PERIODICALS

Reviews of articles from periodicals and specialized journals here and abroad

POLITICS & GOVERNMENT

Needed: Politics

"The New Public Philosophy" by Sheldon S. Wolin, in *democracy* (Oct. 1981), 43 West 61st St., New York, N.Y. 10023.

When Ronald Reagan ran for President, he pledged his commitment not only to traditional morality and patriotism but also to a particular set of economic theories. Since World War II, economic viewpoints have increasingly prevailed in public policy—among liberals, influenced by the likes of Lester Thurow's *Zero Sum Society*, and conservatives, versed in the Laffer curve and supply-side economics. The trend marks a profound political change, writes Wolin, a Princeton political scientist. But, he asks, do economic concepts adequately serve cherished political goals?

In the nation's first century, Americans tended to weigh all public issues in terms of broader concepts of justice, freedom, and equality. Moral fervor surrounded even economic questions (the Jacksonian assault on the National Bank, for instance). The roots of an economic perspective start in this country with the rapid industrialization and government growth after the Civil War, writes Wolin. But they go back further—to the 17th-century rise of science, bureaucracy, and corporate capitalism, and to the ideas of Adam Smith (1723–90). Where once people believed that justice, peace, and prosperity were the state's responsibility, Smith said that these "common ends" could best be ensured by the selfish actions of countless individuals in the market. Thus, economists now require of government that it be "objective," that it devise economic solutions to most problems, that it motivate its citizens economically.

This new public philosophy will lead to a political dead end, predicts Wolin. Coping with natural disasters or economic crises in a democracy requires citizens to "cooperate, tell the truth . . . observe the law, and pay taxes." A war would demand even more—death for some. True

politics builds a civic ethic and the basis for common action. Economics promises only uninspiring, narrow "tradeoffs." For this reason, Presidents will continue to need a Moral Majority in the wings. "In their fury over welfare, abortion, women's rights, and school prayers," concludes Wolin, "they furnish a substitute for politics, replete with solidarity, a sense of community, and a glow of moral superiority."

Judicial Overload

"Bureaucratic Justice: An Early Warning" by Wade H. McCree, Jr., in *University of Pennsylvania Law Review* (Apr. 1981), 3400 Chestnut St., Philadelphia, Pa. 19104.

For years, judges, lawyers, and politicians have voiced concern about the "litigation explosion"—a steep rise in the number of cases brought to trial. McCree, former solicitor general of the United States, now warns that recent efforts to relieve the pressure on the federal judiciary have corroded the quality of justice by cutting back the percentage of cases personally handled by judges.

Americans have always believed that justice must be safeguarded by individuals of unusual learning, wisdom, and integrity. Yet from 1940 to 1980, the number of appeals filed in federal courts jumped by 573 percent, from 3,446 to 23,200. Meanwhile, the number of judges grew by only 131 percent (from 57 to 132). The average judge's caseload has soared from 60 to 175 (or 525, counting the cases that members of the three-judge appeals court panels hear but do not write opinions for). Congress's response has been to expand the crew of law clerks allotted to each judge from one to three. Traditionally, clerks have simply performed administrative tasks and informally critiqued the judge's opinions. Today, they frequently draft opinions themselves. Even though judges must sign the work, some judicial involvement is bound to be sacrificed, says McCree.

Reforms designed to speed up the legal process have had a similar effect. In 1980, the now-divided Fifth Circuit (which covered most of the Deep South) disposed of one-fourth of its 4,225 appeals without oral argument. The cases were selected by central staff attorneys; final decisions were handed down either as perfunctory five-to-10-word opinions written by the judges themselves, or as opinions drafted by the attorneys and signed by the judges. McCree contends that the attorney-written decisions sometimes contain glaring mistakes in logic. Moreover, the practice deprives litigants of the reasoned judicial analysis to which they are entitled, revokes their right to confront the bench, and denies judges the opportunity to probe litigants' arguments in depth.

In the interest of quality, McCree would not increase the number of judges. But he would like to see the federal caseload decline. He encourages Congress to draft more precise laws (statutory "gaps" and ambiguities invite numerous appeals). And he urges judges to resist "legislative-type decisions," such as ordering specific remedies to public problems and aggressively redefining their own jurisdiction.