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MARBLE PALACE: THE SUPREME COURT IN AMERICAN LIFE. By John P. Frank. New York: Alfred A. Knopf, 1958.

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BOOK REVIEWS

MARBLE PALACE: THE SUPREME COURT IN AMERICAN LIFE. By John P. Frank. New York: Alfred A. Knopf, 1958. Pp. 294. \$5.00.

This book is a vivid panorama of the variety of cases the United States Supreme Court decides, the roles it is called upon to assume and the cast of characters which makes up the gyroscope that keeps our democratic machine in balance and on the proper course. It is a book that is exceedingly difficult to describe for the purposes of review, for the author has a great gift as a teller of stories and possesses a great fund of information and insight into the inner workings of the Court which makes the treatise both readable and valuable.

The volume begins with a description of the work that the Court does and how it has changed through the years. It also describes the ever-growing workload and how Congress has altered the court system from time to time so that the Court may be free to act quickly and decisively.

One of the many interesting aspects of the chapter on the power of the Court relates to its almost constant battle with the Patent Office. The Court's standard of invention is infinitely higher than the standard of the Patent Office; therefore, over the past forty years the Supreme Court has invalidated far more patents than it has upheld. As a more or less natural consequence of this conflict, the Patent Office has retaliated with dogged determination to ignore the mandates of the Court and has vented its hostility through articles and editorials opposing the Court's decisions.

In discussing the special functions of the Court as they relate to speech and press, Mr. Frank not only reviews the history of the subject from the Alien and Sedition Acts to *Watkins*, but also sets forth the course the Court must take if it is to play a significant role in guarding American political liberty.

The attributes that go to make up a good judge include reason, creativeness, industry, clarity, persuasiveness and scholarship. Judicial temperament would seem to be an essential element, but Mr. Frank makes the observation that judicial temperament was not a characteristic of a good many of our great justices.

As for the Chief Justice—he is not the number-one man among a group of subordinates, but “first among equals.” His vote counts no more and carries no more authority than any other justice.

The quality of the Court depends largely upon the qualities the individual men bring to the bench. The Court is, and should be, a diverse

group because in that very diversity of background lies the strength that is needed to keep the needs of the law in general and the necessities of broad policy from overpowering the case that is a very real personal problem to the individuals involved.

Quite properly, and in keeping with the author's thoroughness, he makes some predictions as to the future of the Court: moderation will still govern the interpretation of economic regulatory statutes governing such fields as anti-trust, securities and labor; the Court will continue to hew to its present firm position on race relations; the weight of the Court will follow a line of moderation in coping with the problems of speech and thought restriction.

Mr. Frank also has some very cogent suggestions as to how the Court can keep pace with the problem of keeping up with this nation's growth and the increasing number of problems concomitant to such growth. For a start, he suggests that the Court can increase its output by an enlarged use of its staff; by greater use of orders without opinions; by eliminating time-consuming diversions, such as exhaustive footnoted opinions, promiscuous dissents and promiscuous concurring opinions which have cut into the Court's productivity; by solving all the big questions in a big way—by making every decision a hard-hitting, decisive statement of firm policy; and by choosing to hear more cases, not just the big matters that make great policies.

Mr. Frank has vast experience—from the source up—to prepare him for the monumental task he has set for himself in this book. His background in general practice, in teaching constitutional law and in clerking for Mr. Justice Black have given him the insight and experience to collect the wonderful array of information and statistical data that has been brought together between the covers of this book. The author's brilliant summarization and evaluation of this material makes the work a true milestone in the history of the United States Supreme Court. Not only is the *Marble Palace* delightful and gripping to the lawyer; it is a distinct contribution to the lay public who cannot help but gain a greater understanding of this great institution and be imbued with the courage, will and ability to help maintain the American tradition of liberty.

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CANADIAN JURISPRUDENCE, THE CIVIL AND COMMON LAW IN CANADA. Edited by Edward McWhinney, Toronto: University of Toronto Faculty of Law Comparative Law Series, vol. 4, 1958. Pp. 393. \$7.50.

Introduced by an eloquent foreword on the law in a plural society in a crisis age (Justice Rand of the Supreme Court of Canada), the present collection of articles on some of the main branches of Canadian law