court's power as the final arbiter of the Constitution was initiated with Marshall's opinion in Marbury v. Madison (1893). It was in this decision, and cases which followed on the national supremacy issue that gave us an insight into the man who shaped the course of American history.

We will examine Marshall's opinions in Marbury, McCulloch v. Maryland (1819) and Gibbons v. Ogden (1824). From this analysis of his behavior, we will test the proposition that he had an Active-Positive personality.

\[58\] Wheat 1, loc. cit., Pp. 111-114.
Not long after Marshall was appointed to the Court, he asserted his point of view in a controversy between the three "co-equal" branches in the Federal Government. The question of which branch had the final authority to interpret the Constitution had to be answered. The Supreme Court claimed that authority in Marbury. If the Court had not intervened, the conflict between the branches would have continued unresolved.

It was in this atmosphere that Marshall had to make two decisions. One, whether the Supreme Court was the branch which had the authority to become the final arbiter of the Constitution? He answered in the affirmative. This led to the second question: What case can be used to assert that doctrine? Marshall chose to hear Marbury v. Madison in 1801. When the Court reconvened in 1803, Marshall used Marbury as a vehicle to stabilize the relations between the "co-equal" branches of the Federal Government.

We shall briefly look at the facts of this case. President Adams, a Federalist, had lost the Presidential election of 1800 to Thomas Jefferson. The Federalists also lost control of Congress which resulted in both the executive and legislative branches being under the control of the Democratic-Republicans. Adams wanted to have the Federalists in control.

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of the only remaining branch which was the judiciary. To carry out that objective, the lame duck Federalist Congress enacted the Circuit Court Act which (1) doubled the number of federal judges and (2) authorized the appointment of forty-two justices of the peace in the District of Columbia. Adams made the appointments, and the Federalist Senate confirmed his appointments. However, Adams' Secretary of State (John Marshall) had failed to deliver seventeen commissions before Jefferson became President. Jefferson ordered his new Secretary of State (James Madison) to withhold these remaining commissions from the justices. It was on this basis under the authority of the Judiciary Act of 1789 that four injured parties (William Marbury, Dennis Ramsay, Robert Townsend Hooe and William Harper) petitioned the Supreme Court to issue a Writ of Mandamus compelling Madison to deliver their commissions.

Beveridge suggests that Marshall and the Court seemed to have only two choices. One, "it could disavow its power over any branch of the Executive Department and dismiss the application" or, secondly, it could invoke the Write of Mandamus clauses of the Judiciary Act and compel Madison to turn over the commissions.

Had Marshall chosen the former alternative, he would have had to acquiesce to Jefferson's belief that the judicial

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61 Lockhart, et. al., op. cit., p. 1.
63 loc. cit., p. 126.
branch did not have the authority to compel the executive branch to carry out the laws nor invalidate Acts of Congress. This is the likely course expected to be taken by a passive (Positive or Negative) Chief Justice. These types of Chief Justices would be expected to defer to the other branches of the Federal Government for they likely do not have any overriding policy preferences. The rationalization for this behavior is that since the Constitution does not specifically grant the Court the power to review actions of the other two branches, the Court does not have the power to do so. Also, the Passive Chief Justice might not have been able to garner enough support for his position, even if he had one. This is due to either his overconcern to be loved by his colleagues at the expense of conflict (positive) or his lack of concern of the feelings of his colleagues (negative). Marshall did not manifest these orientations.

Neither did Marshall attempt to compel Madison to deliver the commissions. He knew that Madison would ignore the Writ. This would have placed the court in direct conflict with the Executive Branch without any means to compel the Executive to comply with the directive. What was left of the Court's prestige at the time would have been destroyed. It would have been viewed by the other branches as a "paper tiger" to be obeyed when the decisions were acceptable and to be ignored when they were unacceptable.

65 ibid.
Because he would have felt personally offended by Jefferson's actions, an Active-Negative might have chosen this route of issuing the Writ. This would have compelled him to order Madison to deliver the commissions, regardless of the consequences. He would have felt justified in his position, regardless of how the rest of the Court felt. Marshall did not believe in this fashion either.

Thus, Marshall seemed to be in a "no-win" situation. If he ruled in favor of Marbury, he would damage the prestige of the Court. On the other hand, if he ruled that the Court could not order an executive official to carry out the law, he would be sacrificing any possibility that the Court would become the final arbiter of the Constitution or worse. The latter was an alternative he would not choose, for Marshall deeply believed that the Supreme Court should be the final arbiter of the Constitution. He said in Marbury, "it is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each." The question remains; how could he assert the doctrine of judicial review in a seemingly "no-win" situation?

He was able to assert his doctrine by making an ingenious move. He ruled against the Federalist Marbury, to the

66Lockhart, et. al., op. cit., p. 6.
surprise of Jefferson and the Democratic-Republicans, while at the same time he enunciated the doctrine of judicial review. He did this by declaring Section 13 of the Judiciary Act of 1789 to be unconstitutional. This section, among other things, increased the Supreme Court's original jurisdiction by allowing the Court to issue Writ of Prohibitions (to prevent certain practices from continuing) and Writ of Mandamus (which can compel the carrying out of an order). He stated that the original jurisdiction clause of the Constitution was exclusive and complete in its grant of power. Thus any section of any law which seeks to increase the original jurisdiction of the Court is unconstitutional. Therefore, by declaring Section 13 of the Judiciary Act of 1789 unconstitutional, he established the doctrine of judicial review.

This action was, as Beveridge succinctly states, "bold in design and as daring in execution as that by which the Constitution had been framed." He further said, "one of narrower vision and smaller courage never would have done what Marshall did." For Marshall to concede a battle and win the war proved that Marshall had the ability to

67Since Section 13 was declared unconstitutional Marbury had no other legal recourse. For the only way he could receive his commission was if the Court issued the Writ of Mandamus. Beveridge, op. cit., Pp. 110-142.

68loc. cit., Pp. 142-143.
discern his objectives, apply them and act decisively. This would suggest that John Marshall was quite active.

Not only was Marshall active, but he was flexible as well. He was flexible enough not to declare the Republican Repeal Act of 1802 and an act which required Supreme Court Justices to sit as circuit judges, unconstitutional. This he did despite the fact that he felt both were in violation of the Constitution. He gave in and upheld the constitutionality of both when his colleagues on the Court refused to go along with him in Stuart v. Laird (1803). In comparison, an Active-Negative would probably have remained rigid and uncompromising, therefore asserting his beliefs regardless of the opposition from others. However, Marshall capitulated in this instance hoping to find a more suitable occasion to introduce his doctrine of judicial review. Marshall's flexibility would seem to be indicative of a man with a positive personality. He defined what his goals and objectives were, and sought to attain them. This was all done without allowing his personal feelings for Jefferson to endanger the chances of achieving those goals.

At the same time, Marshall's flexibility spared the Supreme Court from the embarrassment that would result in a direct confrontation with the other two branches. And, once the Republican assault on the Court had subsided, the prestige of the Court rose in relation to the popularly

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elected branches.\textsuperscript{70}

A second test of whether Chief Justice Marshall was an Active-Positive was in his ability to lead. Marshall's leadership ability was demonstrated by his persuading his colleagues to vote unanimously in Marbury. This accomplishment is more significant when one considers that his colleagues found Section 13 less objectionable than the law requiring them to sit as circuit judges.\textsuperscript{71} Marshall's great leadership ability was born of high self esteem and inspired confidence among his colleagues. This, in turn, led his colleagues to hold Marshall in high esteem. Marshall also knew how important it was to have a unified court when promulgating a new doctrine. Thus, Marshall persuaded the Court to do what they might normally find objectionable. This is the type of leadership the Court would receive from an Active-Positive Chief Justice.

The cases of McCulloch v. Maryland (1819)\textsuperscript{72} and Gibbons v. Ogden (1824)\textsuperscript{73} support the assertion that Marshall was an Active-Positive. For it was in these cases that Marshall was able to enunciate the doctrine of national supremacy, (along with the necessary and proper chance as a basis for his opinion on McCulloch) while at the same time he was able


\textsuperscript{72}4 Wheat. 316; Lockhart, et. al., op. cit., Pp. 95-102.

\textsuperscript{73}9 Wheat, 1; loc. cit., Pp. 111-114.
to persuade Democratic-Republican Justices (who had replaced Federalist Justices by attrition) to vote with him. The latter point is even more significant when you consider that states' rights had been the centerpiece of the Democratic-Republicans' platform since the formation of their party. It was the Democratic-Republican controlled legislatures of Virginia and Kentucky which adopted resolutions by the same name, that would allow states to nullify national laws.\(^7\) The consequences of such resolutions are not hard to imagine. Beveridge\(^7\) even suggests that the interstate conflict which would result from the nullification of such laws would lead to the dissolution of the nation and ultimately to civil war. Therefore, only a man with an Active-Positive personality could have had such well defined and clear philosophical objectives along with the ability to persuade individual justices with differing backgrounds to agree with him.

It was in this atmosphere of national vs. state supremacy that the case McCulloch v. Maryland (1819)\(^7\) was heard. The main attention in this case was focused upon the state of Maryland and a branch of the Bank of the United States. The Congress in 1816 had created a second Bank of the United States, after the first bank's charter expired in 1811. The state of Maryland enacted a law which

\(^7\)Beveridge, op. cit., p. 105.

\(^7\)loc. cit., p. 108.

\(^7\)Wheat. 316, Lickhart, et. al., op. cit., Pp. 95-102.
required the branch of any bank to issue bank notes on "stamped paper" which amounted to a tax of about 2% of the notes' face value. However, a branch may choose to avoid using "stamped paper", if it payed an annual tax of $15,000. The purpose of this act was to tax the branch of the Bank of the United States out of existence. This action would aid the state banks which were threatened by the competition from the Bank of the United States. However, McCulloch, a cashier of the Baltimore Branch of the Bank of the United States, refused to comply with the law. As a result, he was prosecuted in the Maryland Courts under that act and lost. He then appealed to the United States Supreme Court and won the case at this level.

What was significant about this case as far as Marshall's personality is concerned, is that he expanded the scope of national supremacy. A passive Chief Justice might have merely declared the Maryland statute unconstitutional, since its only purpose was to damage an instrument of the Federal Government in a direct conflict with a "legitimate Act of Congress." But, Marshall went much further when he declared that an instrument of the Federal Government would under no circumstances be subject to state taxation in any

77 loc. cit., p. 95.
78 ibid.
form. Thus, in this case he demonstrated his ability to weave his own interpretation of national-state powers into the fabric of the Constitution, while at the same time he was able to persuade his colleagues to agree with his opinion.

Gibbons v. Ogden (1824) was a logical extension of McCulloch. Marshall applied the doctrine of national supremacy to the field of commerce. This case involved a New York state licensee's "exclusive" right to operate his steamboat in New York waters. For almost twenty-five years Robert Fulton and Robert Livingston and their licenses, including Ogden, enjoyed the exclusive right to operate their steamboats in New York waters. Ogden sought to prevent Gibbons, who only had a license for the United States Congress, from operating his steamboats in these waters between ports in New Jersey and New York on the basis of his state licensed monopoly. Gibbons refused to comply with the New York statute granting the license, and, as a result, Ogden brought suit against him in the New York Courts ruled in favor of Ogden. The case was appealed by Gibbons to the United States Supreme Court, and Marshall and the Court overruled the New York Courts in favor of Gibbons. Marshall could have ruled strictly, by declaring the state license inoperative since it conflicted with a license granted by Congress. However, he did not choose

80 Corwin, op. cit., p. 134.
82 Corwin, op. cit., Pp. 136-137.
to rule strictly in this case. As in McCulloch, he used this opportunity to increase the National Government's powers vis-a-vis the states. In this case, he increased Congress' control over international and interstate commerce was complete. For he states, "... the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government ..." Thus, Marshall declared any state law interfering with Congress' jurisdiction over interstate and foreign commerce was under all circumstances null and void.

He was able to achieve unanimous support for this decision. Only Justice Johnson went further than the opinion of the Court. He concurred on grounds that Congress' control over Commerce was exclusive e.g. including intrastate commerce as well. Marshall was once again able to persuade the others of the logic of his opinion.

The pattern repeats itself over the three cases of Marbury, McCulloch and Gibbons. Marshall used each case to annunciate the theory of government which he had developed on the cold frost bitten field of Valley Forge. In each

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83 Cueno, op. cit., p. 129.
84 Lockhart, et. al., op. cit., p. 113.
85 Cueno, op. cit., p. 129.
86 Lockhart, et. al., op. cit., p. 114.
case he could have ruled on the narrowest possible grounds. He chose instead to expand the importance of the case by establishing a doctrine which would have far-reaching implications. Therefore, the prece­dents established by the Marshall Court have become as much a part of constitutional law as have the amendments to the constitution.

It is also important to recognize Marshall's ability to persuade people with divergent backgrounds and viewpoints to agree with him. It is even more amazing when we consider the Supreme Court was populated by Democratic-Republicans during Marshall's middle and later years on the Court. Justice Story, a Democratic-Republican and a man of high intelligence was even afraid to grant the first premise in an argument with Marshall. For once this premise was granted, Marshall could turn the argument in his favor. Thus, Marshall was able to persuade ardent state supremacists into becoming national supremacists.

Marshall's ability to persuade his colleagues was not based solely on the weight of his positions. He was also able to endear himself to his colleagues, primarily by being accessible to them. This wasn't difficult since they all lived together in the same boarding house. He was considerate of their opinions, yet he would usually convince

87Cueno, op. cit., p. 144.
88loc. cit., p. 142.
them to accept his opinion. He was also quite charming, witty and humorous. Therefore, he had the ability to communicate his own sense of values to his colleagues in a most inoffensive way.  

In conclusion, I believe I have presented sufficient evidence to support my assertion of John Marshall having an Active-Positive personality. We have examined his behavior on the Court, concentrating on three critical cases. If we had examined other cases the same personality would appear. The same Active-Positive personality which was formed in his early years was exhibited again on the United States Supreme Court. The Court did not change Marshall. But Marshall changed the Court and the course of American history.

SUMMARY

John Marshall was an Active-Positive Chief Justice. He did not become one overnight. It was not when he put on the robe of a Justice of the Supreme Court that he became an Active-Positive. Marshall's personality was formed in his early years of life. Once formed he would be unable to change it even had he so desired. For the basic patterns of behavior Marshall developed when young were repeated until the day he died.

We can see the origins of his activity in his early years. We could see this development when he was delegated

the responsibility by his parents to help supply the nutritional needs of his large family. He did this by hunting and fishing for food. We can also see Marshall acting upon his belief of one unified nation as a soldier in the Revolutionary War. He knew that our nation could not survive the British onslaught and the problems of the post war era unless this country was truly unified. He carried that philosophy with him until the day he died. Whether at the Virginia constitutional convention or on the Court, he was active in asserting his belief. At the same time, he used the most effective means to attain his goals. Thus, the activity baseline of his personality developed when he was young endured the life span of John Marshall.

The positive baseline of Marshall's personality also developed while he was young. We could see this through his ability to help rear his bothers and sisters, while still eliciting love, admiration and respect from them. We could see, on the cold fields of Valley Forge, his ability to motivate, inspire and encourage disparaging soldiers and officers alike. His troops not only had great confidence in Marshall, but they also revered and idolized him. This, in addition to his intelligence, led to his appointment as a Deputy Judge Advocate. It was at this stage in his life that he demonstrated his ability to look at both sides of an issue, analyze each and reach a decision which was supported by a well reasoned opinion. He continued to exhibit
this same style on the Court. For he thoroughly analyzed his adversaries' positions and reached an opinion. While not agreeable to both sides his decision was accepted as fair and just, despite an occasional negative reaction. His ability to endear himself to many people was demonstrated repeatedly on the Courts, when he was able to persuade justices with different political viewpoints to vote with him in a unified fashion.

Thus based on the limited information we have of John Marshall's childhood, we probably could have been able to accurately predict his behavior as Chief Justice of the United States.
CHAPTER III
THE CHARACTER OF
EARL WARREN
DEVELOPMENT OF CHARACTER

Earl Warren's early childhood years give us an insight into his character. For it was during this period of time he learned to relate to his parents and his immediate environment. The patterns he developed then were to later become an integral part of his character.

Earl Warren was born on March 19, 1891, in Los Angeles, California. At the time, his parents Methias and Crystal and his three year old sister Ethel lived in a small frame house near an old railroad station at 458 Turner Street. Three years later the Warrens moved into a small bungalow on Ann Street.¹

The Warrens had lived in the small bungalow only a short time before they had to move again. The move was necessary because Methias (or Matt as he was called) and fellow members of the American Railway Union went on strike. The strike was called by union organizer Eugene Debs to restore the wages cut by the railroads. The strike was unsuccessful forcing strikers to flee Los Angeles and look for jobs elsewhere. The railroads blacklisted the participants as well. As a result, many were reduced to a life of drifting from town to town, job to job, unable to ever find permanent

employment. Matt was fortunate to find a job with the Southern Pacific in Bakersfield, California. The railroad had just moved to Bakersfield resulting in a shortage of skilled workers. They sacrificed economic principle for economic necessity by hiring Matt.²

It was in Bakersfield that Earl spent the formative years of his life. It was also in this setting in which Earl Warren's character developed. Bakersfield was a highly diverse town consisting of the red light district and the section inhabited by the respected citizens of the community. Earl lived in the latter. Although he was exposed to the vices of the notorious district, e.g. gambling, etc. he was taught by his parents to avoid such vices. The revelation to Earl that gambling was being manipulated by gamblers for their gain reinforced his distaste for it. This knowledge would serve him well in later years when as District Attorney of Alameda County he would attempt to clean up the community.³

While the free wheeling community of Bakersfield had an impact on the development of Warren's character, his father (and family) was more influential. Matt was a frugal man, and he taught Earl and Ethel to respect money.²

²However the Warrens did not stay in one place. They moved from a rented bungalow to a house Matt built. And then they moved back and forth from another house he built, as Matt engaged in the real estate business. loc. cit., Pp. 13-17, 20-21.

Matt's fear of not having enough money was derived from the death of his own brother, Hjalmar. Hjalmar died in his arms with tuberculosis. Matt felt to the day of his death that if they had had enough money for medical treatment Hjalmar would have lived. Matt believed that the way to avoid poverty was through hard work and education. Although he did not compel Earl to learn, he impressed upon Earl the relationship between education and success.\(^4\)

It was Matt's style to allow his children to develop as free of restrictions as possible. Earl later said, "Father was never one to preach. He did not try to restrict my activities."\(^5\) However, Matt established certain general examples of behavior for his children to follow. His style of discipline taught his children to be obedient and to get along with others. Leo C. Pauly, Earl's principal at Washington School, later remarked that he "never had any trouble with him."\(^6\) Thus, while Matt allowed Earl a sizeable amount of freedom to develop his own character, he set certain social standards of conduct which Earl understood had to be observed.


\(^5\)Katcher, op. cit., p. 20.

There wasn't much written about Earl's mother's (Christine Hernlund) influence upon him. While it may be hazardous to suggest that Crystal allowed Matt to assume total leadership of the family, it seems her role in the family was supportive. While Matt was the disciplinarian, mediator of conflicts and the influential figure in Earl's intellectual pursuits, Crystal attended to the domestic needs of the family. She showed her affection for Earl and Ethel by making sure they were "well fed and neatly dressed". It is also reported that she was disappointed with Earl's progress in school. For she felt he could have surpassed other students if only he would try harder. However, we don't know if she conveyed that disappointment to Earl. If she did, it didn't have an impact upon Earl for he continued to pass his classes with little exertion and little distinction.\(^7\) Thus, besides showing love to her children and attending to their basic needs, she alone did not seem to have any measurable impact upon Earl's personality. It is when you look at both parents together, you can see Matt and Crystal doing everything possible to provide their children with all the tools necessary to survive comfortably in this world.\(^8\)

What type of personality did Earl seem to develop at

\(^7\) loc. cit., Pp. 19 and 22-23.

\(^8\) loc. cit., Pp. 21-22.
this stage in his life? It may seem to some that Earl was a passive type. For, as mentioned before, Earl was no more than an average student. Weaver stated that at the time of Warren’s graduation from high school three young ladies commented on his ability to pass with as little exertion as necessary. Earl seemed to be more interested in activities other than education. For he felt he could learn more about life through experience as opposed to text books. He was always an avid sports fan, and he loved the outdoors. It was outdoors that he could plant and raise vegetables. He enjoyed raising rabbits, dogs and chickens, and liked to hunt and fish. Just for pleasure he would take long, invigorating walks in the country. Thus young Earl focused his attention on the outdoors rather than on school work.

While it may seem that Earl was only interested in enjoyable activities, we may overlook an important ingredient in his character. Earl was active in areas that interested him, and because these activities were outdoors rather than indoors, they should not be discounted. His activities were merely an escape from the academic environment. We can also see that in his early days Warren had two traits of character which would aid him in the future.

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9 loc. cit., p. 22.
10 Katcher, op. cit., p. 20.
leadership and administrative ability.

Warren's traits of leadership and administrative ability were acknowledged by his somewhat biased third grade teacher, Millie Gardnett Munsey. She said that he "showed traits of leadership and always did what he thought was right!" It was better illustrated by his ability to persuade other children to do his work for him. Weaver states that when "he had a chore to attend to, kindling to split or a tool-shed to tidy up, he would assemble a group of youngsters from the neighborhood and entertain them while they did his work." Thus, while Earl Warren may not have been active in the academic sense that John Marshall was in his early years, e.g., copying books, etc., he demonstrated his own peculiar ability to be active. This ability helped to foretell the type of public official he would later make.

Warren was also active in other ways. He worked, for example, instead of spending the summers simply enjoying the great outdoors of California. He began at the age of 10 by assisting an ice man. The next year he took over two paper routes. In the morning he would distribute the Los Angeles Herald, and in the afternoon he would deliver the Bakersfield Californian. The next two years he drove a mule-drawn grocery wagon, and drove a delivery wagon after school for a year. Warren also tried his hand as a door-to-door book salesman. However, he was unsuccessful because

11 loc. cit., p. 18.
12 Weaver, op. cit., p. 22.
of his reserved demeanor. He evidently was not forceful enough to sell books he was disinterested in. He was even unable to sell a leather bound set of *The Life Of William McKinley* to his father. 

Therefore, despite his educational experience, Warren was active in activities he enjoyed.

Because information is limited on Warren's childhood, it is hard to determine conclusively his place on the Positive-Negative baseline. We can only suggest there is nothing in his childhood to suggest he had a negative character. His parents were loving and supportive of Earl's and Ethel's activities. Earl later acknowledged that his father would buy him any book in which he expressed an interest. Ethel recalled that her parents exercised a great deal of wisdom in raising them. She said, "they didn't spoil us, but they were so self denying. Everything was for the children." 

This would suggest an environment favorable to a positive character development.

Neither do we see any personality scars left on young Earl. He was not compelled to be a perfectionist as was Woodrow Wilson. If it had been expected he probably would have resisted. He seemed to do what he felt was right no matter how stubborn he may have looked. 

14 Weaver, op. cit., p. 21.
15 Katcher, op. cit., Pp. 18 and 22.
an education. Earl understood it and intended to get by, with or without academic honors.

In addition to his tendency to be independent, we find the reserved Warren to be quite popular. He evidently was popular with the youngsters he assembled together to do his work for him. Weaver also reports that the Warren children had many childhood friends of foreign extraction. Some of their friends had accents acquired from their immigrant parents. A former high school classmate, reported that Earl was a "friendly and a regular guy. You know you could depend on him. People liked him and he liked people. But, while he was always friendly, he was the kind of fellow who came to school alone and left it alone." Despite the fact that Earl was a reserved boy it seems evident that he was quite popular to the extent he could persuade his friends to do what he wanted them to do, e. g., household chores, while he entertained them.

In conclusion, we have reason to suggest the development of an Active-Positive character. However, at this time Warren does not fit perfectly into the Active-Positive category. For we can see signs of passivity toward his educational experience. And we can also see traits of an aloof young boy who could be quite stubborn if he felt so justified. Someone who becomes stubborn, uncompromising

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16 Weaver, op. cit., Pp. 22-23.
17 Katcher, op. cit., p. 22.
and rigid on a particular issue will be unable to attract widespread support for his position from likewise independently minded colleagues on the court. This could indicate the possibility that Earl had a negative personality. On the other hand, it seems to me that Earl's propensity for activity when interested and his pleasant persuasive personality as exemplified in his childhood behavior seems to suggest an Active-Positive personality. We shall examine the development of his world view and style before we are able to assert with authority in which category he belongs. It is to this examination we will now turn.

DEVELOPMENT OF WORLD VIEW

Earl Warren's environment affected the development of his world view. World view has been defined as a person's beliefs about human nature and social causality. This would include his orientation toward people beyond his immediate family circle. Thus, you would suppose that during his teenage period Warren would have developed a definite political philosophy. In contrast to Marshall's development of the theory of nationalism, Warren did not develop a political philosophy. Simon states that he "never had an abstract thought." He also reported Warren's

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indifference to classroom theories. Warren had said, "no book or professor had a profound influence on me, not even in the law school." Neither did the emotional story about his uncle's death predispose him to a socially causal ideology. Therefore, Warren became a political pragmatist, one who would weigh the facts on both sides and then come to a position.

While Warren didn't develop an all encompassing explanation of social causality, he did develop a sensitivity to the needs of others. While growing up he developed a sensitivity to the needs of railroad workers. Because of his uncle's fatal illness he felt compassion for the ill. He also empathized with the families affected by the common man's afflictions of struggling to provide his family with the necessities of life, e.g. food, clothing and shelter. The essence of Warren was captured when he said, "companionship was the greatest thing I found at the university" (of California at Berkeley) "and it still stands out in my mind today as more important than anything I learned in classes." Thus, Warren's concern and compassion for others can give us a deeper insight into his world view than attributing to him a particular political ideology.

It was during this period he attended Kern County High School in Bakersfield. He was small in comparison to the

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19 ibid.
20 ibid.
size of the other students, and the fact that he still wore knee pants didn't enhance his standing with his classmates. An alumnus (class of 1907) and a former classmate of Warren's felt that his size was the reason why he never went out on dates. Warren, however, later remarked that he was so preoccupied during his senior year as a member of the town band and an original member of the Musician's Union (he played the clarinet adequately), playing baseball and working in the railroad shops that he never had much time for dates. Therefore, Warren did not let his size affect his propensity to be active.

As mentioned before, Warren was well liked while in high school. One reason for this may have been his easy going but persevering demeanor. He was neither conspicuous nor reclusive. He was referred to by some as "meek", "mild", "well-balanced," and "cautious." Although he was not particularly enamored by school he tried to comprehend the subject matter of his courses. For, he knew that if he didn't complete school he would take time to find it in a book. Or he wouldn't be afraid to ask questions in class. In other words, Warren was not concerned with putting on an intellectual display. He was honest when he didn't know something and his fellow students respected and liked him for what he was.

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22 Katcher, op. cit., p. 22.
24 Katcher, op. cit., p. 21.
While he was well liked and active in high school, he was not a genius nor was he a facsimile of one. He was an average student most proficient at History and English. This balanced out with the courses in which he did very poorly such as Latin, Physics and Chemistry. Therefore, Warren did not set the world on fire with his intellectual prowess.

Because of Warren's poor record in high school physics, he had to pass an entrance examination to enter the University of California at Berkeley. At California, Warren did not demonstrate an ability to think on his own. He merely reacted to what the professors said in order to get by. He was content with average grades, and had no desire to lead his class. As a result, Warren was again only an average student. He was more interested in his friends and outside activities such as splurging on steak and beer at the college meeting place, "Pop Kessler's," and in consuming coffee and hot dogs at "Bill the Dog Man's." This was due to the fact, as mentioned before, that Earl was not interested in the theoretical approach to education such as in Political Science, English and History. (However, it is interesting to note he earned his best grades in those same subjects.) He was more

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interested in people and their feelings, and as a result, he was well liked by his fellow students.\textsuperscript{27}

Warren did not run for any school or political office while at California. However, he used his popularity to campaign for others.\textsuperscript{28} One might visualize Warren with a broad smile, a hardy handshake and his own inimitable way of urging a friend to vote for someone. Sometimes, however, he offended some students by his personal, non-philosophical justification for supporting a candidate.\textsuperscript{29}

Warren entered California's Boalt Hall of Law at the end of his third year. As might be expected, he graduated in the middle of his class. He was awarded the degree of Doctor of Jurisprudence. What is psychologically significant is his famous confrontation with the Dean of Boalt Hall, William Carey Jones, Jr.\textsuperscript{30} At the end of his first year, the Dean had told Warren not to expect to graduate unless he volunteered to recite the cases in class. Already disenchanted with the case method of instruction, Warren asked the Dean whether he was obligated to do so. The Dean replied that he wasn't. He also asked whether he was notified of that requirement of graduation. The

\textsuperscript{27}Katcher, op. cit., Pp. 21 and 23-25.
\textsuperscript{28}Weaver, op. cit., p. 31.
\textsuperscript{29}ibid.
\textsuperscript{30}loc. cit., p. 32.
Dean answered no. The Dean defensibly told Warren he wouldn't graduate if he failed one examination. Warren said he had no intention of doing so, and he didn't fail any. However, he refused to volunteer in any class, including the Dean's constitutional law class. Even though he graduated we can see a trait in Warren's character. When he disagreed with something on principle, he was determined not to compromise. There is no evidence to suggest that had the Dean told Warren he had to volunteer in order to pass he would have refused. He probably would have volunteered. For it seems that if Warren did not become so rigid as one who would not compromise at all costs as in the case of an Active-Negative. His sister stated that Warren knew just how far he could go before he was defying parental rule. Thus, even though Warren may have on occasion become stubborn and uncompromising, he did not lose sight of his overall goals such as his graduation from law school, nor did he develop an intransigent or self-damaging position.

After graduating from law school, Warren was admitted to the California Bar. He worked for one year in the law offices of the Associated Oil Company. He was a law clerk the next year in the law firm of Robinson and Robinson.

32 Weaver, op. cit., p. 22.
earning only $3.00 a week. In neither firm was he given
the opportunity to go to court. The only positive de-
velopment from these jobs was that he received some prac-
tical knowledge and experience. However, he felt that
there was no future in reviewing contracts, researching,
statute and case law and preparing briefs, thus, he re-
signed. He was planning to open a law office with two
former Boalt Hall graduates when the United States declared
war on Germany.  

Warren's first attempt to enlist in the Officers
Training Program was unsuccessful. The second time he was
accepted but failed his physical. He had to have a opera-
tion for hemorrhoids. This operation coupled with the pneu-
monia he caught during the operation disabled him for about
a month. By the time he recovered the OTC Program was
disbanded and the draft was in effect. He enlisted in
August, 1917 prior to his actually being called. He was
sent to Camp Lewis near Tacoma, Washington for four weeks
of basic training. While at Tacoma, he completed the Offi-
cers Training Program and was commissioned as a second
lieutenant. He was then sent to Camp Lee, Virginia. It
was in Virginia that he trained soldiers to use the bayonet. He expected to be sent overseas for action but instead was

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33 Huston, op. cit., p. 30.
34 Katcher, op. cit., p. 29.
to Camp MacArthur at Waco, Texas to teach in an officers' training camp. He was also promoted to the rank of first lieutenant. However, soon after he was transferred, the armistice was signed and he was discharged a month later.36

During Warren's tenure in the army he was responsible for many soldiers. Warren was not an abusive individual, and he was able to get along with his soldiers. In the process, he was able to deal with their problems and objections.37 During his tenure in the army he demonstrated an ability to lead men with many different kinds of civilian backgrounds. For example, he instructed soldiers from the business world, from the academic world and from the world of agriculture.38

Therefore, Earl Warren developed a view of the world peculiar to himself. He had no particular ideological bent. He was pragmatic. Yet, we can still understand his future political decisions when recognizing that the underlying trait of this man was one of compassion. His whole philosophical orientation was to help those people in need. This was initially ingrained in him by his father's stirring story of his uncle's death, and was further impressed upon him by his first hard knowledge

36 Huston, op. cit., p. 32.

37 Katcher, op. cit., p. 30.

38 Huston, op. cit., p. 32.
of good decent people injured by labor-management conflict and by criminal elements in the developing state of California. His compassionate positive feeling for others was attested to by the fact that he was well liked in and out of school by fellow students and by the soldiers for which he was responsible. This predilection to aid others, especially the less fortunate, would be the cornerstone of his political philosophy for the rest of his life.

While Warren was a pragmatic compassionate young man, he also demonstrated an ability to be active. In high school he was vigorously engaged in activities, outside of academics. In college he was always out on the hustings campaigning for some friend. This same tendency toward activity was apparent by his desire to go overseas during World War I. He wanted to be on the front where all the action was, rather than passively training people to be soldiers. Thus, after he left the army the mold was set for Warren as to his personality type. The real test of Warren's character came when he faced with his first independent political responsibility. For once Warren assumed the office of District Attorney for Alameda County, we can observe the development of the personal style he used in public life. This style will be repeated years later when he becomes Chief Justice of the United States. It is to this subject we now turn.
DEVELOPMENT OF STYLE

Earl Warren returned to Oakland to live with his sister and her husband. Warren was discharged from the service with only $60. Since he had outgrown his civilian clothes, he only had his uniform to wear. It was at this point he began looking for a job. Due to the assistance he received from two friends, Leon Gray and Charles Kasch, he was hired by the Judiciary Committee of the California State Legislature for $7.00 a day. He later was hired by Oakland City Attorney H. L. Hagen to be a deputy for $200 a month in addition to whatever he received in private renumeration. Finally, Warren obtained a job in the Alameda District Attorney's Office as a deputy on May 1, 1920 for $150 a month.

It was there, in the Alameda District Attorney's Office, in which Warren spent the early adult years of his life. He had intended to work there for only a year and a half. Instead, he ended up working in the Alameda District Attorney's Office for eighteen years, first as a deputy, and later as the District Attorney.

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40 Weaver, op. cit., p. 37.
41 ibid.
While a deputy District Attorney Warren showed a high propensity for work. He would diligently look up law cases for District Attorney Ezra Decoto. Decoto would ask him on a Saturday morning to find a principle of law relevant to a particular case, and on Monday morning the information would be on Decoto's desk. He would also keep abreast of the cases on which other deputies were working. As a result, he would be able to take over a case when the deputy handling it would resign. Due to his hard working style and his amazing ability to collect, comprehend, analyze and retain facts, he was named Decoto's Chief Deputy in 1923. He was assigned to the County Board of Supervisors as the legal counsel. The positive impression he made on John Mullins, a county supervisor, enabled him to succeed Decoto when he was appointed to the State Railroad Commission in January, 1925. Warren had two of the five county legislators supporting him. Another Deputy, Frank Shay, had the support of the Mike Kelly Machine which could be counted on to deliver the other three. But Warren impressed Mullins to the extent that he committed political suicide by voting for Warren as District Attorney. Mullins even persuaded his colleagues to make their selection unanimous.42 Warren never forgot

the assistance he received from Mullins and for many years after, they continued to be good friends.⁴³

As District Attorney, Warren was a successful prosecutor, while remaining fair to and feeling compassion for the defendant.⁴⁴ Simon⁴⁵ states that during Warren's thirteen year tenure as District Attorney; he "convicted more than a dozen murderers a year, jailed the county sheriff for gambling and graft and convicted Alameda's mayor of bribery and theft of public funds."⁴⁶

At the same time he would feel sick to his stomach when the jury rendered a guilty verdict. He was as well adamantly opposed to anyone violating the rights of the accused in order to get a conviction.⁴⁷ A former deputy of Warren's later stated that when a deputy was unsure of the guilt of a defendant, he would take him off the case. If his entire office felt the individual was not guilty, Warren would drop the case. For he stated, "None of us was ever asked to prosecute a defendant if we weren't sure of his guilt."⁴⁸ United States District Judge Frank H. Kerrigan remarked that Warren's department would not lose a case for

⁴³Katcher, op. cit., p. 46.
⁴⁴Simon, op. cit., p. 58.
⁴⁵ibid.
⁴⁶ibid.
⁴⁷ibid.
⁴⁸Weaver, op. cit., p. 48.
failing to adhere to the constitutional protections of the Bill of Rights. Warren even extended these protections to state and local cases not covered at that time by the federal Bill of Rights. Warren never forced an accused person to make an involuntary statement. If the accused wanted to see an attorney Warren's office complied. Therefore, Warren's office proved that a prosecutor's office could be efficient in cleaning up crime and corruption without violating the person's protections under the federal Bill of Rights.

Warren not only introduced the practice of respecting constitutional guarantees, but he reorganized the administrative structure of his office. To staff his office, Warren hired bright attorneys who were capable of thoroughly researching the facts involved in each case before the trial date. He organized a homicide department consisting of lawyers and investigators who were available to respond to any serious crime at a moment's notice. Warren and his office was known nationwide for its efficiency and precision. Professor Raymond Moley of Columbia University stated in 1931 that Warren was the brightest district attorney in the United States. Years later Moley described his office as one which was efficiently organized, non-partisan and could continue in this fashion long after Warren was gone.

49 loc. cit., p. 44.

Thus, Warren was active in establishing new humane guidelines for law enforcement and by molding a haphazard district attorney's office into the most efficient office of its kind in the United States.

Warren was not only active in dealing with Alameda County law enforcement problems, but he also influenced the administration of justice statewide. He was chairman of the advisory Board of the California Institute of Police Officers Training and the Board of Managers of the State Bureau of Criminal Identification. He served on various committees of the American and California Bar Associations. He served as the president of the District Bar Association. He also represented the State Association of Peace Officers. He was the author of most of the essential laws advocated by these groups. For example, in 1934 he helped introduce a series of amendments to the state constitution which were designed to "modernize the antiquated methods of catching and convicting criminals." The administration of justice had not kept pace with the changes in technology.

Law enforcement was hampered primarily by the overlap in authority between the state, county, city and town level. As transportation improved and population grew, the decentralized method of law enforcement made it difficult to apprehend the Dollingers of the day. As a result of his

52. Weaver, op. cit., Pp. 51-52.
success in integrating the multiple law enforcement agencies in Alameda County, he was able to persuade California voters to adopt his proposed amendments to the state constitution.*^ Thus, Warren did not confine his energies merely to law enforcement in Alameda County, but he also devoted his time to alleviating the problems statewide.

Therefore, we can trace the development of a man who appeared to be an activist while service as District Attorney of Alameda County. The style he developed during this period was continued when he became Attorney General of California, Governor of California and finally Chief Justice of the United States. First, Warren demonstrated an ability to accept and relish challenges. He successfully reorganized his office in Alameda and helped to alleviate the crime problem as well. That alone demonstrates that Warren had an active personality. Compared to the previous District Attorney, Decoto, he was extraordinarily active. Warren did not restrict his activities to the county, but he broadened his horizons to deal with state problems as well. He sought to aid state law enforcement officials by introducing constitutional amendments to modernize their techniques.

We do not have any substantial evidence to suggest that Warren enjoyed the District Attorney Office, nor do we

^[53 loc. cit., Pp. 52-53.]

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have any evidence of this office meeting his need for esteem. We can assume that Warren enjoyed the challenges inherent in the responsibility offered by the office of District Attorney, for he not only attempted to deal with county and office problems, but he sought to alleviate the problems faced by the largely disorganized law enforcement agencies across the state. The fact that he stayed in the District Attorney's Office for sixteen and one-half years longer than he had intended should suggest that he enjoyed the challenges inherent in that job. Otherwise he would have left earlier as in the case of his short tenure in the law firms of Associated Oil Company and Robinson and Robinson. Warren, who had not enjoyed his previous educational and job experiences, was able to stay in the District Attorney's Office for eighteen years and carve out roles for himself that were beyond the expectations of the office he held. It is plausible to conclude that he must have enjoyed the job.

While Warren was active and probably enjoyed his job, an examination of his style would be incomplete without mentioning his compassion for people that was ingrained in him by his father's recounting of his uncle's death, by the people hurt in labor-management strife and by people exploited by organized crime in Bakersfield. These strong feelings of compassion were revealed by his feelings toward the criminally accused. He never prosecuted a man whom he believed to be innocent. He tried to give the defendant
the benefit of the protections offered by the federal Bill of Rights. Yet even after doing this, he would still feel upset when the jury rendered the guilty verdict in a case.

In conclusion, you can see that the style Warren developed while District Attorney of Alameda County was that of an activist (e.g. by effectively reorganizing the district attorney's office and by persuading the California voters to adopt amendments to the Constitution modernizing the criminal justice system), and a concern for the well being of the unfortunate. This style would repeat itself until the day Warren died. Thus, we can see the pattern of Earl Warren as a Chief Justice who would lead the Court in guaranteeing that the protections of the Bill of Rights were given to the poor, uneducated, black and less fortunate people as well as to the rich, educated, white and more fortunate people in this country.

In the next section, I would like to examine the political background of Warren between the time he was District Attorney of Alameda County until the time he became Chief Justice of the United States. It is to this summary we will now turn.

POST-PROSECUTOR DAYS

Earl Warren waited until California Attorney General U. S. Webb retired to run for that office. While District
Attorney, he proposed several constitutional amendments to strengthen the office of Attorney General. The amendments included a raise in salary of the Attorney General from $5,000 to $11,000 a year and a raise for his deputies from $200 to $600 and $700 a month. The amendments also prohibited employees of the Attorney General's Office from engaging in private practice. The amendments were ratified by the voters leading to the charge that Warren was "preparing a job for himself." 54

Warren was the only Republican to survive the Democratic landslide of 1938 which elected as Governor Culbert L. Olson. Olson was the first Democratic Governor elected in more than thirty years. As the new Attorney General, Warren was quite active in his job comprehensively reorganizing the office of the Attorney General. For example, he created offices of litigation, collections, criminal work, taxes and opinions for state government. He also recruited a staff of fifty highly qualified attorneys and assigned them to the departments of their specialization and expertise. 55

Warren was also active in combating corruption in the out-going Republican Governor's office. During his very first day in office, he learned that Governor Merri-man's personal secretary was selling paroles to prisoners in state penal institutions. He immediately initiated

55 loc. cit., p. 52.
proceedings that led to the imprisonment of a man who was appointed by the former Governor to be a Superior Court Judge in Alameda County. 56

Outside the government as well as inside he confronted criminal elements. For example, he persuaded Black Jack Jerome, the proprietor of an illegal dog racing track, to close down. When he made it clear that he would enforce the law on California's other six proprietors, as well as on Black Jack, Black Jack complied. The other six followed Black Jack's lead and complied when their season opened. 57

Another major nuisance to Warren and the state's law abiding citizens was a fleet of four gambling ships off the coast of southern California. These ships operated three miles off the California coast claiming they were in international waters. However, Warren found legal recourse. He referred to a United States Supreme Court precedent which allowed states to abate nuisances outside the territorial limits of the United States. Furthermore, the ships were operating within a bay inside the state's territorial limit which was in violation of state law. Finally, he could prohibit the transportation of people to the ships by the unlicensed water-taxes. 58

56 Weaver, op. cit., p. 76.
57 loc. cit., Pp. 76-77.
Warren ordered these ships to discontinue their operations. The ship owners were led by Tony Cornero, the owner of the luxurious ship, the Rex. They refused to terminate their activities. Warren then sent an army of police, deputies, and accountants onto the ships to close them down. Three ship owners surrendered without resistance. Cornero, however, barred the gangway and countered the posse with fire hoses. Warren decided to wait until Cornero capitulated reasoning that the patrons of Cornero would want to leave the ship before their families found out about their activities. After one night Cornero agreed to allow Warren to place a guard on his anchor to prevent his escape in exchange for the removal of his irritated customers. Nine days later when food and supplies on the ship were almost exhausted, Cornero unconditionally surrendered to Warren. Cornero agreed to the destruction of his gambling equipment and paid almost $25,000 in penalties to various governmental agencies.\footnote{Weaver, op. cit., Pp. 79-82.} Thus Warren responded to criminals openly flaunting the law in the face of those sworn to uphold it.

Despite Warren's concern for the civil rights of all people, rich and poor alike, he was engulfed by a wave of anti-Japanese racism present in the country during World War II. He gave his complete endorsement and full co-operation to the relocation of Japanese-Americans from
the west coast of California to camps at Tute Lake in northern California. He told a congressional committee and a governor's conference that we must treat Japanese people differently than Americans of German and Italian descent since we could not understand their mode of living and language whereas we could understand descendants of the Caucasian race. He further contended that if the Japanese-Americans were released it would be impossible to distinguish a saboteur from any other Japanese. 60

A reason for Warren's behavior at this time could have been due to his total commitment to the United States war effort at the expense of the civil rights of American citizens. He might have wanted to take a more active part in this war than he did in World War I as a training instructor. The choice wasn't his, however, as once he was notified of the evacuation of the Japanese, he was in the forefront of the orderly transition from prison life to civilian life. He called "every mayor, sheriff and police chief he knew to ask that they do everything possible to resettle the new arrivals without violence." Despite the built-in tensions between Californians and Japanese descendants, the transition was achieved with few serious incidents. 61

60 Simon, op. cit., p. 59.
61 loc. cit., pp. 59-60.
In the interim, Warren was elected Governor of California. He wanted to continue on as Attorney General, but the growing tension between himself and Democratic Governor Olson compelled him to run for the state's highest office. While Attorney General, Warren was exhorting the California peace officers and the general public to be prepared in case there was an enemy attack. Olson was growing suspicious of a possible gubernatorial opponent in 1942. As a result, after Pearl Harbor he proclaimed a "state of emergency" which excluded the Attorney General from any specific role. Furthermore, Olson pocket-vetoed a special appropriation of $214,000 to aid in operation of the Attorney General's Office during war. These actions prompted Warren on April 9, 1942 to announce his candidacy for governor. 62 He defeated Olson in the general election by a margin of 1,275,287 to 932,995. 63

When Warren became Governor in 1943, he had to undergo an educational process as his only previous political experience had been related to law enforcement. He was well versed on pardons, military preparedness and the criminal justice system, but he was unaware of the scope of the welfare system, and water rights problems, among other things. He worked hard at comprehending these problems and was not afraid to ask questions when he didn't understand

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63 Huston, op. cot., p. 66.
something. Although Warren made a few purely political appointments to pay off some campaign debts, he primarily appointed specialists to the state governmental posts. The appointment of the "professional" people instead of "political" supporters provided sorely needed expertise to a new Governor. 64

Warren's non-partisan professional approach aided him during his ten years as Governor in dealing with the problems of the state of California. As population continued to grow through migration and births, the problems Warren had to deal with increased. Warren was able to meet the challenge of a growing state, however. As Simon points out, "He built more highways, schools and hospitals than any other governor in the nation. He reformed the prison system, widened unemployment insurance coverage and tried vainly three times to establish a compulsory health insurance program." 65 We can see that Warren was quite an activist governor.

As governor, he definitely did not satisfy all the people. For example, he did not satisfy conservative members of his own party with his progressive programs. He nevertheless did satisfy enough Californians to be re-elected for two additional terms. The progressive Warren rejected

65 Simon, op. cit., p. 60.
the extremes of the right and the left. He believed that our democratic system needed to meet the changing needs of society in order to survive. He stated:

"If the government is truly to serve the people we must continually make social progress. I will shoulder every responsibility to make sure progress but never advance to socialism, to which I am opposed. I am sure a great majority of Americans in both political parties want no part of counterfeit liberals on one hand or blind reactionaries on the other."65

Warren was not an ideologist of the right or left but a pragmatist who was flexible enough to adapt his views to differing social conditions.

During his tenure as Governor, Warren was selected in 1948 by New York Governor Thomas Dewey to run for Vice-President of the United States. Despite the predictions of pollsters of a Dewey-Warren victory, Harry Truman won by a narrow margin.66 Warren had hoped to be nominated by the Republican Party for President in 1952. He knew the only chances of that occurring would be if Dwight Eisenhower and Senator Robert Taft of Ohio were deadlocked in the convention. It would have been advantageous for him to support the Taft forces in the seating of pro-Taft delegates. He was close to Eisenhower on substantive issues which enabled Eisenhower to receive the votes for the entire California delegation on this

procedural issue. The seating of pro-Eisenhower delegates in turn guaranteed the nomination of Eisenhower. Some people suggest that Warren's decision to side with the forces on the question was the reason he was appointed to the United States Supreme Court in 1953. Eisenhower denied this suggesting instead that his views were compatible to those of Warren. Regardless of the reasons, Earl Warren was appointed Chief Justice of the United States by President Eisenhower in September, 1953. He served an interim period before the Senate readjourned and confirmed him in February, 1954.

In conclusion, we can see that during Warren's tenure as Attorney General and as Governor he was active in dealing with the problems that confront him. We can also see the progressive philosophy he adopted to deal with those problems. These patterns suggest the type of behavior we can expect from Chief Justice Earl Warren. Quite accurately Huston remarked, "In the light of this philosophy, it is difficult to see how anyone at all familiar with Warren's career and character could have been surprised at his decisions after he became Chief Justice."

It is to the examination of this to which we will now turn. We will examine his behavior on the Court in order

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70 loc. cit., p. 70.
to test my suggestion that Earl Warren should be placed in the Active-Positive category.

AN ACTIVE-POSITIVE CHIEF JUSTICE

Like John Marshall, Earl Warren enjoyed the position of Chief Justice of the United States. A political friend of his remarked how happy he was to be Chief Justice since he could serve longer than a President. Warren once remarked, "this is better than being President. There have been thirty-some Presidents, but only fourteen Chief Justices."71 During this tenure he was under attack from the extremists of the far right (John Birch Society) and later from the new left.72 Despite this fact, he enjoyed the opportunity to eliminate injustices he perceived as existing in the country and express his objectives for the Court and the country. He stated:

"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 we should aid them permanently to our storehouse of treasures. To me these rather obvious objectives must be above mere rhetoric; they are among the ultimate aims of the people in a democratic society."73

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71 Weaver, op. cit., p. 17.
These were ideal to strive for, and the Warren Court used the judicial branch as a vehicle in their attempt to achieve these ideals.

Warren's activist philosophy of government (e.g., using his style flexibly in order to achieve his philosophical and policy-related goals) foretold his behavior on the Court. Warren's personality would not change once he took the oath of office: it was fixed by the time he reached the Supreme Court. It is to the examination of this personality we will now turn. We will look at the Warren Court's decisions in such landmark cases as Brown v. Board of Education, (1954), Gideon v. Wainwright (1963), Baker v. Carr, (1962), Reynolds v. Sims, (1969) and Wesberry v. Sanders, (1964). We ought to be able to test the proposition that Warren had an Active-Positive personality from this analysis of his behavior (in these cases).

When Warren was appointed by President Eisenhower in October of 1953 to succeed the late Chief Justice Fred Vinson, the Court was faced with a case that squarely challenged state enforced segregation in public schools.

76 369 U.S. 186, loc. cit.; Pp. 72-86.
78 376 U.S. 1, loc.cit., p. 939.
The "separate-but-equal" doctrine in public schools as well as in other public places had been enunciated by the Court in Plessy v. Ferguson, (1896). While there had been exceptions made to this doctrine in segregated public graduate schools, it had remained the legal rationalization for societal development in the South following the Civil War. The landmark Brown decision actually was a combination of four state cases reaching the Court dealing with racially segregated schools. In the Brown case as well as in the South Carolina and Virginia cases the plaintiffs were denied relief due to adherence by the Federal District Court to Plessy v. Ferguson. The Delaware Supreme Court had adhered to Plessy doctrine but ordered integration to compensate for the inferior schools attended by the black students. All four of these cases were granted certiorari by the Court. The opinion was given under the title of Brown v. Board of Education of Topeka, Kansas since Brown's name came first in the alphabet.

A fifth case was decided on the same day (May 17, 1954) as the Brown case. In Bolling v. Sharpe the Court ruled that segregation in the District of Columbia public school system as maintained by an act of Congress was in violation of the due process clause of the Fifth Amendment.

Argument had been heard by the Court in 1952 prior to Warren's appointment. The Court ordered another hearing primarily dealing with the question of whether the Fourteenth

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79 Katcher, op. cit., p. 320.
Amendment as proposed by Congress to be applied to the states sought to eliminate segregation in public places including schools. The historical enterprise did not produce any conclusive insights as to whether the legislators sought to eliminate segregation. Evidence could be found supporting both sides. As opposed to previous cases where the Court made exceptions to the "separate-but-equal" doctrine of Plessy, in the Brown case the Court sought to resolve the question as to whether segregation itself was a violation of the Equal Protection Clause of the Fourteenth Amendment. Warren states the question succinctly: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities?" The Court unanimously ruled that it did.

Using sociological and psychological data other than precedents as the basis for the decisions in the Brown case, Warren asserted that segregation has an adverse psychological effect upon Negro children and that segregation is even more damaging when the practice is sanctioned by law. He said it "has a tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would

83 loc. cit., p. 856.
receive in a racial(ly) integrated school system." Thus, he concludes with the assertion that segregated schools are "inherently unequal." As a result, the Court extended the jurisdiction of the Equal Protection Clause of the Fourteenth Amendment so as to prohibit de jure segregation in public schools.

The unanimity reached by the Court in Brown was due as much to Warren's leadership ability on the Court as to the importance of the case itself. The unanimity surprised many Court observers. However, Warren was flexible enough to achieve support for his position from all of his colleagues. He knew from his experience as governor that the art of politics was to compromise. He applied this talent to this brethren on the Court. As Weaver states, old acquaintances of Warren had observed Warren's persuasive ability as Governor. Weaver further suggests that Warren's old associates . . . had seen him go to work on a recalcitrant department head, a conniving party official and the most whimsical of all living creatures--the California voter. He is an arm-twister, a man who gets things done." It was more important to Warren to persuade his brethren to unanimously overrule Plessy's "separate-but-equal" doctrine than to achieve unanimity, on any other issue. The Court was not merely overruling a way of life for many millions of Americans.

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85 loc. cit., p. 857.
86 ibid.
87 Weaver, op. cit., p. 217.
The South had segregated numerous public places between whites and blacks, e.g., restaurants, rest rooms, and churches (some are still segregated today). If this division was to be policy viable, it had to at least have a unified United States Supreme Court.

I would suggest that these attributes are the characteristics of an Active-Positive. Only an Active-Positive could be flexible enough to compromise among the diverse judicial philosophies on the Court at that time to achieve a particular policy stand. It was no small achievement for a new Chief Justice to persuade such strong willed men as Black, Douglas and Frankfurter to agree with his opinion. Thus, Warren's persuasive ability clearly suggests the probability of an Active-Positive personality.

An Active-Negative would not likely persuade the Douglas and Frankfurter wings to agree on anything let alone an opinion of such magnitude. The Active-Negative would have developed his own position unable to compromise with colleagues with whom he disagreed. To do so would be to sacrifice principles, and to an Active-Negative principles are more important than compromise. A pragmatist such as Warren would not have fit into this category.

The Passive-Positive Chief Justice would try to appease his colleagues to go along with his position. He would be more concerned with keeping their affection than

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trying to persuade a few holdouts to go along with the majority. If they wouldn't go along with his draft opinion, he would respect their opinion hoping to keep good will between them while sacrificing the possibilities of a unified Court on a decision that required it.

Although Warren was a friendly person who appreciated that quality in others, he would not allow judicial impropriety to go unnoticed. For example, in Stewart v. United States (1961), Associate Justice Frankfurter scolded the majority for setting aside a conviction due to "improper" questioning conducted by the prosecution. Warren could not restrain himself. As soon as Frankfurter finished, he retorted that Frankfurter's demonstration should be confined to the conference room and not be displayed before the general public. While Warren promoted amicable relations between his brethren on the Court, he did not allow this predisposition to control him in all instances. When the propriety of the Court was challenged, he would respond to such behavior. This leads to the judgement that Warren should not be classified as a Passive-Positive.

A Passive-Negative Chief Justice would not likely have been concerned with the importance and significance of the Brown case. He would have developed a position, informed his colleagues of it, and let them come to their own opinions. If his opinion didn't set well with his

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89 Weaver, op. cit., p. 256.
brethren, so be it. The Passive-Negative would perceive role as presiding over the nation's highest Court, hearing adversary opinions and voting as one among nine. Beyond that, he would let nature take its course. This type of Chief Justice was not interested in finding common ground among his colleagues. He probably would not have been able to persuade such strong willed men as Frankfurter and Douglas to agree on noncontroversial procedural questions, such as the time of adjournment let alone a case with the controversial legal questions of Brown. Warren would not be classified as a Passive-Negative.

We shall now look at two other types of cases to further test the proposition of Warren being an Active-Positive Chief Justice. The first one we will look at is a criminal justice case. In Gideon v. Wainwright (1963), the Warren Court expanded the rights of criminal defendants vis-a-vis the states. They did so by further incorporating the Sixth Amendment right to counsel to state courts through the Fourteenth Amendment. The second type of case we will examine are the reapportionment cases of the early 1960's such as Baker v. Carr (1962) which led to both Reynolds v. Sims (1964), and Wesberry v. Sanders (1964) the Warren Court expanded the Equal Protection

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93 376 U.S. 1, loc. cit., p. 939.
Clause of the Fourteenth Amendment so as to include citizens who were underrepresented in their state legislative districts and in their congressional districts.

Gideon v. Wainwright (1963)\textsuperscript{94} involved a "drifter" named Clarence Earl Gideon was arrested in Florida on a charge of breaking and entering the Harbor Poolroom with larceny in mind.\textsuperscript{95} The offense was a felony under Florida law. Gideon appeared in a Florida State Court as in indigent. He asked the Court to appoint him legal counsel. The Court denied his request on the grounds that Florida law required the appointment of an attorney to an indigent only when charged with a capital offense. He attempted to defend himself in Court, but was convicted and sentenced to serve five years in the state penitentiary. He filed a Writ of Habeas Corpus with the Florida Supreme Court asking them to overturn his conviction and grant him a new trial. The basis of his appeal was that he was denied his right to an attorney under the Sixth Amendment of the Constitution. The Florida Supreme Court denied him relief, and the United States Supreme Court granted him certiorari on appeal.\textsuperscript{96}

After hearing arguments, deliberating, and unanimously finding for Gideon, Warren assigned the opinion to Black. Black said, in reversing the decision of the Florida Supreme

\textsuperscript{94} 372 U.S. 335, loc. cit., Pp. 427-430.
\textsuperscript{95} Weaver, op. cit., p. 219.
\textsuperscript{96} Lockhart, et.al., op. cit., p. 428.
Court that the Due Process Clause of the Fourteenth Amendment made provisions of the Sixth Amendment provision relating to counsel essential to a fair trial applicable to the states. The right to counsel was one of the fundamental rights first applied to the states in Powell v. Alabama (1932), but only in capital cases. The Gideon decision reversed Betts v. Brady (1942) which deemed the presence of an attorney in a state court not be a fundamental right in felony cases, except under "special cases."

Black went on to discuss the importance of an attorney to a defendant by saying when:

"... any person is hailed into Court who is too poor to hire a lawyer, (he) cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public interest in an orderly society. Similarly there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries."

The reasoning of Black reflected Warren's views closely. For, in 1954, nine years before Gideon reached the Court,


98loc. cit. p. 428.
Warren told the American Bar Association that "... no man accused of a serious offence is capable of representing himself."^99

What was significant about this case as far as Warren's personality is concerned is that the Warren Court expanded the rights of poor people vis-a-vis the criminal justice system in this country. The rich could afford to hire the best attorneys to defend themselves while the poor had to face the consequences alone. The unanimous decision of the Court proved again Warren's ability to overrule a previously established doctrine (Betts) which denied poorer people the protection of a Court appointed attorney except under "special circumstances."^100 A Passive Chief Justice might have voted against overruling Betts or overruling it all at once. He may have felt that the Federal Supreme Court should not use the Fourteenth Amendment to require state courts to adhere to the Federal Bill of Rights. A Passive Chief Justice might have ruled in favor of Gideon on the basis that this case involved "special circumstances" which the Court had used since Betts. The Betts doctrine essentially declared that "the special circumstances requiring the services of counsel at trial."^101 The Warren Court, however, went much further in Gideon when they declared that anyone charged

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^99 Weaver, op. cit., p. 219.
^100 Lockhart, et. al., op. cit., p. 430.
^101 Ibid.
with any felony, capital or not, is entitled to an attorney. In this case Warren demonstrates his ability to act upon his beliefs when he sees an injustice, a precedent to the contrary notwithstanding. Thus, he demonstrated his ability to be an activist by overturning a decision reached only twenty-one years before. The presence of the towering figure called "almost Old Testament in character" lending his persuasive talents to the side of Gideon's cause probably had an impact on the final unanimous vote.102

The apportionment cases of Baker v. Carr (1962),103 Reynolds v. Sims (1964)104 and Wesberry v. Sanders (1964)105 are other examples of Warren giving direction to the Court in alleviating injustices inflicted on millions of Americans. He and a majority of his colleagues interjected the authority of the nation's highest court into what had heretofore been a political question.

The fundamental questions involved in all these cases stemmed from the systematic underrepresentation of urban areas because of failure to adjust to apportionment of legislatures despite the massive movement of the population from rural to urban areas. Despite the gradual redistribution of the population from the rural to urban areas, the congressional and state legislative districts were not redrawn by the state legislatures to reflect the new population

102 Ibid.
104 377 U.S. 533, loc. cit., Pp. 940-946
105 376 U.S. 1, loc. cit., p. 939.
distribution. The Court was faced with a unique political issue as well as legal (separation of Power) issues. Obviously, the state legislators would not redesign the election districts to reflect equal population distribution since to do so might have meant the end to their political careers. Thus, the Warren Court broke the stalemate by declaring that citizens (underrepresented) were being denied their constitutional right to equal protection under the law. The Court ordered the state legislatures involved in the cases to re-apportion the districts to reflect equal population distribution as closely as possible. We turn to these cases in greater detail.

Baker v. Carr (1962)\textsuperscript{106} was based on a suit filed in Federal District Court by Charles Baker and other Tennessee voters. The plaintiffs charged the state Legislature with refusing to re-apportion the state legislature on the basis of population in accordance with the Tennessee constitution of 1871. The legislature had reapportioned themselves every ten years between 1871 and 1901. However since 1901 all proposals for re-apportionment of the state legislature had failed to pass. The plaintiffs filed suit against the supervisor of elections in the state of Tennessee, Secretary of State Joe C. Carr, stating that to conduct elections under the 1901 statute was a violation of the Equal Protection Clause of the Fourteenth Amendment. The three-judge district court acknowledged the violation of the citizens' constitutional rights. The court denied relief, however, because they felt that the

\textsuperscript{106}369 U.S. 186. loc. cit., Pp. 72-86.
nature of the issue was primarily political and not a justiciable issue. This constitutional interpretation was endorsed by the Court through Justice Frankfurter in Colegrove v. Green (1946)\textsuperscript{107} when they felt the Guaranty Clause of the Constitution prevented the court from entering into a "political thicket" to grant relief to Illinois voters affected by malapportioned Congressional districts. The Warren Court, however, felt otherwise and granted certiorari to hear the case.\textsuperscript{108}

The Court, in an opinion written by Justice Brennan, reversed the decision of the District Court and sent it back to them declaring "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and . . . that the appellants have standing to challenge the Tennessee Apportionment Statutes."\textsuperscript{109} The Court thus declared that they could hear malapportionment cases under the Equal Protection Clause of the Fourteenth Amendment.

The decision was very significant by allowing the Court in future cases to enunciate the "one-man", "one-vote" doctrine which gives every voter virtually equivalent sized legislative districts. This decision was recognized by such political leaders as Attorney General Robert Kennedy and

\textsuperscript{107}loc. cit. Pp. 71-72.
\textsuperscript{108}loc. cit., Pp. 72-86.
\textsuperscript{109}loc. cit., p. 73.
Senator Richard Russell of Georgia as a landmark decision of tremendous importance to the American political system. It also pointed to the fact that an activist court led by Warren was not afraid to look into the processes of a political branch of government when it violated the rights of citizens under the Constitution. They were not reticent about overturning a decision written only sixteen years earlier by their now dissenting colleague Frankfurter. It is obvious that a passive Chief Justice could have clung to the Frankfurter opinion as Harlan had done. It would seem to be easier to avoid a problem such as interjecting the judiciary into the arduous task of possibly redrawing legislative districts to be approximately equal in population. However difficult the repercussions that may result from such a decision, they would not deter an activist like Warren from enunciating what he felt was a fundamental right guaranteed to all Americans: the equal right to vote.

The decision in Baker laid the groundwork for the decision reached in Reynolds v. Sims (1964). While Baker opened the door to the Courts to review state legislative apportionment arrangements, Reynolds established the principle state legislatures would have to abide by. This case dealt with malapportioned state legislative districts (both Senate and House) in the state of Alabama. The Alabama constitution required the decennial reapportionment of the

110 Weaver, op. cit., p. 243.
state legislature on the basis of population. The legisla-
ture had not taken any action since 1901. Applying 1960 cen-
sus figures, 25.1% of the state's total population could elect
a majority of the Senate and 25.7% could elect a majority of
the House of Representatives. "Population variance ratios
of $u$ to 41 to 1 existed in the Senate, and up to about 16
to 1 in the House."112 The Alabama Supreme Court refused to
intervene despite the legislature's blatant disregard for the
state constitution. The Federal District Court, however, found
the malapportioned districts in violation of the Equal Protec-
tion Clause of the Fourteenth Amendment.113

The United States Supreme Court heard this case and
upheld the decision of the Federal District Court. In the
final vote Warren was able to obtain agreement of all of his
colleagues, with the exception of Justice Harlan. Warren felt
the malapportioned districts denied urban and suburban voters
their fundamental constitutional right to equal representation
in their legislative bodies. Warren went on to say:

"legislators represent people, not trees
or acres. Legislators are elected by
voters, not farms or cities or economic
interests. As long as ours is a repre-
sentative form of government, and our
legislatures are those instruments of
government elected directly by and
directly representative of the people,
the right to elect legislators in a
free and unimpaired fashion is a bed-
rock of our political system. It could
hardly be gainsaid that a constitutional
claim had been asserted by an allegation
that certain otherwise qualified voters

113 ibid.
114 loc. cit., p. 94.
had been entirely prohibited form voting for members of their state legislature . . . and it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the state should be multiplied by two, five, or 10, while the votes of persons in another area would be constitutionally sustainable." 114

Therefore, the plaintiffs had presented, a justiciable issue and shown injury.

Warren further stated that "logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a state could elect a majority of that state's legislators." 115 He concluded that "since the achieving of fair and effective representations for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators." 116

Thus, Warren expanded the Equal Protection Clause so as to include the malapportionment of legislative districts. He and the Court further established the standard of equal representation in legislative districts as close the "one-man, one-vote" standard as possible.

In addition to establishing this new standard for legislative apportionment, Warren took a final swipe at Frankfurter's

114 loc. cit. p. 941.
115 ibid.
116 ibid.
doctrine of restraining the Court from looking into apportionment or "political" questions. He said:

"we are cautioned about the dangers entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection, our oath and our office require no less of us . . . To the extent that a citizen's right to vote is debased, he is much less a citizen."\textsuperscript{117}

It was the judgment of a majority of the Warren Court that the Equal Protection Clause protected voters as well as political extremists, minority groups and other groups of people.

We can see that by Warren and his Court in establishing the "one-man, one-vote" standard for legislative apportionment he was changing existing procedures for legislative apportionment. The districts were malapportioned due to the noncompliance of state legislatures to follow provisions of their own state constitutions which required reapportionment. Many formula that were devised gave weight to factors other than population in drawing their legislative boundaries. The legislatures considered geographical areas, homogenous communities and local governmental boundaries when devising a formula for legislative districts. To overturn this practice, in addition to compelling the reticent legislators

\textsuperscript{117} ibid.
into adhering to their decennial apportionment deadlines, demonstrates that Warren had an activist personality. A passive Chief Justice would not have likely favored the Court's intervention into what was previously held to be a "political question" in Colegrove, let alone establish a new standard for the conduct of legislative elections. The cases thus far seem to support the assertion that Warren was an Active-Positive Chief Justice.

The Court extended the Equal Protection Clause and established the same "one-man, one-vote" standard for congressional elections the same year as Reynolds in Wesberry v. Sanders (1964). In a 6-3 decision Associate Justices Clark, Harlan and Stewart dissenting, the Court through Black ruled that the malapportioned congressional districts in Georgia were in violation of the Equal Protection Clause of the Fourteenth Amendment. Black asserted, as Warren did in Reynolds, that one man's vote should be equal to another's. Therefore, we see the Warren Court putting the finishing touches on cases dealing with malapportionment which they opened the door to with Baker. The doctrine of legislative districts equal in population stands out as the remedy in these cases.

For the Warren Court to carve out new ground in the apportionment cases, as the Marshall Court did in the early 1800's demonstrates the adherence of Warren and his

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118 376 U.S. 1, loc. cit., p. 939.
colleagues to their dream of achieving equal justice under the law for voters as well as for minority groups and poor people. Most of these decisions which created an uproar in the 1950's and 1960's have become accepted as part of Constitutional law as if the Constitution had been formally amended. A prophetic evaluation of this Court was given in the middle 1960's by Arthur H. Dean, Republican Wall Street lawyer and former diplomat, when he said, "I venture to guess that in the years to come the decisions of the Warren Court will have become so ingrained in the fabric of society that people will wonder how they inspired such vitriolic comments." 119

We have seen the pattern repeat itself over and over again in the cases we have examined. Warren had not developed a definite political philosophy nor was he an ideologist on the right or the left. His world view or philosophy was formed when he was a teenager. This philosophy consisted of a concern for those people who were at a disadvantage vis-a-vis the social political economic system they lived within. The compassion he had for Uncle Hjalmar and the railroad union workers of his childhood transferred to his concern for indigents, blacks, and practically disenfranchised voters. This compassionate predisposition when combined with his activism on the Court gave the Court the leadership it was sorely lacking prior to his appointment as Chief Justice.

This leadership trait also relates to Warren's positive

119Katcher, op. cit., p. 475.
predisposition on the Positive-Negative baseline. Warren was a self-confident and friendly, but reserved man, who enjoyed his leadership role and, as a result, was able to evoke confidence from his colleagues as well as from students of the Court. He became the symbolic leader of the reform movement in the era which had many soldiers but no generals. He was able to achieve such eminence by using the same persuasive qualities he developed as a youngster persuading the neighborhood children to do his work, and as District Attorney of Alameda County persuading Californians to adopt his constitutional amendments modernizing the antiquated criminal justice system on the Court with such different personalities as Douglas, Black, and Frankfurter. During Warren's fifteen plus years on the Court, he was able to obtain unanimity in the Brown case, and an overwhelming majority in the criminal justice and reapportionment cases. The dissents of Black and Douglas during the 40's became the rule of law during the 50's and 60's. Katcher points out that not since Marshall had anyone been able to persuade as divergent a group of associate justices in background and viewpoints as were in the Court during Warren's term. The justices appointed during his term were as heterogenous as their predecessors. In spite of this, Warren was still able to hold them in line with the exception of the "internal security cases."

120 Simon, op. cit., pp. 72-73
121 Katcher, op. cit., p. 475.
He thus was able in many cases to persuade less "activist" justices as Clark, Harlan, White and Stewart to vote with the majority. Warren's ability to persuade probably came from the confidence his associates had in him, his ability to be flexible in order to gain widespread support for his opinion while not sacrificing the essence of the opinion, (as in Brown, for example,) and probably from his ability to cajole a colleague into supporting his opinion. Therefore, Warren did not acquire his ability to lead once he put on his robe. Rather he developed it during his early years of growth and during his first independent public responsibility.

I believe I have presented sufficient evidence to support the assertion that Earl Warren possessed an Active-Positive personality. We have examined his behavior on the Court, concentrating on three different types of cases. The same personality pattern repeated itself over these different types of cases. The court didn't change John Marshall and neither did it change Earl Warren. But Warren changed the court by leading it and the nation in a revolution for civil rights.

SUMMARY

Earl Warren was an Active-Positive Chief Justice. He did not become one overnight. It was not when he assumed the office of Chief Justice that he became an Active-Positive. Warren's personality was formed early in his life.

122 ibid.
and once formed, this personality would continue to exhibit the same characteristics. The basic patterns of behavior Warren developed when he was young were repeated until the day he died.

We could see the origins of his activity in his early years of life. We could see him delegating his household chores to his neighborhood friends. We could see his proclivity for speculation in activities that interested him, such as the outdoors. He was also active from the age of ten in working on summer jobs. During his high school days he was involved in numerous activities such as playing the clarinet in the town band, playing baseball, and working in railroad shops. We can also see the development of Warren's world view as an adolescent. He did not develop a particular ideology, but he developed a humanistic outlook on life. He developed a deep desire to alleviate human injustices. Even when enforcing the law against some of the deprived people, he was scrupulously fair by providing defendants with all protections within the federal bill of Rights. At the same time, he provided Alameda County with one of the most efficient prosecutor's office in the country. Even though his conviction ratio was high, he would sicken at the prospect of someone going to jail. He continued to exhibit his own compassionate pragmatism in dealing with the problems of the less fortunate throughout his political career as Attorney General, Governor and Chief Justice of the United States.
The one exception was his endorsement of the detention of many Japanese-Americans during World War II. It suggests that even one of the most popular civil libertarians in history could fall victim to war-time patriotism. Therefore, the activity baseline of his personality which developed when he was young endured for Warren's entire life.

The positive baseline of Warren's personality also developed while he was young. He did not develop an inferiority complex nor did he develop any compulsive characteristics. He was extremely confident while participating in activities he enjoyed such as the outdoors, baseball and music. He continued to be active in areas he enjoyed when he obtained the office of District Attorney of Alameda County, through Chief Justice of the United States. He was well liked throughout his school years, and as a result he was able to persuade people to do what he wanted at a very young age. For example, he was able to persuade his friends to do his chores for him. This was due to their admiration for him, as well as his ability to match their desire with his objectives. As Alameda County District Attorney he successfully persuaded the California voters to adopt his criminal justice reform amendments to the state constitution. While Governor he was effective in persuading legislators into supporting his programs for highway development, and administrative reorganization of the state's penal institutions among others. His ability to persuade was manifested again on the court when he
was able to persuade his colleagues to support his opinion in such cases as Brown, Gideon and Baker. Therefore, the positive baseline of his personality which developed when he was young continued to manifest itself throughout the remainder of his life.
REVIEW OF OBJECTIVES

In this chapter I would like to achieve three basic objectives. First, I would like to explain what I tried to accomplish in this thesis. Second, I will elaborate on what I did to achieve this purpose. And third, I would like to evaluate as objectively as possible my analysis.

My main objective in this paper was to apply a typology similar to the one Barber used in his analysis of Presidential behavior. Barber had applied a four-fold typology of Active-Positive, Active-Negative, Passive-Positive and Passive-Negative to men who became President of the United States. He analyzed their early behavior patterns and as a result was able to explain their behavior in the White House. I adapted this typology and attempted to apply it to Chief Justices of the United States. This was undertaken to see if an man's behavior on the Court could be explained from the information available on his background.

It is obvious to all that the functions of a President is different from the functions of a Chief Justice. For example, a President is the single head of the executive branch of the Federal Government. As a result he can give leadership to the executive branch and to the country
in accordance with his constitutional grant of power. On the other hand, the Chief Justice has to persuade at least four other Justices to side with his position if he wishes to assume the leadership on a particular issue at law. As a result of these differences Barber's four-fold typology for Presidents had to be modified to fit unique characteristics of the Chief Justiceship.

I was able to modify Barber's categories by incorporating Danelski's concepts of task and social leadership for Chief Justices into the four categories devised by Barber. We could then analyze the behavior of men who became Chief Justices, in this case John Marshall and Earl Warren, to see into which category they would fit, if any. Their early years of life would provide us with the essential information we need to hypothesize on how these men would behave on the Court. We could then test their behavior on the Court to see if their behavior as Chief Justice was compatible with the character typology. If they were we could suggest a correlation between a man's behavior early in their life to that when he reaches the Chief Justiceship. A definitive theory should await an examination of more Chief Justices than just two. Even if we undertake that project it may require more in depth analysis by psychologists to develop a supportable theory. However, this study may allow prediction of behavior that can be expected once a person becomes Chief Justice.
I believe we have opened the door to a more thorough analysis of personality behavior patterns of justices. It enabled us to look into a man's development to see what patterns of behavior developed them. Once established, these patterns, e.g., character, world view and style, etc., probably will not change. Thus we can see that Chief Justices Marshall and Warren's ability to be both task and social leaders develop during the early years of their lives.

Further, they were not appointed to the Court absent of a particular world view. We see their views on society germinate early in their lives. Marshall's theory of nationalism and Warren's compassionate pragmatic outlook developed during their adolescence. And finally, we can see the style they adopted during their first independent public responsibility foretold their ability to relate to the needs and expectations of other people while still young. We can see Marshall develop his own style as District Attorney of Alameda County. These two styles were used again while both were Chief Justices of the United States. By looking into the development of certain patterns of behavior and delineating between four different patterns, we were able to understand why a Chief Justice voted the way he did in certain cases and could better anticipate how he would vote on a given case by analyzing his handling of similar situations in the past.
As mentioned before, I think it would be premature to suggest the formation of a more general theory which will enable the prediction of behavior that can be expected once a person reaches the position of Chief Justice of the United States. This is not to say I don't believe we can use this model to predict with reasonable accuracy the behavior of Chief Justices. It is my cautious approach to scientific research which compels me to await further research using this typology. I would prefer to evaluate further studies applying my typology before acknowledging the formation of a definitive theory on the behavior of Chief Justices.

It is this same vein of thought that I encourage others to use this typology, in analyzing the behavior of Chief Justices. Students of the United States Supreme Court have ample subjects for this endeavor. It would be interesting to find out whether Charles Evans Hughes would be an Active-Positive. We may find that Harlan Fisher Stone is a Passive-Negative as alluded to before. Was there a Chief Justice who will try to compensate for his insecurities on the Court as Barber suggested Wilson, Hoover, Johnson, and Nixon did as President? Also, one may even try this analysis on Chief Justices of other appellate courts e.g., state and/or foreign. Therefore, the prospects are challenging and are only limited by ones objectives.
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