



SPHERE

Fostering Civil Discourse and Diverse Viewpoints for Every Classroom

The Warren Court–Civil Rights through Civil Proceedings Reform

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GRADE LEVEL: 11TH–12TH GRADES

Overview

Students will delve into the lasting legacies and impacts of the Warren Court's decisions and discuss to what extent the Court was pivotal in shaping criminal justice reform.



Objectives

- Define 42 U.S.C. § 1983
- Analyze Warren Court cases impacting the interpretation of the Fourteenth Amendment and 42 U.S.C. § 1983
- Evaluate the impact of the Warren Court on criminal justice reform and the judicial system

Materials

- Lesson handouts printed or shared via Google Docs
- Articles printed or shared via Google Docs

Vocabulary

- Civil liberties
- Fourteenth Amendment
- Sixth Amendment
- Fourth Amendment
- Common law
- Qualified immunity
- Civil rights

Prework

Recommended to complete Lesson 3 of this unit: Civil Rights Contexts for *Gideon v. Wainwright* and Adequate Representation.

Day 1

WARM-UP (10 MINUTES)

Step 1: Have students read about [42 U.S.C. § 1983](#), otherwise known as Section 1983.

Step 2: Ask students to discuss with a partner about what this code provides for citizens.

Step 3: Share with students that this code was established during the Reconstruction era after the Civil War to help protect the rights of African Americans in what was originally known as the Civil Rights Act of 1871 or the 1871 Ku Klux Klan Act. Explain that a pertinent question of this code is whether a person has a “valid cause of action under the Civil Rights Act against police officers when the police officers violate that person’s due process.”

ACTIVITY 1: *MONROE V. PAPE* (15 MINUTES)

Step 1: Share with students that they will be exploring another critical civil rights case of the Warren Court.

Step 2: Ask students in pairs to examine the court case for *Monroe v. Pape* and to fill out the respective case section in the table of Handout 1.

Step 3: After students complete their reading, ask them to share their answers about the case.

Step 4: Ask students to consider how the interpretation of Section 1983 was impacted by this case.

ACTIVITY 2: QUALIFIED IMMUNITY AND THE WARREN COURT (15 MINUTES)

Step 1: Share with students that they will now read a follow-up case that happened toward the end of the Warren Court era that had a legacy on the interpretation of Section 1983 through the present.

Step 2: Have students read the case *Pierson v. Ray* in their same pairs and fill out the respective case section of the table in Handout 1.

Step 3: Ask students to consider how the interpretation of Section 1983 changed and what precedent the case set.

OPTIONAL LESSON BREAK IF NOT ON BLOCK SCHEDULE

ACTIVITY 3: QUALIFIED IMMUNITY ARTICLE ANALYSIS (ABOUT 35 MINUTES)

Step 1: Tell students that they will be taking a deeper dive into the notion of qualified immunity as set out from *Pierson v. Ray*.

Step 2: Have students in either their original pairs or in groups jigsaw the resources: "[How Qualified Immunity Hurts Law Enforcement](#)" and "[Qualified Immunity: How It Protects Law Enforcement Officers](#)."

Step 3: Have students compare and contrast the aspects of qualified immunity mentioned in each article in their groups. Ask students the two key assumptions that they notice in the study by James Craven, Jaw Schwikert, and Clark Neily. What were their findings? Then ask them to compare them to the key assumptions in the article from the FBI's *Legal Digest*.

Step 4: As a class, have students share their findings on the two different perspectives.

For the Cato piece, students should share that one is that public confidence in policing has plummeted over the last decade and the other is that high-profile incidents of police violence have weighed heavily on police–community relations.

Step 5: Ask students to dive deeper into discussion by answering the following question: To what extent is qualified immunity a constitutional right?

EXIT TICKET (10 MINUTES)

Step 1: Ask students to think independently about to what extent the Warren Court was pivotal in shaping criminal justice reform. What are the lasting impacts? Have students use

the answer, cite, evidence format to practice Advanced Placement writing skills to craft a short response.

Step 2: Have students save this response for the next day's lesson.

Day 2

WARM-UP (10 MINUTES)

Step 1: Have students recall the cases they have learned about from the Warren Court era. Students should list cases such as *Gideon v. Wainwright*, *Miranda v. Arizona*, and *Monroe v. Pape*.

Step 2: Ask students to first think independently about how the Warren Court impacted the civil rights movement in the United States. Then ask students to share with their neighbor one way the Warren Court impacted the movement.

Step 3: In whole group discussion, have students share their answers.

ACTIVITY 1: CASE ANALYSIS (40 MINUTES)

Step 1: Define “common law” for students and tell them that it is derived from judicial decisions and not formal statutes.

Step 2: Share that scholar David A. Strauss argues that the Warren Court was not based solely on the Constitution but rather on precedent from other cases.

Step 3: Have students pair up in groups of four. In those groups, ask students to jigsaw the Strauss article “[Common Law Genius of the Warren Court](#).” Have all students in the group read the abstract and then assign each student a case. These cases include the following:

- *Brown v. Board*, p. 860
- *Gideon v. Wainwright*, p. 868
- *Miranda v. Arizona*, p. 871
- Reapportionment cases, p. 875.

Step 4: As students read, have them consider if the case was common law or based on the Constitution.

Step 5: Have students share their answers.

Step 6: Share that Strauss considers the remedies to state abuse within an adversarial system that the Warren Court codified. Strauss compares the Warren Court's decisions in *Gideon v. Wainwright* and *Miranda v. Arizona* to US Supreme Court Justice Benjamin Cardozo's decision in *MacPherson v. Buick Motor Co.* Courts prior to Warren were considered hostile to equality and social justice. Strauss rejects the characterization of Earl Warren as “lawlessly activist.” Instead, he lifts the Warren Court's “explicitly normative reasoning with its reliance on the lessons of the past and an empirical bias for the present. Strauss notes

that the Warren Court eschewed modest and incremental change in favor of a “more fair or more just world.”

In the *Brown* decision, with respect to *Plessy v. Ferguson*, the Court applied common law principles and concluded that it was not “faced with as long standing an endorsement of segregation as might have appeared.” So, too, with *Gideon v. Wainwright*, the Court's emblematic criminal procedure reform case, the key operating principle is reasonableness. The Sixth Amendment alone does not justify the holding in *Gideon* (“There seems little doubt that the original understanding of the Sixth Amendment's right to counsel was that it gave an accused the right to have his own retained counsel, not the right to have counsel appointed at the state's expense.”) The Court leaned into *Gideon* because of the fundamental principle of fairness as multiple state-level defendants who petitioned the Court for relief over the past decade and a half would have benefited from right to counsel. The scales of justice were tipped too heavily in favor of the state in a context where many defendants were illiterate and indigent. As Strauss observes, “a discretionary, case-by-case standard” needed to be overturned in favor of a stricter rule. This was true for *Miranda* as well where there was documented evidence of illegal coercion during pretrial interrogation, particularly in cases involving civil rights defendants in Massive Resistance states.

ACTIVITY 2: WARREN COURT REFORM DISCUSSION

Step 1: Have students circle back to their Exit Ticket from Lesson 3.

Step 2: Ask students to independently consider and take notes on how their opinion has remained the same or changed.

Step 3: Ask students to share their answers. Remind students to recall the skills around civil discourse and healthy habits of conversation when sharing their opinions.

Handout 1

Case	Precedent set	Civil rights and liberties impacted
<i>Monroe v. Pape</i>		
<i>Pierson v. Ray</i>		