

BOOK REVIEWS

CASES AND OTHER AUTHORITIES ON CONSTITUTIONAL LAW. By Walter F. Dodd. St. Paul: West Publishing Co. 1932. pp. 1509.

Within about two years four new casebooks in Constitutional Law have appeared—that of Professor Field of the University of Minnesota, that of Professor Rottschaefer of the Law School of the same institution, that of Professor McGovney of the University of California Law School, and now that of Professor Dodd of the Yale University Law School. The vitality and growth of the subject-matter dealt with in these works is thus strongly attested, as well as growing appreciation of its importance. And indeed Constitutional Law has undergone great development within recent decades, so much so that it is hardly an exaggeration to say that on its *restrictive* side—whether of national or of state legislative power—it is in no small measure a creation of the Court within the last forty years.

Hence since a casebook cannot include everything and still fulfill its *raison d'être* of making a selection from an overwhelming bulk of materials, a question arises: What amount of space relatively should be given, on the one hand, to the older foundational cases, from which today's law branches off, albeit at very sharp angles occasionally, and, on the other hand, to cases in which this law receives explicit, even though not always very durable, statement? Regarding this matter, the four books above mentioned seem to reveal two schools of thought. Thus Professor Field shows a marked inclination toward the second alternative, giving many of the old classics a decidedly cold shoulder; while Professor Dodd's bent is in the opposite direction. Of the other two collections that of Professor Rottschaefer leans toward emphasis on recent cases; that of Professor McGovney should be classed with Professor Dodd's.

For myself, I must express a decided preference for the latter type of selection—a preference no doubt reflecting an interest in constitutional history, but also related to pedagogical purpose. It seems to me that the late Samuel Butler was not far from wrong when he asserted that "the only way to understand a subject is to understand it historically," and that this remark applies especially to the subject of American Constitutional Law. Even the most recent results of the Court's lucubrations are usually traceable to ideas which appear in simpler context in much earlier cases; and to trace recent doctrines to and from such beginnings seems to me one of the great purposes of the case system. Furthermore, a course in Constitutional Law should not be a course in "current events," nor should its purpose be to give the student the Court's last guess on this, that and the other of half a hundred points. It should be a course in the jurisprudence of the Court, which, notwithstanding all the Court's backings and fillings, does have a large degree of continuity and inner coherency because of the persistence of the interests which it protects. The identity and the contours of these interests are, therefore, the grand objective of a study of Constitutional Law, and these are not discoverable from their wavering reflection in yesterday's cases alone.

Still another reason for the inclusion of as many of the older cases as possible lies in the fact, especially true of those decided by the Court under Marshall, that they were decided on *reason* rather than *authority*. Their study thus becomes often an intellectual exercise of the first order. Compare, for instance, the opinion of Chief Justice Marshall in *Gibbons v. Ogden*¹ with that of Chief Justice Taft in *Sonneborn Brothers v. Cureton*.² The former is a logical inquiry upon which the student is launched in almost the first sentence and which is never relaxed until the last sentence; and in the interval between almost every possibility of the Commerce Clause has been probed in a composition which is a single artistic structure. The latter, in contrast, is a thing of scissors and paste—useful enough in its way and replete with information, but certainly without an ounce of mental stimulation for the student.

On the whole Professor Dodd's selection of cases seems to me admirable, though I think it falls down at one point. It was a mistake, I hold, in treating of the relation of the Commerce Clause to the State Taxing Power to omit the basis cases in 15 Wallace, and 114, 116, 118 and 120 U. S. The editing, too, is excellent, the cutting wisely done, and the general order of treatment of the entire subject logical. One topic that seems to be rather unduly slighted is the "full faith and credit" clause. Perhaps if Professor Dodd had had before him the recent extraordinary decision of the Court and the still more extraordinary opinion of Justice Brandeis in *Bradford Electric Co. v. Clapper*,³ he would have stressed more this clause, which is apparently trembling on the verge of a new and unheralded fruition.

Another excellent feature is supplied by the annotations, which almost always occur at significant points and which, without exhausting learning, furnish the student guidance while whetting his interest.

"The proof of the pudding is the eating thereof." But this particular pudding looks so good that I have about decided to avail myself of the next opportunity to give it the crucial test of trying to teach from it.

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OUR WONDERLAND OF BUREAUCRACY. By James M. Beck. New York: Macmillan Company, 1932. pp. xv, 272.

The title of this work is from "Alice in Wonderland" and is scarcely appropriate, the fundamental conception of "Alice in Wonderland" being the logical application of illogical premises; while it seems that Mr. Beck admits that bureaucracy must exist, his quarrel is with the illogical development of a logical premise. Indeed, throughout his quotations are erudite rather than apposite, and are valuable rather as a criterion of his literary criticism than as exposition of the argument which they accompany.

The purpose of the book is a little obscure. "In the broader sense,"

¹9 Wheat. 1, 6 L. Ed. 23 (1824).

²262 U. S. 506, 67 L. Ed. 1095 (1923).

³286 U. S. 145, 76 L. Ed. 1026 (1932).