

## BOOK REVIEWS

CASES AND MATERIALS ON CONSTITUTIONAL LAW. By John P. Frank. Chicago: Callaghan & Co. 1950. Pp. xxviii, 1050. \$8.75.

The publication of Professor Frank's casebook is bound to hasten the demise of the doctrinal approach to professional training in constitutional law. The affirmative approach which he has incorporated in its novel organization and provocative content departs radically from that preoccupation with the growth and manipulation of legal syntax so characteristic of the traditional casebooks in constitutional law. Indeed his book is part and parcel of a growing disaffection with sterile and spineless doctrinalism. It is one of several successful efforts to combine the usual legal materials with learning drawn from other intellectual disciplines.

But how does Professor Frank's affirmative approach, responsive as it is to his philosophy of law and of legal education, get itself actualized in a casebook? The casebook itself provides a clear and unequivocal answer to that challenging question.

In 3 *Journal of Legal Education* 110 Professor Frank has explained very succinctly the rationale of his approach in creating this casebook. From that exposition and from his many other published works it is quite clear that he believes not only that constitutional law doctrine is progressively evolutionary but also that this evolution can be traced as the outgrowth of the human activity involved in the solution of specific historically determinable social problems. Furthermore, he appears convinced that it is necessary not only to discover from the reported cases what a particular constitutional law doctrine is but also to determine why the doctrine has come into being. The *what* answer analytically extracted from the published opinions is merely one special end product of a whole range of human activity within which the answer to the *why* question must be diligently sought if the relationship of legal doctrine to the social context is to be adequately comprehended. This leads him initially to a historically oriented examination of those particular social problems which have generated persistently significant constitutional law doctrines in the past.

The first part of the book covering 426 pages is divided into five convenient historical periods within each of which selected social problems and the constitutional law doctrines involved in their solution are systematically investigated. Each chapter is sufficiently self-contained to permit a historical and social focus of absorbing interest to the student. The cumulative effect of the cases, the excellent biographical sketches, the illuminating excerpts, the notes and editorial comment is to create a measure of that vivid intellectual and emotional integration with the past so essential to the proper understanding of legal doctrines. The student cannot help but carry away from this study a conviction that the successful participation of the lawyer in social activity involving as it does such an interweaving of people, events and ideas requires something more than the exercise of technical skills.

The second part of the book covering the remaining 644 pages contains three chapters each devised for a particular purpose. The first chapter treats of the period from 1930 to 1937. Up to this period constitutional law is considered as responding to essentially conservative laws of growth and development. Within this period it is considered as subject to radical change. The *why* of the radical change is placed primarily in the social problem of the great depression. Here the dynamics of affirmative social action are reflected in radical shifts in constitutional law doctrines. Thus the thesis that the understanding of the social dynamics of the time are the only sound basis for comprehending attendant shifts in legal doctrine is strikingly exemplified.

The second chapter of Part II is entitled *The Constitution Today*. Here a happy selection of significant cases on government regulation of business and on civil rights are collected to demonstrate the current status of constitutional law doctrines as applied in these spheres of human activity.

The third chapter of Part II singles out three specific contemporary problems for detailed study. They are state taxation, the negro problem and freedom of communication. Here the impact of the general method employed throughout the book is felt. These problems are of such particularity and admit of such relatively precise proposals for their solution that the marshaling and consideration of appropriate cases under these particular problem headings establishes and preserves the necessary connection between social problem and legal doctrine. Although arbitrarily selected they are nevertheless representative of the highly complex problems which test the flexibility and adaptability of law under a constitution.

Professor Frank's casebook is eminently suited to the needs of lecture room and student. The coherence of the presentation, the discriminating selection of the limited number of cases reproduced, the importance of the social problems considered, the general stimulation provided by the informative biographies and excerpts, the well edited notes with their searching questions, all add up to a tremendously sound and useful tool for the teaching of constitutional law.

And, finally, the emergence of Professor Frank's casebook at this time is not without significance to the legal profession as a whole. Today's lawyer is in the process of becoming the product of yesterday's teaching. Only time will tell whether Professor Frank's challenge to the traditional modes of constitutional law thinking and teaching constitutes a really successful departure. But the very challenge itself indicates a dissatisfaction with the law as it has been taught. The pressing need is to adopt classroom tools that will aid in the development of a profession that understands and responds to the total needs of a complex society.

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