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Cases on Constitutional Law

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The examination and review of a casebook on Constitutional Law does not give the reviewer the wide scope of comment found in other fields. The new cases on the subject make the need imperative for rather frequent compilations. In no other field, in fact, is the need so keenly felt as in that of public law. Since the monumental work of James Bradley Thayer and the exceptionally fine analysis of the subject by Dean James Parker Hall the many new cases have brought home to the teacher the necessity of thoroughly revamping those valuable collections. Mr. McGovney has succeeded in working over the old materials, adding new cases and infusing his own discriminating knowledge of the subject in an admirable manner.

The great mass of material to be covered in a casebook obliges the compiler to cut and trim and leave out, as well as to relegate to footnotes, much of interest to the student. It is unfortunate from the viewpoint of the teacher that abbreviated statements of facts are substituted because it is both useful and valuable to the student to be compelled to sift out of a complicated situation the constitutional question. The human interest element is also necessarily sacrificed to some extent by the substitution of colorless restatements of facts. It is a problem requiring painstaking discrimination to cut the materials down and at the same time present by cases in an adequate manner the subject of Constitutional Law in its most important phases. The author has succeeded well in this task. In solving this problem he has chosen to present the separation and delegation of governmental powers by essay rather than by the use of cases. Some additional phases of the subject for the sake of brevity could have been presented in like manner, but this can be accomplished by the individual teacher.

As to material omitted the only criticism to be made is that the problems of searches and seizure and self-incrimination should be included in a casebook of this size. In this day of wire-tapping and unwarranted searches made under the color of not even just suspicion a student should have a clear conception of these constitutional rights. The justification for such an omission is that the problems are left to be treated in the course on Evidence, with the result often that they are also omitted in Evidence to be treated in the course on Constitutional Law. Students therefore
leave the law schools without more than the merest reference to these important questions.

The author is to be commended for his selection of cases and the analytical arrangement of the chapters on Taxation and Foreign Corporations. Such cross section treatment, even though incomplete in every detail, is well adapted to give the student an adequate knowledge of these important divisions of the subject of Constitutional Law. His discriminating selection of footnote material drawn generously from law reviews, from cases omitted from the text, together with the problems suggested, is excellent. Footnotes of this character are more valuable to students than are mere annotation or extensive citation of cases.

On the whole the book denotes an immense amount of labor on the part of the author and indicates that it is made for the teacher who desires to present the subject in broad outline and to leave to the students the task of filling in details. It meets a keenly felt need of the teacher.

—Clifford R. Snider.


In thoroughness of treatment this is a typically Sturjean product; in derision of the courts, what they decide and how they say they decide it, the opposite is true. But of course this book is for sale to the profession and that makes a difference. That fact, however, is no explanation for the surprising want of critical case comparison and the entire absence of personal case appraisal by the author—shortcomings suggested by a random first sampling and confirmed over doubts by a later page by page scrutiny. Indeed, there are places—and frequent ones—where the text has almost

\("Ch. XXXVIII."

\(^1\) See his Legal Theory and Real Property Mortgages (1928) 37 Yale L. J. 691, 709-715.

\(^2\) Some few instances of criticism by the author should be noted as exceptions to this statement (see pp. 202, 355, 448-452, 559-560, 604-607, 929) in three of which instances however the criticism was first made by a dissenting judge or by another court. The doubts which he entertained as to the soundness of one case (see pp. 450-453) are shown to have been justified by a reversal since he wrote. Finsilver Case, 253 N. Y. 382, 171 N. E. 579 (1930).