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## Book Review of *The People and the Court*

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## THE PEOPLE AND THE COURT

By CHARLES L. BLACK, New York

The Macmillan Company 1960. pp. 238. \$5.00.

*The People and the Court* is both an analysis and a defense of judicial review. Although the author readily admits to the influence of his opinions, the book is much more than a polemical diatribe; it is a logical and well documented presentation.

Mr. Black lays the ground work for his defense with an historical summary of the development of judicial review. Included here is a brief analysis of the intent of the framers of the Constitution as well as a brief analysis of the landmark cases of *Marbury v. Madison* and *McCulloch v. Maryland*. This establishes clear, and apparently incontrovertible, historical and judicial bases for judicial review. Next the pragmatic values of the institution are cogently presented. Here the legitimating function of the court is presented with greatest emphasis. The powers of the court to invalidate and to check the actions of both Congress and the states are recognized as necessary but of less manifest importance than the legitimating powers. The truism that neither the affirmative nor the negative function of the court could exist exclusive of the other is thus recognized. Despite this necessary co-existence the author readily espouses the belief that it is essentially the legitimating function that is requisite to the continuation of our type of government ("full power in the people under the restraint of law"). At this point the author has presented, through an admittedly subjective analysis, an effective and rational affirmative defense for judicial review. It is here that the book becomes alive and the zeal of the author becomes apparent as he continues with an examination of the attacks on judicial review. Mr. Black, protagonist of judicial review, employs both logic and authority in mustering a withering rebuttal to these views. Particularly are the arguments of Mr. Thayer (bellwether of judicial review assailants) annihilated.

The defense then rests and the book continues by exposing the subtle but real encroachments upon judicial review. These,

the reader is warned, often appear in another guise and could eventually destroy, *sub silentio*, judicial review (and, by implied positive correlation, our present form of government) if allowed to go unchecked. This is a real service and, even if it does no more than create an awareness of the necessary implications of the exposed measures, the reader and our government will benefit.

In view of the current ill-founded and highly impassioned attacks on the Supreme Court's exercise of its power of judicial review, a rational unimpassioned defense of this function was needed. Mr. Black has supplied this need with this book which is, as is candidly intended, a capable and well documented defense of judicial review. Early portions of the book may prove tedious and phlegmatic but in general the author has maintained both clarity and interest. Through the use of numerous examples and illustrations, the judicial concepts involved are presented in such a manner as to make them understandable even to those untrained in law. The book requires but also merits a more than cursory reading.

N. W. S.