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The Warren Court's Concepts of Democracy by Howard Ball

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The field of white collar crimes, an area so unique in so many significant respects has, up until now, been avoided by the average practitioner. Since these prosecutions normally involve businessmen and professionals, a lawyer who does not usually handle criminal matters is likely to become involved. It is at this point when the attorney chosen should not only know his criminal law but should also be thoroughly familiar with the special problems attached to the white collar crimes. This is where *Defending Business and White Collar Crimes* achieves its greatness. Not only does it deal with the particular areas of white collar crimes, but it also gives a thorough and highly sophisticated course in criminal defense tactics that will be useful to the novice and expert alike.

Its forthright, to the point manner reveals proven and tested methods of handling all phases of a white collar case. It guides the reader from the time the client walks into the office with respect to interview and retainer. It continues through bail motions, pre-trial discovery, suppression, severance and change of venue. Actual trial tactics are thoroughly discussed, along with hints and tips that could only be gleaned from these expert authors. General defenses are carefully explained. Actual white collar crimes are divided into chapters and expertly analyzed element by element. Matters peculiar to these crimes are highlights and specific tactics and defenses are discussed. Summation material and requests to charge are supplied.

No more need an attorney shy away from a tax fraud prosecution or a complicated bankruptcy, fraud or conspiracy case. It is all there in *Defending Business and White Collar Crimes* and it is a must for every attorney.

Stanley E. Preiser*

THE WARREN COURT'S CONCEPTS OF DEMOCRACY. By Howard Ball. Cranbury, New Jersey: Associated University Presses, Inc., 1971. Pp. 256. \$10.00.

Howard Ball's critical study of Supreme Court cases dealing with legislative reapportionment focuses on two questions: (1) What were the conceptions of democracy expressed by the Justices? and (2) Which of the opinions, if any, could be called reasonable? The crux of the matter is stated by Justice Douglas in *Baker v. Carr*, in his concurring opinion, in which he said that "It is that the conception of

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political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth Amendment, the Seventeenth Amendment, the Nineteenth Amendment can mean only on thing—one person, one vote."

The writer stresses the point that "Equality in voting—one man and every man, one vote—does not, by any means, solve all the problems of democracy, but without it democracy is a sham." Further, he says that "political equality is essential to the maintenance of a stable, pluralist democratic system because it presupposes competitiveness, visibility, responsiveness, and accessibility for all interests who wish to involve themselves in the formulation, changing, or blocking of public policies." The author suggests that the apportionment controversy is crucial for the democratic system, yet he realizes the procedural character of democracy.

Mr. Ball seems to suggest that majoritarianism guarantees social change. Yet there is no definite thesis in the total American historical context that the effective will of the voting majority inevitably underwrites social change. To the contrary, social change in the last twenty years has been spearheaded by the Supreme Court, the Congress, and the President. In any event, the substantive content of economic and social theories requires leadership not necessarily connected with the voting masses.

The author emphasizes the fallibility of men and an open-ended society, which means that political institutions and process should not block the possibility of change. In his study of the cases, he determines whether the Justices have employed the fallibilistic concept and whether their decisions were reasonable from the viewpoint of empirical orientation.

The reader gets the feeling that Mr. Ball is setting up his own criterion of political philosophy and social teleology rather than trying to get inside the minds of the Justices writing the opinions. Actually, social and political philosophy are one thing, juridical and constitutional principles are something else. Under the Supremacy Clause of the Federal Constitution and the Court organization, the decision of the Supreme Court is the last word, whether it acts "reasonably" under the Ball concept or not. The author puts his seal of approval on the majority of the Court in enunciating the "one man, one vote, one value" as being a necessary and vital institutional value in a society that based its political activities on the principles of universal suffrage and the representative assembly. Thus, Ball writes, the Court majority acted "reasonably primarily because it protected, enforced, and gen-

erally maintained the basic societal symbols—democracy, representative government, and political equality—in an era of rapid change.”

He cites Chief Justice Warren’s summation in the *Reynold’s* opinion that “representative government is, in essence, self-government through the medium of elected representatives of the people” and that “logically, in a society grounded on representative government, it would seem reasonable that a majority of the people of a state could elect a majority of that state’s legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result.” Political equality, the “mainspring of representative government, meant, to these justices, one man, one vote.” The majority opinions since *Baker* (and Black’s minority opinion in *Colegrove*) said implicitly and explicitly that there must be equal weight and equal representation for equal numbers of people.

The author points out that the view of Justices Frankfurter and Harlan, that the court not wander into the political thicket, was not reasonable nor rational. Justice Frankfurter, in his opinions in the apportionment cases of *Colegrove* and *Baker*, exemplified his primary concern “for the continued viability of the Supreme Court in the American Federal system.” “The Court’s authority,” he said in *Baker*, “possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court’s complete detachment, in fact and appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.” “The Court, by entering the political thicket, disregards the inherent limits of its power.”

The writer concludes that “In elevating the one man, one vote concept as a basic constitutional requisite of representative government, the ‘majoritarians’ were attempting to have state legislators act to narrow the gap between theory and reality.”

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