enriched with the old Chinese proverb that the first result of any war is that the adversaries exchange vices, and reminded of the man who wanted to unite Heaven and Hell by combining the best features of each. To the suggestion that all this intellectual activity is perhaps unnecessary since some men attain bliss through ignorance, "we reply that success in a lottery is no argument for lotteries." And we are reminded of Hegel, while the Battle of Jena was raging on his doorstep, writing his *Phenomenology* which "for good or evil will last for many years." We are told that "after all, the useful has no intrinsic value." And in an essay written in 1919 on philosophy in wartime: "And when people begin to admonish me that if everyone did as I did, etc., I answer that humanity would probably perish from the cold if everyone produced food, and would certainly starve if everyone made clothes or built houses."

Finally, in one of the concluding essays there is an admonition that has perhaps special relevance today for those in law and in the social sciences: "He who wishes to preach to those in the market place must see more than the market place."

HARRY KALVEN, JR.*

The Constitution and What It Means Today. (8th ed.) By Edward S. Corwin. Princeton: Princeton University Press, 1946. Pp. 263. $2.50.

This is the eighth edition of a book which, first published in 1920, has long been accepted as one of the most useful commentaries on the American Constitution. The last previous edition appeared in 1941. The intervening period has been overwhelmingly preoccupied with the fact of war. And since, as Corwin says, in wartime "interpretation of the Constitution falls much more largely to the political branches of the government than to the judiciary," considerable attention is given in this new edition "to executive and legislative acts illustrative of the war power and suggestive of its effect both on private rights and constitutional structure."

Professor Corwin is not disposed to be too critical of wartime infringement of normal constitutional standards. As he says, "Total War is itself a highly justifying, not to say compulsive circumstance, in the presence of which judicial review is apt to be properly self-distrustful, and hence ineffective." And so he apparently hesitates to criticize the Supreme Court for failing to declare illegal the army's evacuation of Japanese residents from the West Coast, though he expresses his own skepticism as to the necessity for such measures. He believes that the destroyer deal with England violated several statutes, but was sanctioned by public opinion and later congressional action. He disapproves of President Roosevelt's threat on Labor Day, 1942, to disregard certain statutory provisions unless Congress repealed them by the following October 1, but adds that "any candid person must admit the possibility of conditions arising in which the safety of the republic would require the waiving of constitutional forms." He expresses no opinion on the use of presidential seizure powers in the *Montgomery Ward* case,[1] though referring to Judge Sullivan's "informative" opinion;[2] the reversal of this decision by the circuit court came too recently to be noted in this book.

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[1] United States v. Montgomery Ward & Co., 150 F. 2d 369 (C.C.A. 7th, 1945).

[2] United States v. Montgomery Ward & Co., 58 F. Supp. 408 (Ill., 1945), reversed on appeal; see note 1 supra.

Apart from problems relating to the war power, major interest in the volume may well center on three fields singled out for special comment by Professor Corwin in his preface. The first is that of judicial decisions pertaining to labor. In the 1941 edition of this book Corwin wrote: "Constitutional law has always a central interest to guard. Today it appears to be that of organized labor." The period from 1941 to 1946 has seen this interest further developed—in some respects too far, Corwin infers. The extension of freedom of speech to cover picketing, and the "substantial repeal" of the Sherman Act as applied to labor reveal the Court as adopting the role of "a sort of superlegislature in the field of labor activities." Corwin sees this trend reaching a climax in the recent decision in *Hunt v. Crumboch*,[3] where the Court held that the Sherman Act was not violated by the refusal of a labor organization to admit to membership the employees of an interstate trucking company, though the actual and intended effect was to force the company out of business. Corwin aligns himself with Jackson's biting dissent in this case, a dissent in which the late Chief Justice and Justice Frankfurter joined. Corwin considers, however, that the claim of these two latter justices "on one's sympathy is not great," considering that they helped initiate the present trend by authoring the *Apex*[4] and *Hutcheson*[5] cases, respectively.

Corwin is equally critical of the Court's tendencies in a second field of considerable interest—the freedom of religion cases arising chiefly out of the fanatic zeal of Jehovah's Witnesses. The decisions in several of these cases Corwin regards as obvious departures from "common sense and common law." He refers to the "erratic" record of the Court in its quick reversal of the *Gobitis*[6] and *Opelika*[7] decisions. He believes that the Supreme Court has not thought these new aspects of the religious freedom issue through, and speculates that perhaps the Court's curious disposition of the *Ballard*[8] case, involving prosecution of the head of the "I Am" cult for mail fraud, was a "stall" to permit the Court "to set its thinking on the general problem of religious liberty in better order, something very much needed." As for himself, Corwin is quite clear that "the right of people to resort to their own places of worship and listen to their chosen teachers" does not stand on "a constitutional level with the right of religious enthusiasts to solicit funds and peddle their doctrinal wares in the streets, to ring doorbells and disturb householders, and to accost passersby and insult them in *their* religious beliefs."

In a third field of recent activity, involving decisions where the Court has defended "the principles of fair trial, fair play, and equality before the law in behalf especially of persons of color," Corwin is in the happier position of having little but praise for the Court. He singles out the extremely important *Screws*[9] civil rights case and the *Steele*[10]

[3] 325 U.S. 821 (1945).

[4] Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).

[5] United States v. Hutcheson, 312 U.S. 219 (1941).

[6] Minersville School District v. Gobitis, 310 U.S. 586 (1940).

[7] Jones v. Opelika, 316 U.S. 584 (1942), reversed on rehearing, 318 U.S. 103 (1943).

[8] United States v. Ballard, 322 U.S. 78 (1944).

[9] Screws v. United States, 325 U.S. 91 (1945).

[10] Steele v. Louisville & Nashville R. Co., 323 U.S. 192 (1944).

case invalidating a collective bargaining agreement against Negro firemen as decisions in which "the Court appears in its best light and its great powers find their real vindication in terms of democratic ideals."

Naturally, not every student of the Constitution will agree with all of Professor Corwin's appraisals or conclusions. His judgment that the Supreme Court's 1937 poll tax decision "logically settles" the validity of that tax overlooks some important questions. President Roosevelt's conclusion that the legislative purge of Messrs. Lovett, Watson, and Dodd from the federal payroll by an appropriation act rider constituted a "bill of attainder," Corwin regards as of "doubtful propriety"; but the U.S. Court of Claims has already upheld Mr. Roosevelt and overruled Mr. Corwin on this point. Nor will the author find unanimity for his belief that Congress "obviously" has authority to recover power delegated to the President, by means of a concurrent resolution taking effect without the President's signature. And one may wonder what purpose is served by the footnote reference to Justice Byrnes as one "who at the moment occupied a seat on the Court." Surely the action of Byrnes in resigning from the Court after one year to take on almost the heaviest wartime responsibilities assumed by any civilian merits no such derogatory reference.

The book is, of course, practically irreproachable in its accuracy on matters of fact. However, the Securities and Exchange Commission was not created by the Securities Act of 1933, but by the Securities Exchange Act of 1934. The "Hot Oil" cases[11] were decided in 1935, not 1934. The date of the *Darby*[12] decision is given in one reference as 1937 instead of 1941. A check of the list of cases reveals that it is not infallible.

This reviewer has concentrated upon the more controversial aspects of the book because of their greater contemporary interest, and because most readers are familiar with the earlier editions. To redress any unintended distortion resulting from this emphasis, the reviewer wishes to state clearly that this work offers probably the most fair-minded, understandable, and generally useful discussion of the Constitution available. Corwin understands the basic role of the Supreme Court in constitutional interpretation, and if he finds it necessary to criticize tendencies of the present Court, he does it calmly and urbanely, without loss of historical perspective. When the Court makes a stupid decision, as in the second *Williams v. North Carolina*[13] divorce case, Corwin merely notes that the Court can hardly "make much permanent headway" in that direction. And while he disagrees with the present pro labor emphasis on the Court, he can explain it by comparing "these decisions with those in which a generation ago the Court thrust forward the 'due process' clause as a shield and buckler of the right of employers to the unrestricted use of their economic superiority in bargaining with labor, for thus is illustrated the political quality, in a broad sense, with which much of constitutional law has always been infused and probably will always be."

C. HERMAN PRITCHETT*

[11] Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).

[12] United States v. Darby, 312 U.S. 100 (1941).

[13] 325 U.S. 226 (1945).

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