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Review of “Cases on Constitutional Law,” By Dudley McGovney

Isidor Loeb

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fulfil needs of men, which probably can be better fulfilled if expressed, thought about, and weighed, rather than submerged as a psychological factor in the judging process.

We are indebted to Dean Green for insisting that a study of doctrine is not sufficient in a study of torts; we are indebted to him for insisting that the nature of the tort trial is a vastly important condition of the results of tort litigation. It is perhaps ungracious to complain that he has not done enough; that he has not indicated that the trial is only viewed in perspective when the picture includes the social problems implicated and their possible solutions. Perhaps we should praise him as a prophet of transition, whose moderation will make his services more valuable than they would be if he attempted to push his best ideas to their logical conclusions.

CLARENCE MORRIS.

Cambridge, Massachusetts.

CASES ON CONSTITUTIONAL LAW, by *Dudley O. McGovney*. Indianapolis: The Bobbs-Merrill Company, 1930. Pp. xxxix, 1803.

The preparation of a one-volume case-book on constitutional law has become increasingly difficult with the great growth of the subject in recent decades. Professor McGovney has undertaken to solve this problem by excluding sections dealing with personal and religious liberty, protection to persons accused of crime, jurisdiction of Federal courts, territories and dependencies, and foreign relations. An advance publication of the first two chapters in 1929 indicated a final chapter on "The Treaty Power" but, probably on account of limitations of space, this does not appear in the complete volume.

While some of these omissions may be regrettable there is compensation in the fuller treatment that has been given to some of the other topics. The editor has emphasized the historical method in the selection and arrangement of cases on the subjects of the function of the courts in reviewing legislation and of the due process of law clauses as limitations upon the substance or purpose of legislation. These sections are the most significant in the case-book and distinguish it for the most valuable treatment of these topics since the publication of Professor Thayer's two volumes in 1895.

Variety of treatment has been followed in other sections. In some only the more important features have been presented. An extreme example is Chapter IV on the "Separation and Delegation of Governmental Powers" which consists of an essay by Professor Frederick Green and a single case. This is intended as an experiment in the use of treatises to supplement case study and the editor desires to receive reports regarding the experience of others in trying this method.

Other sections are presented with far more detail. The chapter on "Citizenship, National and State," includes 131 pages, or more than seven per cent of the entire volume. While probably due to the editor's special interest in this topic, the amount of space devoted to it appears excessive. Cases dealing with taxation and corporations are, for the most part, excluded from other sections and given special consideration in separate chapters devoted to these topics. The growing importance of administrative regulations and decisions is indicated by 125 pages devoted to a chapter on "Administrative Boards and Officers."

The volume would have been improved by including an index. The table of cases is limited to those from which selected parts appear in the book and does not include references to cases in the notes, or from which extracts are given in the principal cases. While the editor is justified in omitting cases dealing with valuation and other matters affecting the determination of reasonable or confiscatory rates it would seem that *Smyth v. Ames* is deserving of more than a brief note. The *Dartmouth College Case* is disposed of in three pages consisting of statements by the editor, brief quotations from Marshall's opinion and a note containing references to several discussions of the case. The absence of any section dealing with territories and dependencies probably explains the failure to include any of the Insular cases. The chapter on "Citizenship" could have been curtailed so as to make room for a discussion of the doctrine of "unincorporated territory" or this could have been included in the section dealing with "Sole and Dual Government." The chapter on "Due Process of Law" could also have been improved by the inclusion of *Barron v. Baltimore*.

The merits of this volume far outweigh any deficiencies. Professor McGovney's long experience as a teacher of Constitutional Law has enabled him to offer a valuable aid to instruction in this subject.

ISIDOR LOEB.

Washington University School of Law.

CASES ON THE LAW OF TORTS, by *Francis H. Bohlen*. 3d Ed., 1930. Indianapolis: The Bobbs-Merrill Co. Pp. xx, 1193.

The publication of this new edition of the familiar Bohlen's *Cases on Torts* is not merely a case of a little new wine being poured into an old bottle. The bottle itself has been changed, though many of the old chapter and section labels still remain to give it its unmistakable Bohlenesque appearance. The change in the form of the bottle, however, is significant. Whereas, in the former edition, the basis of distinction between Parts One and Two of the book, covering cases dealing with invasions of interests of personality and property, was mainly the degree of *directness* involved in the production of the injury, the categorical scissors are now guided by the presence or absence of the element of *intention*.

The change is revealing. And particularly so, because of the fact that the learned editor has for the last five years been engaged in the work of restating the law of torts as Reporter for the Torts Section of the American Law Institute. His experience in this "super-seminar," as he calls it, "in which the theories of the law teachers have been subjected to the test of judicial opinion," has apparently led him to adopt a more *analytical* approach to the subject, instead of the *historical* one, in which the distinction between trespass and trespass on the case and with it the distinction between direct and indirect invasions necessarily received paramount consideration. One result of this new classification is the shifting of cases like *Weaver v. Ward* and *Brown v. Kendall* from their former positions in Part I, where they served simply to illustrate the law of battery, to a position in Part II of the present edition where they serve incidentally to indicate the historical development of the law from liability without fault to liability based on moral or social misconduct, but mainly to introduce the modern law of negligence and proximate cause, for which latter purpose their use in a modern case-book is unquestionably more significant.