

# Corwin: A Constitution of Powers in a Secular State

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## REVIEWS

*A Constitution of Powers in a Secular State.* By EDWARD J. CORWIN. Charlottesville: The Michie Co., 1951. Pp. ix, 126. \$2.50.

Retirement, as illustrated by Professor Corwin, is a time of the gathering of ripe fruit. This little volume by one who has devoted his life to the study of the Constitution is a meditative consideration of current problems against a background of research and writing done in earlier years. But let no one suppose that these are placid musings of elderly remembrance; the bite into today's issues is sharp indeed.

The bulk, and the occasion, of the volume are three lectures given by Professor Corwin at the University of Virginia last year. The remainder is an essay decrying the Supreme Court's concept of separation of church and state, an essay which Professor Corwin is sufficiently fond of to have published twice before. But, though the latter essay is almost extraneous to the three lectures, it is a nice sample of vigorous advocacy, has at least some relation to the history of Virginia where the lectures were given, and will doubtless interest a larger audience than it has hitherto had.<sup>1</sup>

The effort to make the lectures and the essay cohere resulted in expansion of the title slightly beyond the bursting point. The lectures deal with a "Constitution of Powers." The first deals with the passing of earlier concepts of federalism and the substitution of a new one by the prodigious expanse of the federal government's activities in the last two decades. The resultant decline of the relevance of the Supreme Court to national life leads to the conclusion that "the future preservation of the Federal System rests with Congress rather than the Court."

The second lecture passes from the centralization of the United States to the foreshadowed centralization of the World. Upon its theme of "the atom bomb and the Constitution," the lecture arranges its consideration of the Atomic Energy Act, the Atlantic Pact, and plans of world government. There is, as Corwin shows, an important difference in the nature of the impending centralization and that which we have known in the past 20 years. Since 1931 we have been centralizing in Washington, reducing the states to very little more than the level of significance that counties once had. Now, under the claims of scientific expertise and the doctrine of the special authority of the President in foreign affairs, we are centralizing again, moving the power newly centralized in Washington from Congress and the courts into the hands of a very small part of the Executive Department, and, most particularly, into the hands of the President himself.

This carries Corwin to his third lecture, "The Problem of the Presidency." It examines the proposition that "the influence of the Presidency has increased, is increasing, and ought to be diminished," partly accepts and partly rejects the indictment, and suggests an improvement of the Cabinet system as one remedy for the situation.

<sup>1</sup> The chapter appeared first in 43 *Thought* 665 (1948), and again in the memorable symposium in *Law and Contemporary Problems on Religion and the State*, 14 *Law & Contemp. Prob.* 3 (1949). Without re-opening that debate here, let me note my agreement with the answer made to Prof. Corwin in that symposium, *ibid.*, 44.

These lectures are no Jeremiad. Professor Corwin is not so much decrying the tendency of the times as depicting it. And his picture gives solid ground for worried thought. The lectures, contrived with good humor and gracious style, flow deceptively like a rich after dinner conversation by a thoroughly educated man. I say "deceptively" because a closer glance will show that the materials of discussion were most carefully chosen with scholarly care, making the ease of presentation all the more gratifying. The principal suggestion emerging, that the present administrative Cabinet be replaced by a Joint Legislative Council, seems to me more intriguing than, in the fundamental sense, helpful.<sup>2</sup> The tendency toward concentration of power in Executive hands, as it seems to me, is part of a drive in our times which will not be stayed by some regular pattern of Presidential conversations, no matter with whom they may be. If we would arrest the drift to centralization of power, we must aim at more fundamental causes.<sup>3</sup>

JOHN P. FRANK\*

*Introduction to Commercial Law.* By ROBERT BRAUCHER and CHARLES CORKER. Brooklyn: The Foundation Press, Inc., 1950. Pp. xxi, 308. \$5.00.

*Cases on Commercial Law.* By ROBERT BRAUCHER. Brooklyn: The Foundation Press, Inc., 1951. Pp. xx, 709. \$8.00.

There should be nothing sacred about the division of law into the commonly listed courses as we have known them, such as Sales, Bailments, Bills and Notes, and so on. To a large degree they are artificial and chiefly for the convenience of the curriculum architects. In the dynamic development of the law, there are certain to be situations which do not conveniently classify into these historical pigeonholes. One is inclined to applaud at the outset any earnest attempt such as that of Professors Robert Braucher of Harvard and Charles Corker of Stanford to start somewhat from scratch and create a new division, that of Commercial Law.

The appearance last year of their *Introduction to Commercial Law* consequently stirred much more than passing interest. It was an event which transcended the mere appearance of another new textbook, albeit an unique one, because a clue was provided as to the newer approach being made by two leading law schools to several traditional fields. Now Professor Braucher's *Cases on Commercial Law* arrives to fill in the picture, and we see it more completely.

Professor Braucher, in his Foreword, takes us behind the scenes, and explains the problem he confronted when he worked out this solution. It had been decided that no longer was there justification for an allocation of six hours to the courses in Sales and Bills and Notes. The objective was to find a way to cope with these two time-honored areas in only two hours a week! It is to the credit of these two resourceful authors and teachers that they did not retreat; they chose to attack.

Their goal was to use two hours more effectively and purposefully than six had been employed before. After testing their new tack for three years, Pro-

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<sup>2</sup> The thought is also considered in Corwin, *The President*, 304 et seq. (1940).

<sup>3</sup> Elimination of the popular over-demand for "secrecy," for example, would do something to eliminate the excessive delegation of power to specialized technical experts; cf. Gellhorn, *Security, Loyalty, and Science* (1950).