

Book Review: Corwin: Constitutional Revolution, Ltd.

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Repository Citation

Herbert W. Rice, *Book Review: Corwin: Constitutional Revolution, Ltd.*, 26 Marq. L. Rev. 113 (1942).

Available at: <http://scholarship.law.marquette.edu/mulr/vol26/iss2/11>

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BOOK REVIEW

Constitutional Revolution, Ltd. By Edward S. Corwin. Claremont Colleges, Claremont, California. 1941. Pp. ix, 121.

This volume consists of three lectures delivered at Pomona and the allied colleges at Claremont last year by Professor Corwin, the McCormick Professor of Jurisprudence at Princeton University. The author states that it is his purpose to indicate the causes, nature and the scope of the revolution which our constitutional law has undergone since 1935.

The first lecture is devoted to a group of illustrative cases tending to demonstrate how broad was the freedom of choice open to the Court when the New Deal legislation came up for judgment. The author's discussion of such constitutional idioms as "due process of law," "freedom of contract," "rule of reason," and others, brings to mind a statement reported to have been made by Justice Harlan in a lecture in Constitutional Law at George Washington University some years ago. The Justice remarked "I want to say to you young gentlemen that if we"—meaning the Court—"don't like an act of Congress, we don't have much trouble to find grounds for declaring it unconstitutional." Ever since Marshall's time, both Court and Constitution have been political issues. Who is not familiar with the long struggle between Jefferson and Marshall, with Jackson's defiance of the Court, with Lincoln's refusal to accept the doctrines of the Dred Scott decision and his later controversy with Taney, with Theodore Roosevelt's vitriolic attack upon the courts and his demand for the recall of judicial decisions, and the recent contest between President Franklin D. Roosevelt and Congress over the Court? It is because the courts—and especially the Supreme Court—have concerned themselves too much with fundamental questions of politics and policy. Since Marshall's time, the judiciary has asserted its superiority over the other departments of the government until it has become, in the opinion of Justice Brandeis, a "super-legislature." To the usual argument for judicial review, that the courts only interpret the Constitution and cannot alter its meaning, Professor Corwin replies that the chief result of judicial review has to date been "the Court's emancipation from the constitutional document."

The first part of the second lecture reviews the rulings of the Supreme Court in the "Hot Oil," Schechter, Gold Clause, Carter, and Butler cases. The author does not make a comprehensive, or even a systematic, survey of these cases. Rather is he concerned with a number of suggestive comments upon the character of this series of decisions. In the second half of the lecture, the great reversal of the Court in the N.L.R.B. and Social Security cases is discussed.

In the last chapter, Professor Corwin points out some of the results of the change which began in 1937. There are three casualties of this revolution, namely, the *laissez-faire* theory of governmental functions, the theory of competitive or dual federalism, and the doctrine of separation of powers as expressed in the Schechter opinion in 1935. There is one general consequence which springs from the nature of the casualties. It is the decline in the scope and effectiveness of judicial review.

In the volume under review, Professor Corwin compares Volume 301 of the *United States Supreme Court Reports*, wherein is contained the great reversal of 1937, and Volume 11 of *Peter's Reports*, wherein is recorded the somewhat

lesser revolution in our constitutional law precisely one hundred years earlier, which followed upon Taney's succession to Marshall.

One who is interested in recent changes in constitutional interpretation will find this book not only interesting and informative, but provocative as well. Professor Corwin has given us in this volume a scholarly and judicial discussion of highly controversial questions but without controversial heat or bias.

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