

January 1941

Review of “The President: Office and Powers,” Edward S. Corwin

Harold Zink

Follow this and additional works at: http://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

Harold Zink, *Review of “The President: Office and Powers,” Edward S. Corwin*, 26 WASH. U. L. Q. 589 (1941).

Available at: http://openscholarship.wustl.edu/law_lawreview/vol26/iss4/8

This Book Review is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

of injunction to take care of interference with express trains, the index helps you out whether you look under "express" or under "trains." All in all, pretty neat. In any event, it ought to make you feel better for having spent twenty-five dollars.

T. RICHARD WITMER

Yale Law School.

THE PRESIDENT: OFFICE AND POWERS. By Edward S. Corwin. New York: New York University Press, 1940. Pp. xii, 476. \$5.00.

The contents of this book grew out of a series of lectures delivered by Professor Corwin on the Stokes Foundation at New York University in 1937. However, it should be added that the book is more substantial than the ordinary volume of lectures. It is apparent that a good deal of revision has been undertaken since the lectures were delivered. Moreover, almost one hundred and fifty pages of carefully prepared footnotes, tables of cases, and indexes have been added. Needless to say, these make the book distinctly more valuable to serious students.

The numerous readers of Professor Corwin's earlier works dealing with the Supreme Court, the Constitution, and judicial review will expect this present study to be exactly what it is: a study in public law, or as the author states it, "in American constitutional law, to be precise." This is not to say that individual incumbents of the office are ignored or that references are not made to political incidents, for, as Mr. Corwin points out, "American constitutional law is not a closed system." The office of President does not exist in a vacuum, and consequently while this treatise does not pretend to deal in detail with "day-to-day operations," it recognizes the necessity of taking into account the "reciprocal interplay of human character and legal concepts which no other office on earth can quite emulate." Both the historical and analytical methods are employed in developing the subjects dealt with.

To those who are familiar with Mr. Corwin's writings dealing with the recent history of the Supreme Court it will be no surprise that his concept of the office of President is distinctly a broad one. As he traces the developments which have added in such large measure to the responsibilities of the office, he concludes that such an enlargement is not only natural in view of what has taken place in American life but generally to be desired. Posing the question, "Does the Presidency, then, in light of these facts, constitute a standing menace to popular government and to those conceptions of personal liberty to which popular government is, in part, traceable?" he answers, "So far as concerns popular government in the sense of majority rule, the exact opposite is the case—all the above developments are the direct consequence of Democracy's emergence from the constitutional chrysalis." Nevertheless, Mr. Corwin admits that private and personal rights have been weakened somewhat by the increased authority of the President. But he does not worry unduly about the status of property rights, because he is of the opinion that they are well able to protect them-

selves against political power, at least if any lesson can be "drawn from the history of liberalism."

After a scholarly examination of the various views which the framers and other early leaders held of the office of President, the author proceeds to a consideration of the qualifications, election, and tenure of the President. In this connection he points out the weaknesses of the electoral college and the dangers inherent in a situation which fortunately has not confronted the United States very often: the disability of the incumbent to exercise his duties. Anyone conversant with the current scene in the Argentinian Republic will be particularly impressed by the possibilities incident to disability on the part of a President to perform the functions entrusted to him, especially in times of crisis.

In dealing with the President as administrative chief Mr. Corwin gives generous attention to the well known *Myers* and *Humphrey* cases. He concludes that the latter "goes a long way toward scrapping the *Myers* decision," believes that is to be "applauded" in so far as it removes "a constitutional limitation upon Congress in a field which is essentially political in nature," but questions the soundness of certain of the dicta. For example, he is amazed at the assertion of Mr. Justice Sutherland that a member of the Federal Trade Commission "occupies no place in the executive department" and asks if such an officer is not in that department, "where is he?"

In succeeding chapters Mr. Corwin deals adequately with the President as chief executive, as commander-in-chief, and as organ of foreign relations. He discusses the delegated legislative power of the office, the emergency powers, the President versus the Senate in foreign relations, along with other less controversial matters.

The final chapter of the book, entitled "Popular Leader and Legislator," will probably impress the average reader as the most striking. Here Mr. Corwin deals with the constitutional basis and *modus operandi* of presidential leadership, the veto power, patronage, and the relation of the chief executive to judicial review. The climax of the chapter is reached when the problem of stabilizing presidential leadership is approached. Despite the approval with which the trend of authority to the Presidency is viewed, presidential power is regarded as dangerously *personalized* for two reasons. In the first place, presidential leadership is almost entirely dependent upon "the accident of personality," which is not at all adequately safeguarded by our method of choosing a President. In the second place, Mr. Corwin feels that the lack of a governmental body which can be depended upon to give unbiased advice and which the President is obliged to consult is serious. To obviate the dangers attendant upon such a situation the author would not advocate the abandonment of presidential government and the substitution of English cabinet government, for he is too much of a realist to regard such a remedy as immediately feasible, even if desirable. Instead he would reconstitute the cabinet, building it out of a group of prominent members of Congress or combining congressional leaders with the executives of the more significant general departments, say the Secretaries of State and Treasury and the Attorney General. To such a nuclear cabinet would be added heads of other departments, representatives of independent agencies,

and chairmen of congressional committees when the business under consideration pertained to such agencies and committees.

Mr. Corwin is of the opinion that such a change would be constitutional. He maintains that it would preserve much of the vigor of the office and yet, at the same time, safeguard against the serious weaknesses which are now apparent. A cabinet of this type would remain advisory, but it would "bring presidential whim under an independent scrutiny which today is lacking." It would "capture and give durable form to the casual and fugitive arrangements by which Presidents have usually achieved their outstanding successes in the field of legislation."

Again and again the reader is impressed by the rich background which Mr. Corwin brings to bear on the numerous complicated topics which he discusses. It may not be possible to agree with every one of his conclusions, but they are always thought-provoking and at the very least worthy of careful consideration.

HAROLD ZINK†

THE PATTERN OF COMPETITION. By Walton H. Hamilton. New York: Columbia University Press, 1940. Pp. ix, 106. \$1.25.

It is difficult, if not impossible, to discharge simultaneously the functions of an objective book reviewer and an enthusiastic promoter of the same book. Faced with this dilemma, I am rather inclined to undertake the latter function, since it seems to me that this little book by Hamilton represents an important contribution to our current thinking and on that basis deserves very wide attention.

His answer to the question "do we have competition?" is predominately in the negative. It persists only in the economic text books and in certain statutes designed to preserve by legal sanctions conditions which the drive of the profit motive is rapidly eliminating from our economic system. "Business, unable to impose an orderly design on industry, has passed on these responsibilities to an amateur state committed to public control."

One of the author's most interesting viewpoints is that competition is after all a product of economic transition. The ways of petty trade which became dominant at the time of the Industrial Revolution were crystallized into a "system." Classical economic theory, developed at this early transition period, succeeded in smoothing over a rough empirical structure and evolving a complete system.

The reviewer has always held the opinion that Adam Smith and his colleagues, exercising the function of keen observers of the economic currents of their times, devised a satisfactory and workable explanation of the interplay of forces in a transitional period. The followers of Adam Smith in later years, and not the founders of classical economics, are the theorists who stick to the standard pattern rather than adjust the theories to conditions based on realistic observation of a changing economic world.

Hamilton stresses the point that during the past century the economist

† Hall Professor of Political Science, DePauw University.