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Review of “Cases on Constitutional Law,” By Noel Dowling

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CASES ON CONSTITUTIONAL LAW: By Noel T. Dowling. Chicago: The Foundation Press, Inc. 1937. Pp. lv, 1166.

The student of Constitutional Law is fortunate in the existence of a number of excellent case books. To this group, a valuable addition is made in the new work by Professor Dowling. This collection has been developed over a period of years in connection with the Editor's work in the Law School of Columbia University. A predecessor appeared for study in the Editor's classes only. Actual experience in teaching has suggested some changes, and the book as now presented has a background of successful use.

The organization presents distinctive features, which make for simplicity and clarity. The first chapter includes the Constitution and notes on the Amending Process. This is followed by a chapter on the judicial function in constitutional cases and another on the federal system. After this the material, comprising about nine-tenths of the entire book, is grouped under three main heads: Powers Delegated to the National Government; Powers of the States as affected by the Delegation of Powers to the National Government; and Limitations on the Powers of Government.

The emphasis upon the federal power as a whole has manifest advantages. The treatment of the Commerce Clause will furnish a useful example. It has been a frequent practice to develop this topic by a process of dividing the Commerce Clause into component parts. The headings would be somewhat as follows: What is Commerce?; What is Interstate Commerce?; What is a Federal Regulation of Interstate Commerce?, etc. The student may well get the idea that the judicial process in this particular involves first a determination of what is commerce, abstractly considered. Then the expression "among the several states" is to be explored as an abstract proposition. This is to be followed by a determination of "regulation," and by the process of addition the Commerce Clause is mastered. Actually it is a question of federal power which must be ascertained, not an abstract definition of commerce. Professor Dowling has, by his presentation, made this clear.

The arrangement of cases has another striking advantage—The Constitutional law of the United States has been developed over a period of one hundred and fifty years. Theories have been born, have blossomed and have fallen into decay. The so-called original package rule furnishes an illustration. Other theories have developed so that with changing years they have taken on altered meaning. Accordingly the Constitutional law of the United States should be presented in such fashion as to indicate this process of change. It is quite misleading to treat the cases as if they had all been decided on the same day or at the same term of Court. There is real value in presenting cases under each topic in chronological order, so that the student may have an opportunity to witness the growth or disintegration of ideas. Professor Dowling has been very careful in this regard.

There are other features which are most satisfying. One is the practice of frequently giving substantial portions of opinions in preference to the use of many brief excerpts. The judicial justification of decision quite often involves the interplay of the several reasons used rather than a series of

separate and complete proofs. The reasoning has a cumulative effect which is lost when one point alone is presented. Another feature is the inclusion in a few important cases of a brief résumé of arguments of counsel. It is regrettable that the demands of space have limited this practice.

The notes are replete with citations of and comments on leading cases. The citations to law reviews are very complete. Thus the student is guided to a wealth of learning, so that, on his own initiative, he may explore the topics presented in the cases and see how far commentators have praised or condemned court action. With his casebook in hand the student has a key to almost endless material.

The selection of cases is very satisfactory. Each user of the book will doubtless find some of his particular favorites lacking, but that is inevitable. No compilation is complete except perhaps to the compiler. The compilation here succeeds splendidly in presenting the law of today against a background of its development through the past. In every respect this volume is a satisfying and a scholarly piece of work.

F. D. G. RIBBLE.†

THE TEST OF THE NATIONALITY OF A MERCHANT VESSEL. By Robert Rienow. New York: Columbia University Press, 1937. Pp. 247.

"The evident confusion and contradictions that have marked references to the nationality of merchant vessels by jurists, publicists, and others have prompted this study. It was apparent that there existed no clear-cut conception of exactly what state of facts created such a relationship between a vessel and a state. Particularly in time of war the concept of the nationality of a vessel has been dealt with so loosely as to quite obliterate the exactness of its meaning."

After thus indicating in the Preface what his motivation was, the author proceeds to present the results of his extensive study of the problem. His volume is well documented and is effectively implemented with copious footnotes, a bibliography of fifteen pages, an impressive table of cases, a table of contents, and an index.

The chief value of the volume consists, not so much in the clarification of the concept of the nationality of merchant vessels, (a concept perhaps much less badly marred by confusion and contradiction than the Preface might imply), but rather in the collection and analysis of the legislation, cases, and opinions bearing upon the concept and its evolution. It is in this way that the author has made a significant contribution.

His conclusion, like the conclusion of every recognized authority on international law, is that the ultimate determinant of the nationality of a merchant vessel is its legal registry as evidenced by the documents on board the ship. The conditions of ownership, construction, crew, etc. which are prerequisite to registry are left for determination to the municipal law of each particular state.

On such tests as the flag used, the citizenship of the crew, the nationality of the owners, the nationality of the builders there is, in the first place,

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