merely to mitigate these conflicts. It does nothing to eradicate them. And the surest evidence of its failure is the collapse of law in the present world, or rather the collapse of the dogma of "justice according to law."

Mr. Seagle's thesis is, of course, not new. Law has already taken a good deal of de-bunking at the hands of others. The novelty of the book lies chiefly in its appropriation of materials that have hitherto gone almost untapped in discussions of this kind. Something has already been said about Mr. Seagle's handling of ethnological data. Even more striking is the economic sieve through which many of his historical facts are filtered.

With Mr. Seagle's ethnology the average reader is in no position to argue. With his economic views, however, dissension is sure to arise. Mr. Seagle is obviously of the left wing—at times a bit too obviously and too cussedly. There are moments, indeed, when the intrusion of his economic bias is as irritating as it is unnecessary to the matter at hand. Fortunately, the situation is nearly always saved by a flash of humor, as when in the midst of an encomium on primitive communism he reminds the reader that "in the nature of things there can be little or no communal interest in a loin-cloth!"

Here then is a learned book with a hefty wallop. If at times it punches foul, it gives the fans their money's worth in every round. Don't miss it. It's the best of the current legal bouts in the heavy-weight class.

ISRAEL TREIMAN.†

CONSTITUTIONAL REVOLUTION, LTD. By Edward S. Corwin. Claremont Colleges, printed by the Adcraft Press. (1941) pp. ix, 121. $2.00.

This little volume contains three lectures delivered by Professor Corwin at the Associated Colleges of Claremont, California. They are based in large part on, and reflect the great learning of, the author's many previous books and articles on the Constitution and constitutional law. Of these previous works, two especially, *Twilight of the Supreme Court*, published in 1934, and *Commerce Power versus States Rights*, published in 1936, are prophetic of *Constitutional Revolution, Ltd.*, and should be required reading for anyone wishing to question its thesis. In these two books is revealed such an understanding of the Supreme Court and its work prior to 1937 as alone entitles one to make a scholarly appraisal of the work of the "new" Court. Indeed, the lectures which make up the current volume may be said to be merely Professor Corwin's' *Q. E. D.* to the thesis of the earlier volumes—that much of the legislation struck down by the Court as unconstitutional could as easily have been upheld without departing from either the text of the Constitution or even the Court's own canons of interpretation.

In the first lecture, "Judicial Choices in Constitutional Interpretation," Professor Corwin briefly reviews the thesis of his earlier books that the "old" Court's rules of constitutional law could be expressed in pairs of contradictories which gave the Court an unlimited range of choice in deci-

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sion,[1] and that, therefore, its decisions are to be explained in terms of the philosophy of government and law which dictated the choices of the majority Justices. In the succeeding lecture, "The New Deal Comes to the Supreme Court," this thesis is developed in Professor Corwin's usual scholarly and temperate vein: The philosophy of the majority Justices is briefly sketched in historical perspective; it is intelligently disagreed with as having become outmoded by change of circumstance; and this critique is the basis for explaining rather than inveighing against the Justices and their decisions. The position of the minority Justices is similarly attributed to their underlying philosophy, which, while differing from that of their brethren, and, while approved by Professor Corwin, was as much a product of their environment. In his final lecture, "Dissolving Concepts," Professor Corwin appraises the results to date of the work of the "new" Court; finds the results to have been achieved as he predicted they might—without "packing the Court" or otherwise shearing it of its power; and sees in this "revolution" a Court limited to a much narrower range of choice in decision. He expresses a mild regret, indeed, that the Court seems to have assumed too complete a spirit of self-abnegation in sustaining state legislation that invades the former barriers against double taxation of inheritance and the taxation of interstate commerce.

In explaining how the "revolution" occurred in 1937 without any change in judicial personnel, Professor Corwin dismisses as of little importance the coercive influence of the plan "to pack the Court." He surmises that Mr. Dooley[2] was partly right and that "considerably more important * * * in inducing the Justices—or certain of them—to restudy their position" was "the outcome of the election of 1936, manifesting an overwhelming popular approval of the New Deal."[3] But Professor Corwin attaches most importance to the fact that only one member of the Court, Mr. Justice Roberts, needed to become a "Saul at Tarsus" to accomplish the "revolution"; and this conversion, Professor Corwin intimates, may have been due, if we but knew it, to his having received the Gospel intracurially rather than popularly, as Mr. Dooley would have had it.

The account of the "revolution" has been told before; yet Professor Corwin's lectures in *Constitutional Revolution, Ltd.* are well worth the reading if only for their brilliant style. The lectures presuppose a considerable knowledge of political science and constitutional law; and, hence, they do not seem especially adapted for the general reader. They would, however, furnish the capstone for a serious reading program on the Con-

1. For a single example, while the whole Court agreed that state legislation fixing prices in a private business was invalid but that state legislation fixing prices in a business affected with a public interest was valid, the members of the Court differed, as a matter of human judgment, under which "contradictory" to place a New Jersey statute regulating the fees of employment agencies. Ribnik v. McBride (1928) 277 U. S. 350, 56 A. L. R. 1327.

2. "But there's wan thing I'm sure about. * * * th' Supreme Court follows th' iliction returns." Dunne, *Mr. Dooley At His Best* (1938) 76-77.

3. P. 78.

stitution by laymen. For the lay reader, especially, the reviewer would enter a *caveat.* The "old" Supreme Court was not unique in using the technique of contradictory formulae in making its judgments; and the "new" Court continues the use of this technique even though the division among its members no longer appears in interstate commerce and substantive due process cases. In a brief passage[4] Professor Corwin seems to recognize the universality of the use of contradictory formulae in the judicial process generally and, indeed, in the making of all human judgments; yet the rest of the lectures may convey the impression that the "old" Court in its use of pairs of contradictories departed from the normal judgment process. This is especially true of a passage on page 108, which, if not carefully read, may seem to say more than that the "new" Court now accepts one of the pair of contradictories in formerly disputed areas of constitutional law. Professor Corwin fails to warn sufficiently that the already accumulated dissents in the opinions of the "new" Court themselves bespeak the continued presence of pairs of contradictories in other areas of constitutional law.

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4. Pp. 32-33.

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