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## Book Review (reviewing Charles Lund Black, *The People and the Court* (1960))

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**The People and the Court.** By CHARLES L. BLACK, JR. New York: The Macmillan Company, 1960. Pp. 238. \$5.00.

"At a certain village in La Mancha, which I shall not name, there lived not long ago one of those old-fashioned gentlemen who are never without a lance upon a rack, a lean horse, and a greyhound. . . ." That is the beginning of another story, but one not different in substance from the one offered by Professor Black in *The People and the Court*. For in this volume, Black assumes the role of self-appointed knight-errant doing battle to protect his lady fair—no less than the Supreme Court of the United States—from the calumnies of her detractors. And his lance is levelled, without distinction, at those who have dared to suggest that her slip is showing and those who would destroy her.

In one respect, however, the author is unlike Cervantes' hero. Where Quixote chose to tilt at windmills, Black prefers to do battle with straw men. He demolishes the argument, no longer urged by any except those mired in the deep South, that the Court has improperly usurped the power of judicial review. It was an argument made strongly in the 30's by many who now find themselves on Black's side. But it is obviously not the Rodells, Arnolds, or Boudins who have so upset Professor Black that he has felt compelled to put his very able pen to paper in this fashion. He rids himself of the problem whether there should be any limits on the exercise of the power of judicial review by equating the proponents of self-limitation with the abolitionists. He is consistent, at least, in defending the Court of the 30's along with that of today. But he forgets, or chooses to ignore, the basic problem of judicial review. The problem has been stated cogently by one whom Black would not number among the present Court's detractors:

From age to age the problem of constitutional adjudication is the same. It is to keep the power of government unrestrained by the social or economic theories that one set of judges may entertain. It is to keep one age unfettered by the fears or limited vision of another. There is in that connection one tenet of faith which has crystallized more and more as a result of our long experience as a nation. It is this: If the social and economic problems of state and nation can be kept under political management of the people, there is likely to be long-run stability. It is when a judiciary with life tenure seeks to write its social and economic creed into the Charter that instability is created. For then the nation lacks the adaptability to master the sudden storms of an era. It must be remembered that the process of constitutional amendment is a long and slow one.<sup>1</sup>

Professor Black's message to those who have recently dared to speak or write of the Court in other than wholly approving terms may be put in the words of the good knight to his faithful and long-suffering Sancho: "Bless me, what a catalogue of musty proverbs hast thou run through! What a heap of frippery-ware hast thou threaded together, and how wide from the purpose! I pray thee have done, and for the future let thy whole study be to spur thy

<sup>1</sup> DOUGLAS, STARE DECISIS 31 (1949).

ass, nor do thou concern thyself with things that are out of thy sphere; and with all five senses remember this, that whatever I do, have done, and shall do, is no more than what is the result of mature consideration, and strictly conformable to the laws of chivalry, which I understand better than all the knights that have professed knight-errantry."

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**Constitutional Uniformity and Equality in State Taxation.** By WADE J. NEWHOUSE, JR. Ann Arbor: The University of Michigan Law School, 1959. Pp. 853. \$12.50.

This is a thick book. It is really three "books." First, it is a reference work of no mean proportions. The author has extracted from each and every one of the state constitutions the clauses dealing with uniformity and equality of taxation, has given the legislative history of each, and has collected the cases state by state. So far as I know, this is the only place in which this material is brought together. I am sure that no teacher of state and local taxation, and no draftsman of future revenue articles, will wish to be without it.<sup>1</sup> For reference use, it would be a better book if it were not for the fact that for analytical reasons the states are arranged in an order not alphabetical, both in the table of contents and in the body of the book. There is no index at all. This results in an excessive amount of thumbing. Already my review copy is beginning to look like an unexpurgated edition of *Lady Chatterly's Lover* in a lending library.

Second, it is a series of scholarly monographs on the limitations imposed upon the legislature of each state by its constitution, as interpreted by its courts. These monographs are called "uniformity structures" to make the point that the effective restraints upon legislative action are the product not alone of the wording of the "uniformity and equality clause," but also of its interpretation in the context of other constitutional provisions bearing upon the subject. Some of these monographs are quite good; collectively they paint with broad strokes the tremendous diversity in tradition and feeling about the most equitable method of distributing among the citizens the cost of government.

The writing of forty-eight such monographs is a monumental task. Professor Newhouse has made it even more monumental by attempting to show not only what the interpretation of the present provisions has been, but to trace changes in language and compare the present rules with those enunciated under previous constitutions. In the introduction he indicates that he spent two

<sup>1</sup> Witness copious quotations from Professor Newhouse in CONSTITUTIONAL MANDATES FOR UNIFORMITY OF TAXATION, Illinois Legislative Council Publication No. 134 (1959).