

Louisiana Law Review

Volume 3 | Number 3

March 1941

THE AMERICAN PRESIDENCY, by Harold J. Laski. Harper and Brothers, New York, 1940. Pp. 278. \$2.50.; THE PRESIDENT: OFFICE AND POWERS, by Edward S. Corwin. New York University Press, New York, 1940. Pp. 476. \$5.00.

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Repository Citation

Alex B. Daspit, *THE AMERICAN PRESIDENCY*, by Harold J. Laski. Harper and Brothers, New York, 1940. Pp. 278. \$2.50.; *THE PRESIDENT: OFFICE AND POWERS*, by Edward S. Corwin. New York University Press, New York, 1940. Pp. 476. \$5.00., 3 La. L. Rev. (1941)

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of present-day students pointed at Bar examinations drawn up by average practitioners—and form your own conclusions as to this. There is, moreover, a special obligation on Louisiana lawyers and law teachers to make generally available the legal history of the state. It is a veritable mine of valuable resources that includes French and Spanish and common law; its cultivation is long overdue. Because of Livingston's equal grasp of all of these systems, he has excellent claim to the title of premier lawyer of Louisiana. In that state he blossomed to maturity as a great advocate and as a legal scholar and codifier of world and lasting renown. Livingston should be an inspiration to the Bar, teachers, and students of Louisiana. His career should encourage them to add greatly to the wealth of their own jurisprudence and to that of the country as well. For his considerable help in furtherance of this goal, we are much indebted to the author of this book.

JEROME HALL*

THE AMERICAN PRESIDENCY, by Harold J. Laski. Harper and Brothers, New York, 1940. Pp. 278. \$2.50.

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

No other political institution in the world provides so subtle and unstable an interplay between office and personality as does the American presidency. The presidency conditions the nature of the president's activity without defining it in any save the vaguest terms. As Woodrow Wilson put it, "The president is at liberty, both in law and conscience, to be as big a man as he can."—as big, that is, as he can be within the limits imposed by a federal system, a division of powers, and a party organization with radical centrifugal tendencies.

How big a man the president should be was left unsettled by the framers of the constitution; and their divided opinion on this matter is reflected in the ambiguity of the provisions which define the office. The presidency has never achieved a position of stable equilibrium within our system. And now this office of ambiguous origin and fluctuating history has come to assume a position of fateful importance in moulding the shape of the future. It must

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be so used as to provide the driving and inspirational leadership the present crisis demands—and post-war adjustments will continue to demand—without permanently impairing the democratic nature of our system, else democracy, it is to be feared, will perish from the earth.

A considerable body of literature devoted to the office has appeared in the last two years, attesting to the general recognition of these facts. Last year, for example, was marked not merely by the type of campaign biographies ordinarily associated with a presidential election, but by such notable volumes as Professor Laski's *The American Presidency*, and Professor Corwin's *The President: Office and Powers*.

The books admirably complement each other. Professor Corwin's, as he himself says, is a study in public law—"American constitutional law, to be precise." His is a solid and substantial volume, showing the customary signs of his painstaking scholarship. Professor Laski tells us that he "attempts through English eyes to interpret the way in which it [the presidency] actually works." Reducing his academic luggage to a minimum he makes a tour of the office sufficiently diverting to become a selection of the Book-of-the-Month Club. The volumes, in short, are characteristic products of their respective authors. Professor Corwin has devoted a lifetime of study to American constitutional law, and perhaps several decades to the accumulation of the materials from which his generalizations are made. Professor Laski has assembled a modest library of standard volumes on his subject, turned upon them his penetrating eye, allowed his extraordinarily facile mind to speculate, and fertilized the results with observations drawn from his manifold studies in political theory and comparative government. Professor Corwin's book should remain the definitive treatment of his subject for years to come; the future of Professor Laski's study will probably depend on the measure in which time confirms his conclusions. It has already come uncomfortably close to refuting his categorical statement that no representative of big business could hope to achieve the presidency.

And yet any reviewer who treats the books jointly will probably be tempted to give major attention to Professor Laski. For Professor Corwin's volume is so thorough in its research, so careful and judicious in its conclusions, that little of controversial nature appears, and one is reduced to "recommending it to all serious students of the subject." Professor Laski, on the other

hand, is a virtuoso in the art of stimulating the critical faculties. He is always arguing a highly controversial thesis, and to one who knows his works well, there is usually the highly diverting possibility of answering him out of his own mouth.

Thus, the central thesis of his *American Presidency* is the proposition that strong government which stems from powerful leadership alone can save liberal democratic institutions. But only a few years ago in his *Modern State in Theory and Practice*, and his *Rise of Liberalism*, he was committed to the essentially Marxist proposition that the state is held captive by the economic overlords of society, and that these gentlemen will use its powers, if necessary, in order to protect their own economic freedom, even at the expense of all the "incidental freedoms" of liberalism. Accepting this proposition, one must conclude that the strengthening of the government now advocated would prove to be simply the strengthening of the hold of the capitalist class on society, and perhaps eventually a hastening of the plunge into Fascism.

But Professor Laski is nothing if not versatile. He appears periodically poised on a new set of assumptions on which he disports himself with debonair ease. Each book has its own set, and from these the author argues a thesis with great cogency and consistency. It is a little confusing, however, to one who has read his last book, and expects an argument from the same set of assumptions. Something unspecified has now caused him to conclude that his deterministic position should be abandoned, and that political power within the democratic state can be made to transcend its source in economics. And we have him thereupon shifting his base with so complete a disregard of former intellectual commitments, that he here experiences no embarrassment in advocating the abolition of virtually all constitutional limitations which have helped to preserve what he was once pleased to call the "incidental freedoms" of liberalism, in order to strengthen the power of the central government, and the political majority of the moment.

Professor Corwin has the pedestrian virtue of consistency. When he wrote *The Twilight of the Supreme Court* in 1934 he was primarily concerned with reproaching the august tribunal for failing to follow a course of constitutional interpretation which would permit Congress the powers it required in order to legislate for the nation; but even then he expressed concern at the tendency of the court to confirm an interpretation of the presidential office which appeared to set no effective limits to the executive

power. This aggrandizement of the president's power Professor Corwin recognizes as the direct consequence of "Democracy's emergence from the constitutional chrysalis." But the effect of this development on private and personal rights, he views with some disquiet.

It is on this point, then, that the books join issue, though it would be a mistake to conclude that there is a sharp divergence of views. Neither author suffers from Mr. Hoover's acute phobia of executive power, or would support the thesis that a strengthening of the executive must be a prelude to dictatorship. Both concede the necessity for a type of positive leadership possible only to the president. But they are not in complete accord as to the degree to which the president can be trusted.

Laski ends his book with a profession of faith in the beneficence of a strong executive. ". . . the president of the United States," he writes, "must be given the power commensurate to the function he has to perform. . . . With all its risks, its conference is the condition upon which the American adventure may continue in that form of which its supreme exponents have most greatly dreamed."¹

Professor Corwin concedes that "the power and prestige of the presidency comprise the most valuable political asset of the American people. . . . But," he continues, "centering as they do in a single individual who is free to advise or to refrain from advising, with whomsoever he chooses, this power and this prestige are apt to become unduly *personalized*, thus inviting two dangers: antagonism between President and Congress and autocracy."²

Professor Corwin, then, seeks a means of institutionalizing this power of the president, and is satisfied that he has found it in the suggestion that the president draw his cabinet members from Congress. Professor Laski does not share Professor Corwin's distrust of the unfettered executive and considers a similar suggestion at length, only to reject it as incompatible with the fundamental nature of the American system. This type of adventure into institutional innovation is Professor Laski's specialty. He has excelled in it, at least since the *Grammar of Politics* in 1925, and this performance is equal to his best.

Though it is cited by neither author, the experience of Germany under the Weimar constitution is certainly not without

1. Pp. 277-278.

2. P. 306.

significance in this connection. An effort was made by the Germans to strike a balance between the French and American conceptions of the presidency. The office was given considerable powers, but at the same time provision was made for cabinet responsibility. Throughout the history of the Republic the president avoided the mean he was intended to hold to and veered between extremes. When the cabinet system worked, the president tended to become a cipher; at other times his power, irresponsible, and in the case of Hindenburg, exercised on the advice of a cabal of no official status, was formidable and dangerously arbitrary.

It seems correct to argue, as Professor Laski does, that no compromise is possible between cabinet government and presidential government; the two do not combine.

Even here, however, the two writers are not very far apart. For Professor Laski, while leaving the cabinet to the choice and control of the president, sees a strong need for its recruitment from among the nation's leading political figures: men who have had a background of experience with the Congress, who have a national standing of their own, who have the habit of speaking their mind, and who have the competency which would permit them to relieve the president of some of his onerous burden.

In view of the difference in background of the Princeton specialist in American constitutional law, and the intellectual cosmopolite with his I.L.P. connections and his broad erudition derived from investigations in the history of European political thought, and the professed difference in the objects with which the two studies were undertaken, there is a surprising identity in conclusion. The scope of the investigations is not the same, and the depth of the research is discrepant. But as to the role which the president has come to play and must continue to play in the functioning of American democratic institutions, the difference between the two is slight.

Professor Corwin does not have the penchant for the sweeping solution and the absolute generalization which has long been characteristic of his English colleague. His intellectual history has not been marked by the adoption of such radical doctrine as that of contingent anarchism of which Professor Laski was apostle in the twenties, or of quasi-Marxism which Professor Laski preached through the mid-thirties. And now he does not argue the unstinted application of strong-man rule as does Professor Laski in starting off the forties. He apparently continues to believe in the

freedoms of the Liberal tradition, and not only those which Professor Laski would endorse. "Nor is it feasible," he writes, "to distinguish . . . between the property and other rights."³ Consequently, he does not accept Professor Laski's engagingly plausible formula: "The central problem of representative government is . . . to make responsibility for action unmistakable, and to reach at once that citizen-body whose verdict upon its exercise is alone decisive."⁴

He believes, apparently, that substantial validity remains in the concept of government by laws, and therefore he sees the problem as one of *institutionalizing* power. If Professor Laski's convincing analysis is correct, this is not to be achieved by means of the device which Professor Corwin views with most favor, but that does not mean that it will not be achieved at all. The British were more than a century developing their solution of the legislative-executive relationship, and the form ultimately arrived at seems to have been unconditioned by the lucubrations of even such seers as Locke, Montesquieu, and Blackstone. If there is to be an institutional solution to the American problem, it seems most likely to come as did the British, by means of a development and extension of elements already present in the system, and reacting to changes in the political structure of the country. For example, congressional committees under a happier party system, and with more effective organization might contribute to the articulation of the two branches; or the power of the purse implemented by effective financial control might aid in the enforcement of executive responsibility to the Congress. The proponent of constitutional government must, at any rate, hope for some such institutional solution to the problem, without necessarily committing himself to the exclusive advocacy of any particular device.

As the United States prepares now to enter a vortex in which the very existence of democratic, constitutional government is endangered, not the least of our assets is the presidency, with its highly elastic powers, its history of achievement, and its enormous popular prestige. These are elements of strength in a military or ideological war. But it would be disingenuous to deny that such elements have on occasion elsewhere in the world produced despotism. The constitution must undergo another critical period from which it cannot expect to emerge triumphant solely by

3. P. 316.

4. P. 165.

virtue of the excellence of its design. The avoidance of the incidental danger of autocracy as we embark on an unlimited defense of democracy makes a supreme demand on our reserves of political experience and tradition of constitutional morality. It may be that under the heat and pressure of the coming experience, our institutions will become sufficiently malleable to permit the executive and legislature to achieve a new integration and stable relationship. And though Professor Laski's passion for the unqualified generalization seems to commit him to the unstinted strengthening of the executive power, one does not necessarily court inconsistency to hope for a solution in terms of institutions and at the same time share his aspiration for an America restored to its people.

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THE LEGISLATIVE WAY OF LIFE, by T. V. Smith. University of Chicago Press, Chicago, 1940. Pp. xi, 101. \$1.50.

The American people take their democracy for granted. They condemn it without discrimination in conversation with one another; they defend it in violent language against an alien detractor. Businessmen, believing they can make money faster than politicians can take it away, are likely to consider the responsibilities of democracy a nuisance to be avoided and the fruits of self-government a poor substitute for the benefits that might be expected of a benevolent despotism. Laboring men, quick enough to give their lives for democracy on the battlefield, will have precious little of it in their organizations for collective bargaining. College professors touch upon it obliquely; they have seldom elevated it to the central point of inquiry in a significant contribution to the literature of political science.

During recent decades the principal concern of the American student of political science has been to determine what constitutes "efficiency" and to advance the achievement of "efficiency" when that desirable quality has been identified. Most of the writing, being concerned with efficiency (except that dealing with international relations), has centered upon problems of administrative organization and procedures. A bare handful of men have looked with penetration at the democratic process as it is

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