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BOOKS NOTED

POLITICS, THE CONSTITUTION, AND THE WARREN COURT. By Philip B. Kurland. Chicago: The University of Chicago Press. Pp. xxv, 222. \$9.75. Since the retirement of Mr. Chief Justice Warren, many commentators have hastened to assess the collective effect of the decisions of the Warren Court, and have tried to place these decisions in their proper judicial or historical perspective. This particular offering is by a seasoned court watcher, who, besides being a distinguished academician, is also an author, an editor (of *The Supreme Court Review*), and a former law clerk to Mr. Justice Frankfurter. Perhaps as a result of this eclectic background, Mr. Kurland has been able to avoid the misconceptions of other authors who have perceived and analyzed the Warren Court only in terms of an absolute number of justices operating over a given number of years, without having a proper regard for the overlapping efforts of the 17 individual jurists of varying talents who ultimately comprised the Warren Court.

In five essays, based on the Cooley Lectures he delivered at the University of Michigan Law School barely 3 months after Mr. Chief Justice Warren stepped down, Mr. Kurland examines the significance of the Warren Court in the context of American constitutional history and the Court's interactional relationship with the other two branches of government. The author prefaces his essays by setting forth what he feels should be the relevant considerations used in judging the work of the Warren Court. He notes that the Warren Court did not actually create any of the major doctrines which it was called upon to effectuate. In addition, he points out that only a bare minimum of its major pronouncements have actually become widely accepted practices. The author then assesses what he feels were the three dominant failures of the Court in this era. The first was its apparent unwillingness to adhere to the step-by-step process which normally characterizes the common law and constitutional forms of lawmaking. Second, the Court failed to recognize the limitations and incapacities inherent in its own structure. As its final and most important failure, the Court inordinately relied on coercive force rather than well-reasoned opinions and moral suasion.

Examined in the light of these competing circumstances and failures, the author feels that the present Court has been made particularly vulnerable to political attack, and that a credibility gap has been created between the Court's pretensions and its actions. As a result, the author feels that it is essential for the Burger Court to retreat from the political stance of its predecessor and to try to revive the public's confidence in the courts. To regain the public's confidence, the Court must epitomize reason rather than emotion, and it must protect individual interests from the stamp of government paternalism and conformity. To shed its political aura, the Court must begin to persuade rather than coerce. The accomplishment of these two primary tasks will require jurists who have both strength of character and proven intellectual ability. Not one or the other, but both. In any event, the present Court must set at least one additional goal for itself. It must at least match its predecessor's attainments in the protection of individuals and minorities.

The book is well documented and fully indexed. One possible disconcerting factor is the author's extensive use of long quotations (especially in the first essay), which can be distracting. On balance, however, this book

can be recommended to anyone interested in reading a scholarly assessment of the controversial Court, written by a knowledgeable and seasoned observer.

LAWYERS FOR PEOPLE OF MODERATE MEANS. By Barlow F. Christensen. Chicago: American Bar Foundation. 1970. Pp. xii, 313. Clothbound, \$7.50; Paperbound, \$5.00. This challenging and provocative book represents part of the research reports written by the American Bar Foundation for a special committee of the American Bar Association studying the availability of legal services. The author has narrowed this broad subject to consider only the availability of legal services in civil matters to people of moderate means (those whose incomes range from \$5,000 to \$15,000) living in an urban or metropolitan area. The author is motivated by what he sees as a growing gap between lawyers, who are no longer a homogeneous and fungible group, and society, which is "now predominantly urban, anonymous, heterogeneous, rootless and mobile." Given the divergence between these two groups, the crucial question becomes whether or not the law can be relevant to the contemporary social problems of a large, urban, middle class society. Implicit in the author's view is the necessity for the legal profession to critically examine itself, and to determine if it should change to more realistically accommodate its services to the changing needs of society.

The author's approach utilizes a novel, hybrid-economic analysis, which by itself is worthy of comment. He discusses the demand for legal services as a function of their quality, price, and accessibility, which are in turn affected by the public image of the law, lawyers, and legal institutions. Legal services are not a marketable commodity per se; they exist only in relation to personal problems and the appropriateness of a lawyer's skill to their solution. In addition to physical accessibility, availability is defined in terms of the price and quality of the product (legal services) as perceived by the buyer (client). Need is determined essentially by a subjective appraisal of the importance or urgency of a given problem.

After setting forth his perspective and method of approach, the author proceeds to discuss and evaluate possible solutions to the problem of making legal services more readily available to people of moderate means. He first discusses and evaluates two of the more traditional approaches: legal specialization and the lawyer referral service. The author feels that increased use of legal specialization offers a feasible means of improving the quality of legal services, while lowering their costs, and of improving the administration of justice by increasing the effectiveness of the adversary system. He concludes that this approach offers meaningful social utility, and rejects the attitudes and assumptions underlying opposition to it. A second approach discussed by the author is the lawyer referral concept. He feels that although it is a useful concept in form, it has become a failure in fact. The reasons for its failure are laid at the steps of the local bar associations for their resistance to change and their reluctance to adequately promote the concept. The author concludes that while both the legal specialization and lawyer referral services are useful concepts, they must be supported by the local bar associations if they are to provide meaningful responses to changing legal needs.

Moving from these two less than effective traditional approaches, the author presents and discusses two more modern approaches for bringing the average citizen and the lawyer together in the legal market place. The first is the special law office run either on a private or public institutionalized

basis, or on some intermediary basis. This not entirely new idea would attempt to render legal services at reduced cost to people of moderate means. A hybrid form of the special low-cost law office is the group legal service approach, which the author feels is the most controversial, but at the same time the most promising, approach. In its simplest form, this approach would involve one or more attorneys who would render legal services to individual members of a group sharing common problems — for example, members of a labor union. In analyzing and evaluating this approach, the author sifts through a maze of conflicting interests, objectives, restrictions, and objections — both real and imagined — to present his proposal. This last concept is undoubtedly controversial, and it provides the most imaginative and challenging reading in the book.

In summary, Mr. Christensen has written a book which should be read by all members of the legal profession. While he concedes that some of his approaches will not be accepted by many members of the bar, he challenges those who disagree to provide better means of making legal services available to more people at a lower cost, but not at a lower quality. Society is proceeding apace, and to remain relevant, legal institutions must keep pace with it.