

4-1933

Cases on Constitutional Law, by Walter F. Dodd;
Cases on Constitutional Law, Second Edition, by
Joseph Ragland Long; Cases on Constitutional
Law, by Dudley O. McGovney; Cases on
Constitutional Law, by Henry Rottschaefer

Hugh E. Willis

Indiana University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Constitutional Law Commons](#), and the [Legal Education Commons](#)

Recommended Citation

Willis, Hugh E. (1933) "Cases on Constitutional Law, by Walter F. Dodd; Cases on Constitutional Law, Second Edition, by Joseph Ragland Long; Cases on Constitutional Law, by Dudley O. McGovney; Cases on Constitutional Law, by Henry Rottschaefer," *Indiana Law Journal*: Vol. 8: Iss. 7, Article 11.

Available at: <http://www.repository.law.indiana.edu/ilj/vol8/iss7/11>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Cases on Constitutional Law. By Walter F. Dodd. (West Publishing Company. 1932. Pp. xxxii-1509.)

Cases on Constitutional Law. Second Edition. By Joseph Ragland Long. (Lawyers' Cooperative Publishing Company. 1932. Pp. xx-1182.)

Cases on Constitutional Law. By Dudley O. McGovney. (Bobbs-Merrill Company. 1930. Pp. xxxix-1803.)

Cases on Constitutional Law. By Henry Rottschaefer. (Commerce Clearing House. 1932. Pp. xxx-1196.)

The teachers of constitutional law have had given to them within the last two years four new casebooks for consideration, and there is another casebook promised some time soon by Noel T. Dowling of Columbia. All of these new books are excellent casebooks. Any teacher of constitutional law could present the subject of constitutional law well by the use of any one of these books. However, there are a great many differences in the books now available, and there are some criticisms of all of the books which any reviewer would probably make.

One criticism which this reviewer would make of all of the new casebooks is the over-editing of the important leading cases. In some cases this has been carried so far as completely to eliminate them. The result of such over-editing is that the books present morticed excerpts from many cases, but no adequate report of any of them. For this reason, it would be more accurate to call these casebooks textbooks than to call them casebooks. The reviewer would prefer to have more complete

reports of the leading cases. If the more important leading cases were given such treatment, he would not object to having the gaps between these cases filled in with less important cases edited to the bone and with periodical and other materials. The chief fault of Hall's *Cases on Constitutional Law* was this over-editing of the leading cases. The books now under review have not improved upon Hall's Cases in this respect. The Dartmouth College Case is entirely omitted by Mr. Rottschaefer, and it is not printed, but only reported on by Mr. McGovney. All of the others give it very short treatment, but Mr. Long the shortest treatment of all. The case of *McCulloch v. Maryland* is given short treatment by all, but Mr. McGovney offends the least in this respect. The case of *Cohens v. Virginia* is entirely omitted by Mr. McGovney and Mr. Rottschaefer, is referred to by Mr. Dodd, as by Mr. Hall, only in a note, but is included by Mr. Long in his casebook. The case of *Brown v. Maryland* is included by all of the casebooks under review, but it is given the shortest treatment by Mr. McGovney. The Dred Scott Case is omitted by Mr. Dodd and Mr. Rottschaefer, but is included by Mr. Long and Mr. McGovney. Mr. Long gives it six pages and Mr. McGovney thirteen pages. The case of *Texas v. White* is omitted entirely by Mr. Rottschaefer and is omitted by Mr. Dodd and Mr. McGovney except for short excerpts, but it is included by Mr. Long. The case of *Munn v. Illinois* is omitted by Mr. Rottschaefer, but is included by the others and given six pages by Mr. Long, eight pages by Mr. Dodd, and twelve pages by Mr. McGovney. The Slaughter-House Cases is included by all, but is given different space by the different editors. Mr. McGovney gives it only four pages, Mr. Rottschaefer a little over seven pages, and Mr. Dodd and Mr. Long twelve pages. The case of *Downes v. Bidwell* is entirely omitted by Mr. McGovney and Mr. Rottschaefer, and is omitted by Mr. Dodd except for a short quotation, but is given seven pages by Mr. Long. The case of *Adkins v. Children's Hospital* is included by all and is given about the same space by Mr. Dodd, Mr. Long and Mr. Rottschaefer, but about twice this much space by Mr. McGovney. The case of *Cook v. Tait* is omitted by Mr. Long and by Mr. Dodd except for a note, but is given about two pages of treatment by Mr. McGovney and by Mr. Rottschaefer. The case of *Frick v. Pennsylvania* is omitted by Mr. Long and is given from five to seven pages by the other editors. The case of *Hammer v. Dagenhart* is included by all of the editors, and is given from six to eight pages by them. The case of *Terrall v. Burke* is omitted by Mr. Long and Mr. Rottschaefer and is given a little over one page by Mr. Dodd and a little over two pages by Mr. McGovney. The case of *Missouri v. Holland* is included by all, and is given from three to five pages by them. The National Prohibition Cases is included by all except Mr. Rottschaefer, and is given from two to four pages by them. Mr. Dowling promises a casebook built on the opposite theory. He plans not only to

include more of the opinions of the courts, but also some of the arguments of attorneys and the statutes or other governmental action involved in the cases. When this book is published, it will be interesting to compare it with the books now under review. If Mr. Dowling can succeed not only in giving adequate treatment to the important leading cases, but also in giving adequate treatment to all of the important constitutional law doctrines or concepts, his book will make a great appeal, at least to some teachers of constitutional law.

All of the four books under review, with the exception of Mr. Rottschaefer's, include about the same leading cases. Mr. Rottschaefer's book emphasizes modern cases and, therefore, omits a great many of the earlier cases which show constitutional changes and growth and which laid the foundation for constitutional law. There are thirteen cases found in Hall's casebook and the four cases under review. There are thirty-one cases found in Hall, McGovney, Dodd and Rottschaefer's casebooks. There are sixty cases found in Hall, McGovney, Long, and Dodd's casebooks. There are ninety-four cases found in Hall, McGovney, and Dodd's casebooks. There are one hundred and sixty-six cases found in Hall and McGovney's casebooks. There are one hundred sixty cases found in Hall and Dodd's casebooks. There are five cases found in McGovney, Long, Dodd, and Rottschaefer's casebooks but not in Hall's. There are fourteen found in McGovney, Long, and Dodd's casebooks but not in Hall. There are thirty cases found in McGovney and Long's casebooks but not in Hall's. There are twenty-six cases found in McGovney's and Rottschaefer's casebooks but not in Hall's. There are forty cases found in McGovney and Dodd's casebooks but not in Hall's. There are twelve cases found in Long, Dodd, and Rottschaefer's casebooks but not in Hall or McGovney's casebooks. There are twenty-one cases found in Long and Rottschaefer's casebooks but not in Hall or McGovney's cases. There are twenty-two cases in Long and Dodd's casebooks but not in Hall or McGovney's casebooks. There are three cases found in Hall, Long, Dodd and Rottschaefer's casebooks but not in McGovney's. There are eight cases found in Hall, Dodd, and Rottschaefer's casebooks but not in McGovney's. There are twenty-nine cases found in Hall, Long and Dodd's casebooks but not in McGovney's. There are sixty-six cases found in Hall and Dodd's casebooks but not in McGovney's. Thus, it is seen that while there are some variations, yet from the standpoint of leading cases, either Hall, McGovney or Dodd's cases would be adequate, and perhaps Long's cases.

As to the other cases, there is not so much agreement. There are one hundred twenty-seven cases in Long's casebook which are not found in Hall or McGovney's casebooks. There are one hundred forty-three cases in Dodd's casebook which are not found in Hall or in McGovney's casebooks. There are one hundred forty-seven cases in Rottschaefer's casebook not found

in Hall or McGovney's casebook. Mr. McGovney has two hundred eighty-seven cases not cited in Hall or Hall's Supplement. Mr. Long has the fewest cases and, of course, as above indicated, in general the shortest excerpts from the opinions. Mr. McGovney is somewhat erratic in his selections. Perhaps he has too many cases on the topic of the supremacy of the Supreme Court and the topic of due process of law, but he has no cases at all, but only a magazine article, on the topic of separation of powers, although some of his cases in Chapter 7 also develop the law of separation of powers. But, of course, a teacher can make his own omissions when he is supplied with too much material. It seems to the reviewer that Mr. Dodd has not included enough materials upon the subject of eminent domain.

When it comes to the topics covered, there is considerable dissimilarity. All of the casebooks under discussion omit the topic of sovereignty. Long's casebook surprisingly covers most of the other topics in constitutional law, although, as already indicated, the treatment is often rather meager. McGovney's casebook omits the topics of jury trial, treaties, territory of the United States, and amendment. Dodd's casebook omits the topic of territory, except for notes. Rottschaefer's casebook omits the topics of citizenship and suffrage, territory, Indians, aliens, powers, privileges and immunities of United States citizenship, due process as to procedure, freedom of speech and the press, religious liberty, and slavery, and has very little material on the subject of treaties. These omissions are rather extensive and, so far as the reviewer can see, these sacrifices are not compensated for by better treatment of the topics covered.

So far as analysis and arrangement are concerned, there is some dissimilarity in all of the books and some variations which merit discussion. All of the books, except Mr. Long's, treat the doctrine of the supremacy of the Supreme Court first. Mr. Long treats this fourth. Mr. Dodd and Mr. Rottschaefer treat the doctrine of separation of powers second, Mr. Long third, and Mr. McGovney fourth. Mr. Dodd and Mr. Rottschaefer treat the doctrine of our dual form of government third, Mr. McGovney second, and Mr. Long first and sixth. Mr. Dodd treats the doctrine of citizenship and suffrage fifth, Mr. McGovney third, Mr. Long second, and Mr. Rottschaefer, of course, not at all. Mr. Dodd treats the doctrine of personal liberty and social control fourth, Mr. McGovney fifth, Mr. Long seventh, and Mr. Rottschaefer last. Mr. Dodd treats the doctrine of amendability of the Constitution last, and Mr. Long fifth. Mr. Rottschaefer hides it in Chapter Five under the federal legislative powers, and Mr. McGovney does not treat it at all. Mr. Long has broken up the various topics and has treated them partly in one place and partly in another. Mr. McGovney has perhaps given us the greatest variety of treatment. In connection with certain topics, he has emphasized the historical approach. In connection with other topics, he has attempted what he calls "taking the

law in cross-section." He has more or less mixed up the topic of our dual form of government. Mr. Rottschaefer purports to organize his materials dealing with constitutional limitations on the basis of the character of the interests that ought to be protected, while Mr. Dodd and, for that matter the other men, have undertaken to arrange their materials according to constitutional doctrines or concepts. The reviewer wonders whether or not Mr. Rottschaefer has accomplished his purpose. He has treated the police power under due process of law, but apparently does not so treat the topics of taxation and eminent domain. On the whole, it seems to the reviewer that Mr. Rottschaefer's analysis and arrangement of his materials on constitutional limitations are somewhat confused and confusing and of doubtful expediency outside the police power. While due process in a way protects the interest in personal liberty against social control, whether in the form of the police power or of taxation or of eminent domain, yet the police power rather than the constitutional limitation is the great sovereign power which protects most of our social interests. The Supreme Court, in expounding the police power, has recognized and created new legal social interests and thereby given us a natural law with a changing content. Under the police power, in spite of the due process clause, it has developed and protected social interests. Under taxation and eminent domain it has not so much protected social interests as it has made the due process clause a limitation on social control, although it is true it has stretched the power of taxation and the power of eminent domain so as to protect the social interest in our political institutions in spite of the constitutional limitations. If personal liberty is the social interest which the constitutional limitations seek to protect, there are other constitutional limitations, like those referring to freedom of speech and the press, religious liberty, slavery and suffrage, which protect personal liberty as much as the due process clause, but these are not treated by Mr. Rottschaefer. However he does treat the contract clause. The order of some of the materials raises questions in the mind of the reviewer. Some of these have already been referred to. In addition, the reviewer cannot understand why the case of *Allgeyer v. Louisiana* is located where it is in Mr. Rottschaefer's casebook, unless he wants us to understand that there is nothing in historical development. The reviewer does not understand why Mr. Dodd preferred to treat due process of law as a matter of procedure after due process as a matter of substance, and he wonders why, in Chapter Nine, in order more completely to show the historical development of due process of law, he did not include some materials on Coke's Dictum and the Slaughter House Cases and the case of *Murray v. Hoboken*. He also cannot understand why the case of *Piqua Bank v. Knoop* has the place given to it in Mr. Dodd's book under the topic of "Laws Impairing the Obligation of Contracts" instead of immediately following the Dartmouth

College Case, nor why the case of *Clark v. Nash* has been omitted in the topic of eminent domain.

So far as notes, periodical material, and other aids are concerned, a few further comments may be noted. All of the books have indexes with the exception of Mr. McGovney's. This seems to the reviewer to be a serious omission in Mr. McGovney's book. Mr. Long has very few notes, but the notes in all the other casebooks seem to be sufficiently adequate, critical, and valuable. All of the books are somewhat defective in their use of periodical material. Mr. Long has made almost no use of periodical material. The others make considerable use of periodical material. Mr. Rottschaefer has undertaken to make his periodical material more helpful by a bibliography, but this bibliography is somewhat partial and incomplete, so that it is questionable whether or not this adds much to the usefulness of his book. Mr. Dodd has inserted some explanatory material of his own, but its accuracy is sometimes questionable. Note Section 1, The Judicial Function.

The reviewer has in this review only stated his own position with reference to the matters which he has criticized. His review would not be one which he should write unless he did this. Other reviewers would, of course, voice their personal criticisms. This reviewer does not know whether or not other reviewers would agree with him. Yet, in spite of all that he has said, he would like to repeat what he said at the beginning of this review, that all of these casebooks are good books, and any teacher would not make a mistake in adopting any of them. Any one of them would, in the judgment of this reviewer, be a better teaching tool than prior casebooks. Mr. Hall's book had become almost impossible as a teaching tool. This reviewer has himself come to the conclusion that for his own purposes Mr. Dodd's *Cases on Constitutional Law* is better adapted for his uses than any other book available at the present time. If Mr. Dodd's was not available he would choose Mr. McGovney's book. Of course, he bases his judgment upon the data set forth in this review. Whether or not the data will influence others to come to the same conclusion is, of course, a matter with which this reviewer is not concerned. One of the chief reasons for the reviewer's not selecting Mr. Rottschaeffer's book is its omission of old leading cases. The reviewer is one of those teachers of constitutional law who believes that it is a serious mistake for a case book on constitutional law to omit those old foundation cases, decided on reason instead of authority, which give the historical development of the principles of constitutional law and tie them together with some sort of coherency and continuity. He wants to teach more than a temporary cross section of constitutional law.

HUGH E. WILLIS.

Indiana University School of Law.