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Corwin: LIBERTY AGAINST GOVERNMENT

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LIBERTY AGAINST GOVERNMENT. By *Edward S. Corwin*. Baton Rouge: Louisiana State University Press. 1948. Pp. xiii, 210. $3..

Professor Corwin is widely known as a writer, educator, and practitioner in the field of constitutional law. In his latest book, he presents a continuous story of the principle which has been so significant in the history of the Ameri-

can Constitution; that of liberty against restraints imposed upon individuals by their government, as secured by judicial review. This history is divided into three principal periods: the Roman and English origins of an external restraint upon the legislature; the use of the doctrine in this country prior to the Civil War for the protection of property; and the application of the Fourteenth Amendment to protect the less tangible interest of the "freedom of contract" and its more recent development as a guardian of civil liberties. The struggle in this country during the nineteenth century over the extent of the authority of the courts to pass upon legislative enactments had for its background in English history the conflict between Locke's philosophy of popular sovereignty and Coke's belief in the supremacy of the common law as a natural law to which all legislation must conform, on the one hand, and, on the other hand, Hobbes' theory of the surrender of all law-determining authority to a supreme power, as reflected by Mansfield and Blackstone in their support of the absolutism of Parliament. Because of the American concept of the Constitution as a codification of the social contract, the authority of the courts to review legislation in terms of the specific restrictions of that document was early established. The efforts of the state courts, in the pre-Civil War era, to find in the state constitutions a basis for judicial review in terms of a higher standard of reasonableness, was in effect a manifestation of the naturalist theory, however. Professor Corwin points out that the courts employed this principle chiefly as a device to protect the "vested rights" of property. On the federal level, until late in the nineteenth century the Supreme Court reflected the restricted concept of judicial review by its reluctance to become the "perpetual censor" of state legislation, although in several cases the due process clause of the Fifth Amendment was used to strike down federal enactments. With the changing personnel of the Court and the outside pressure from the exponents of a *laissez faire* economy, the Fourteenth Amendment was at last accepted as a source of authority for judicial review which is shown to have had the effect of establishing standards so dependant upon the individual propensities of the members of the Court as to amount to a resurgence of the philosophy of a superior naturalism. Even one who is not intensely interested in the minutiae of the decisions of courts and the opinions of jurists which influenced the stages through which the doctrine of judicial review has passed in the United States will find that the first portion of this book offers a valuable exposition of the English political and legal philosophies which supplied the traditions in which our Constitution was conceived and applied.