

THE PEOPLE AND THE COURT, Judicial Review in a Democracy.
By Charles L. Black, Jr.; Published by Macmillan, New York,
1960; pp. 238.

"A government of laws and not of men" is an oft-repeated principle in treatises on the democratic form of government. Charles Black, Jr., in this book under review, advances a modified form of this concept. He posits the idea of having a government of law through men, and not men without law; of having a law with men and through men under which all men can live together.

The author writes specifically of the importance of judicial review in the American system of government but his arguments can very well support any other government under a Constitution. The Constitution is the supra-positive law under which men live in a democracy and the men through whom this law is maintained are the Justices of the Supreme Court.

The two prime functions of the courts, according to Black, are the legitimating of governmental acts and the checking of the other branches of the government when they encroach upon grounds forbidden by the Constitution. These two functions are intertwined and may be said to be dependent on each other. The investment of the power to invalidate makes the court a legitimating organ with regard to those acts to which it can find no constitutional objection while the legitimating function necessarily goes with the idea of invalidation, for legitimation means decision, and decision is not decision unless it can go either way.

The author then goes into a detailed discussion of the basis and importance of each of the major functions. With regard to the first, he makes the reader aware of the problems that arise in a government that is limited in its powers by a Constitution which necessarily has to be couched in general terms. The powers granted by the Constitution being general, any act of the Executive or Legislative departments may easily be questioned as to whether they fall within or without these powers. The people who entertain doubts as to the validity of these acts must not be left unanswered. They must be reassured that the different departments of the government are acting within the powers granted by the Constitution or the implementing force of these departments will be greatly diminished. The difficulty lies in that any tribunal that gives the decision would necessarily be a part of the government itself whose acts are being questioned. There must be a resort to a body, then, which though part of the government is not practically, though theo-

retically, deciding its own case. The courts, occupying the position that it has under the Constitution, answers this need. After laying down the basis, the author proceeds to give various illustrations in which the court has fulfilled this function, the clearest of which was the granting of the stamp of legitimacy on the set of New Deal legislation passed during the term of Franklin D. Roosevelt.

This book was written chiefly to awaken the citizenry to the vital role that is played by the courts in the determination of rights and the preservation of law in a constitutional system of government. The author felt the need of re-emphasizing this role of the courts in view of the grave and seemingly determined challenge posed by legal commentators and scholars, particularly James Bradley Thayer, who would try to strip the courts of some of its more controversial functions. By the simple and logical presentation of the subject, the author has attained his purpose.

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