

JUDICIAL POLICY MAKING: The Political Role of the Courts. By GLENDON SCHUBERT. Chicago: Scott, Foresman and Company. 1965. Pp. 212. \$4.50.

This title alone would have shocked many lawyers and judges a generation ago. The content will still do so. Professor Schubert has condensed into a relatively short work an astounding number of historical facts, a remarkable array of new ideas, and a refreshing application of existing methods. Some readers will feel that he has made unwarranted assumptions and misleading generalizations.

His concept that courts are political instruments in the partisan as well as general sense, and that they serve a large function in policy-making both on trial and appellate levels may come as a surprise, but his illustrations and arguments are convincing. The subjection of the judiciary to examination by the tools of sociology, psychology, and political science, including statistical mathematics, structural functional analysis, and behavioral theory, with the expectation that such studies may be used to predict judicial decisions, should raise a goodly number of judicial hackles—but probably to the betterment of society.

The lay reader will find in this book an easily comprehended picture of the courts, the manner in which their jurisdiction is invoked, the procedures they follow, and their roles in society. The lawyer will be fascinated by the analysis of policy-making as it has been and continues to be a function of the courts, particularly upon appellate levels.

The work suggests projects for student research upon the subject, and provides an invaluable bibliography.

The author vividly illustrates the distinctions between traditional jurisprudence and the new schools of "sociological jurisprudence" and "realistic jurisprudence." One educated in the older school may question that "The task of courts is to provide remedies . . ."; and contend that the function of the courts is to administer existing remedies. Many also will disagree with the idea, "that it is a particular function of the Supreme Court to illegitimize policies that are favored by local but opposed by national majorities." But certainly all practicing lawyers will acknowledge that "the manipulation of precedents in support of decisions is an indispensable judicial skill, since it is the basic tool for the process of rationalization in opinion-writing."

Not all law students, lawyers and judges will agree with Professor Schubert's theories, but all could benefit from an exposure to them.

CRANDALL CONDRA*

* Member of the State Bar of California.