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BOOK REVIEWS

THE SUPREME COURT. By Bernard Schwartz. Ronald Press Co., New York: 1957. Pp. 429.

For some years the New York University Law School has been publishing very helpful annual surveys of American law. Apparently, Professor Schwartz of the faculty there has embarked upon his own personal project of offering law surveys. In 1955 he published his very excellent summary study entitled *American Constitutional Law*. Now he has written another book of the same kind, this one, as indicated by the subtitle, *Constitutional Revolution in Retrospect*, being a panoramic look at the jurisprudence of the Supreme Court since the fateful year 1937. Such a study, emphasizing breadth of coverage rather than depth of analysis, is especially valuable at this time when professional and public interest in the Court and its work is probably at an all-time peak.

The controversial questions raised before the Court in recent years quite naturally have resulted in controversial decisions. These decisions have generated one of those periods, recurrent in American constitutional history, of severe denunciation of the Court and drastic proposals to restrict its powers. The current assault, magnified by modern communication facilities, probably registers a new high in concerted opposition to the Court. Certainly a new low has been reached in the quality of the criticism. Heretofore, when emotions have subsided, responsible men have concluded that, on net balance, we are better off with the Supreme Court as it is than we would be otherwise. The Court up to now has survived its detractors with its powers unimpaired, and it seems safe to predict that such a sensible result will again be the case. In the meantime, while the controversy is raging, it is important that there should be available a source to which honest men of objective interest can turn for a fair, accurate, reasoned and concise treatment of the constitutional adjudication of the Supreme Court for the past twenty years. The new Schwartz book more than adequately fills this need.

Here, in ten chapters comprising 375 pages of text, the reader will find a summary discussion and evaluation of all the leading cases decided by the Court in the past two decades, grouped together in appropriate categories for perspective and easy comprehension. Chapter one discusses the nature of the constitutional revolution of 1937, chapters two through nine each deal with a particular area of constitutional law, and chapter ten examines various aspects of the judicial process at the Supreme Court level. There is no hesitance in stating that the exposition is factually accurate, scholarly in its grasp, interesting and entertaining in its style, although naturally this reviewer, as will every reader who already has a background in constitutional law, disagreed with many of the author's particular statements and opinions. To indicate each of these variances of opinion on items of relatively minor importance would be unprofitable, if not captious. There is one matter, however, of such importance that some comment seems to be justified.

The author quite correctly states that the essence of the constitutional revolution of 1937 was the abandonment by the Court of what had come to be known as "government by judiciary" and its replacement by a conscious policy of judicial self-restraint and deference to the legislative and executive branches. The conflict between the judicial and the other branches had arisen with respect to laws regulating property interests and economic affairs. As to that type of legislation, the Court since 1937 has been unanimous that presumptive validity and deference to the legislative judgment should be the order of the day. In the area of the freedoms of the

first amendment, however, the view has been advanced on and off the Court that laws dealing with such matters should be given a more exacting judicial scrutiny since they interfere with constitutional rights of preferred status. Here there has been anything but unanimity. On this question, the most consistent and articulate spokesmen on the Court, of course, have been Justice Frankfurter on the one side and Justices Black and Douglas on the other.

Professor Schwartz comes out squarely for the Frankfurter view that the judicial function and the test of constitutionality should be the same regardless of the nature of the legislation. "There is no more justification for a judicial tribunal to play the part of a super-legislature in the field of First Amendment rights than there is where only rights of property are concerned. . . . If the considerations militating against the pre-1937 extreme type of judicial review are sound in cases involving rights of property, they are also sound where rights given by the First Amendment are concerned. . . . If the Court was right in 1937 in rejecting the role of Supreme Censor of economic legislation, its more limited approach is correct as well in cases involving other kinds of legislation, including that impinging upon First Amendment rights." (pp. 311-12). The question at issue is one on which the present reviewer has heretofore been unable to make up his mind with any feeling of assurance or finality. Now, after further reflection prompted by Professor Schwartz's observations, I am convinced that the Black-Douglas position is correct.

The basis for a different standard in first amendment cases, Professor Schwartz says, "is to be found neither in the text nor the structure of the Constitution, but in the personal hierarchy of values of the particular judge." (p. 237). Let us see if this is so. An economic regulation by Congress under the commerce or tax and spend clauses is an exercise of an expressly granted positive power; state regulation similarly emanates from the affirmative police power. Judicial limitations frequently resulted in the past from a narrowing of the affirmative power by interpretation, as of the word "commerce"; today the Court defers to legislative judgment as to the scope of the affirmative power. But power may also be limited by express limitations judicially enforced. These limitations may be either clear and specific or they may be vague and generalized, and the judicial function may properly vary in the two cases. Thus, the express or affirmative congressional and state power to regulate the economy is limited by the generality of due process to the passage of "reasonable" laws. But what is reasonable is a matter on which men may differ, hence it is proper for the courts to defer to the legislative judgment. On the other hand, I suppose everyone would agree that Congress could not lay a tax on exports in violation of the specific prohibition of article I, section 9, and that it would be an abdication of judicial duty for the Court to uphold such a tax on the ground that it was reasonable.

Now compare an economic regulation with a law restricting religion, speech, press or assembly. So far as Congress is concerned, there is no express affirmative power to deal with such matters, but there is, on the contrary, a clear and definite prohibition in the first amendment against such laws. So far as the states are concerned, the incorporation of the first amendment into the fourteenth removes the ambiguity from due process there, leaving the vagueness of the affirmative police power opposed by a specific prohibition. In discussing the few invalidations of congressional laws since 1937, Professor Schwartz says, "However deferential the judge may be toward the legislator, he must, if he is to keep faith with his oath of office, draw the line at a direct violation of an express constitutional prohibition." (p. 59). Well, if the first amendment is not an express constitutional prohibition, then what is?

Deference to the legislative judgment may be proper where questions of the

reasonableness of economic regulation are in issue, and the societal groups affected are represented in the legislative arena. But legislative restrictions of speech, press, assembly and religion are never directed against those who are approved by the majority; they are typically a device to impose orthodoxy and to stifle dissent, and they are directed against minorities who are largely voiceless in the legislative process. To subject laws restricting first amendment freedoms to the reasonable legislative judgment test is, in effect, to withdraw the constitutional protection at the only time when it is needed, and thus to render it largely meaningless. It is submitted that an early day Jackson was right when he wrote in 1943 that: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."¹ And so to give first amendment freedoms more rigorous judicial protection than property rights is not, as Professor Schwartz says, a reflection of a personal hierarchy of values, but indeed is a duty imposed by the text of the Constitution which recognizes, by singling them out for special immunity from legislation, that they occupy a preferred status.

In support of his position, Professor Schwartz calls on a later day Jackson who said in 1949, "We cannot give some constitutional rights a preferred position without relegating others to a deferred position; we can establish no firsts without thereby establishing seconds."² This, Professor Schwartz says, is the "basic weakness" of the preferred-position philosophy. Let us examine it. There are at least two other areas in constitutional law in which it is well settled that some constitutional rights are more important than others. The first is in the matter of congressional power to govern territories. It was recognized over fifty years ago that constitutional limitations on Congress' power are applicable in full to "incorporated" territories but that only so-called "fundamental" limitations are applicable to the "unincorporated" territories. The second is in the area of due process as a limitation on state power. The Court has rejected the argument that fourteenth amendment due process includes all the specific protections of the Bill of Rights. By the selective process of the *Palko* decision,³ only those provisions of the Bill of Rights are included in the fourteenth amendment which are of the "very essence of a scheme of ordered liberty," those which reflect principles of justice "so rooted in the traditions and conscience of our people as to be ranked as fundamental." As compared with trial by jury and the privilege against self-incrimination, Justice Cardozo stated that freedom of speech and thought are on "a different plane of social and moral values Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom."⁴

Professor Schwartz is not in disagreement with the *Palko* selective process. On the contrary, he says that "Some provisions of the Bill of Rights seem to protect petty preferences, not basic principles, as for example the right to jury trial in cases where the amount in controversy exceeds twenty-dollars Rights of this type, which reflected temporary preference of the Framers, are not the kind of rights protected by due process. . . . Other safeguards, however, do have perdurable validity." (p. 168). The *Palko* decision is still followed by the Supreme Court; it was accepted by Justice Jackson; it is accepted by Justice Frankfurter, and now it is approved by Professor Schwartz. But if the *Palko* process is not an exercise in the establish-

1. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943).

2. *Brinegar v. United States*, 338 U.S. 160, 180 (1949) (dissenting opinion).

3. *Palko v. Connecticut*, 302 U.S. 319 (1937).

4. *Id.* at 326-27.

ment of firsts and seconds in constitutional rights, then words have no meaning; and if the first amendment freedoms are preferred in the *Palko* context, just why they should lose that preferred status in other contexts is not at all clear. If I may quote Jackson one more time, "I give up. Now I realize fully what Mark Twain meant when he said, 'The more you explain it, the more I don't understand it.'"⁵ Furthermore, when restrictions on freedom of religion and expression are compared with economic regulation, it is not accurate to say that the preferring of the one means the deferring of the other. It is rather a question of which forum, the judicial or the legislative, is more appropriate for the protection of the right. The old doctrine of political questions has always recognized that some constitutional provisions are better left to elected representatives. Neither Justice Jackson nor Justice Frankfurter nor Professor Schwartz has suggested the abandonment of this doctrine on the ground that it puts some rights in a "deferred" status.

One final criticism. In his eagerness to condemn the proponents of the preferred freedoms approach, Professor Schwartz lapses into serious historical error. He states: "Certainly, if there is any Justice today who does violence to the basic Holmes tenet of judicial self-restraint, it is Justice Douglas. It is true that he does so in cases involving personal rights, whereas the doctrine of deference was applied by Holmes in cases where property rights were at issue. Yet, it is somewhat presumptuous, at the very least, to assert that it follows from this that Holmes would have limited his restrained approach to economic cases. On the contrary, there is no reason to assume that he would have denied the ample scope to legislative judgment on matters of personal right that he gave to it on matters of economic policy. There is no indication in his work that personal rights were deemed worthy of preferential treatment as compared with other constitutional rights." (p. 366). It is submitted that the evidence is just the other way. The fact is that Justice Holmes did not carry his deference to legislative judgment in the economic field over to the speech cases which came before him; there he created the much more rigorous "clear and present danger" test. The fact is that when the Court applied the tests of presumptive validity and reasonable legislative judgment in the *Gitlow*⁶ case, Justice Holmes dissented. The fact is that, although they agreed with the result in the *Whitney*⁷ case for technical reasons, Justice Holmes concurred in Justice Brandeis' separate opinion which gave an eloquent exposition of what was meant by clear and present danger and which clearly repudiated the reasonable legislative judgment approach of the majority.

Justice Frankfurter himself has recognized that Justice Holmes' view of the judicial function and the constitutional test to be applied varied with the nature of the legislation. In a concurring opinion in 1949 he said, "The ideas now governing the constitutional protection of freedom of speech derive essentially from the opinion of Mr. Justice Holmes. The philosophy of his opinions on that subject arose from a deep awareness of the extent to which sociological conclusions are conditioned by time and circumstance. Because of this awareness Mr. Justice Holmes seldom felt justified in opposing his own opinion to economic views which the legislature embodied in law. But since he also realized that the progress of civilization is to a considerable extent the displacement of error which once held sway as official truth by beliefs which in turn have yielded to other beliefs, for him the right to search for truth was of a different order than some transient economic dogma. And without freedom of expression, thought becomes checked and atrophied. Therefore, in

5. *SEC v. Chenery Corp.*, 332 U.S. 194, 214 (1947) (dissenting opinion).

6. *Gitlow v. New York*, 268 U.S. 652 (1925).

7. *Whitney v. California*, 274 U.S. 357 (1927).

considering what interests are so fundamental as to be enshrined in the due process clause, those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements. *Accordingly, Mr. Justice Holmes was far more ready to find legislative invasion where free inquiry was involved than in the debatable area of economics.*"⁸

Justice Frankfurter, to repeat, is the member of the Court who feels most strongly that the judicial function and test should be the same regardless of the nature of the legislation. He has been the most articulate opponent of Justices Black and Douglas in their espousal of the preferred freedoms approach. Professor Schwartz says that "In this respect, Justice Frankfurter has merely been trying to follow in the footsteps of Oliver Wendell Holmes, whom he has always considered his mentor on the bench." (p. 364). If Justice Frankfurter has really aspired to fill the shoes of Justice Holmes, perhaps one may be permitted a comment on the degree of his success. So far as the judicial function and the dichotomy of property and personal rights is concerned, he has one shoe on and one shoe off. As to literary style, he has been running around the Court barefooted for almost twenty years.

WILLIAM P. MURPHY†

BEYOND THE DREAMS OF AVARICE. By Russell Kirk. Henry Regnery Co., Chicago: 1956. Pp. 339.

What John Dryden said of Chaucer's *Canterbury Tales* applies with equal force to Russell Kirk's prose essays in *Beyond the Dreams of Avarice*: "Here is God's plenty." This judgment will hold whether readers approach these remarkable essays from an aesthetic or intellectual viewpoint. The same power of diction and phrase, the same beauty of style, and the same richness in range and depth of thought which marked Mr. Kirk's talents in *The Conservative Mind*, *Program for Conservatives* and *Academic Freedom*, reappear in *Beyond the Dreams of Avarice*. There is at least one pithy phrase and fertile idea on every page of this book. The title is taken from a phrase of Dr. Samuel Johnson, and summarizes the philosophical ideal of Mr. Kirk's anti-materialist Christian humanism.

Many of these essays were published separately during the past decade in various learned journals in Britain and America. Although Mr. Kirk has grouped his essays under the convenient headings "American Observations" and "Notes from Abroad," this richly varied collection is much more organically unified than the modest terms "observations" and "notes" would suggest. The grand theme which gives structural unity to *Beyond the Dreams of Avarice* is contained in the positive principles of inherited constitutional government and Christian humanism. Mr. Kirk's discontent with the basic convictions in modern liberal thought and secular society is not merely "negative criticism." Implicit in his attack on the various manifestations of avarice in the social conditions, political policies and materialist aspirations of our era is his intense desire to see the triumph of that sweetness and light which is at once the source, test and end of the Christian and humanist traditions of Western civilization.

Robert Frost once asked an American audience of students and teachers: "What

8. *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949). (Emphasis added.)

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is the opposite of Utopia?" After a long awkward silence a timid voice from the audience ventured: "Hell?" Frost shot back his answer: "No, not hell. Civilization!" Mr. Kirk would certainly applaud the wit and wisdom concentrated in Frost's pithy answer. The opposite of a hypothetical Utopia is indeed our actual imperfect civilization. Since Mr. Kirk is well aware that abstract perfect theory has its practical defects, this is a point in favor of our civilization. It is precisely because Mr. Kirk appreciates the genuine and solid good already established in our civilization, through the inheritance and transmission of sound tradition, that he is one of the most forceful anti-Utopian social critics of our time. Like Edmund Burke, his great master and model in political philosophy, Mr. Kirk knows that many of the greatest evils in our present civilization are the direct result of modern man's intellectual pride, his excessive and naive faith in his own natural goodness, rationality and instincts. These essays constantly point out that past and current Utopian innovations and doctrinaire social plans have generally failed because of that human pride which at once has contempt for man's natural rights and prescriptive wisdom, and an exalted trust in private speculative reason. In man's relationship to man, Mr. Kirk prefers the collected wisdom of generations of humanists and Christians to the private stock of reason found in Hobbes, Rousseau, Bentham, Marx, Freud or Dewey.

To Mr. Kirk, the common desire of our era to extend the theoretical perfection of a materialist Utopia is a satanic objective. Nothing will more quickly and perfectly convert our imperfect civilization into Hell than those schemes of avarice which are drawn from dreams of a terrestrial paradise. The grand illusion of our time is the Gnostic heresy which holds, in defiance of Christian revelation and the right reason of man, that the kingdom of God may and should be established on earth. Since "the anti-Christ is a secular utopian . . . a professed Christian . . . cannot be a professed utopian." The spiritual dogmas of the Gnostic heresy are starkly materialistic, but this fact has been disguised by an appeal to science and man's economic needs. Materialists and secularized Christians have converted the worship of the golden calf from the Christian sin of avarice into the utopian virtue of progress. In combatting the secular liberalism of the Gnostic fallacy, Mr. Kirk sets forth the position toward history and society of his Christian humanism: "The Christian humanist never has shared the opinion of the liberal historian . . . that nothing ever really happens in history. One age may be much worse than another; one society may be relatively just, and another relatively unjust; men may improve somewhat under a prudent and humane domination, and may deteriorate vastly in an insensate time. But the gospel of Progress as the inevitable and beneficent wave of the future—a doctrine now irreparably shattered by the catastrophes of this century—never deluded the Christian humanist. He does not despise the past simply because it is old, nor does he assume that the present is delightful simply because it is ours. He judges every age and every institution in the light of certain principles of justice and order, which we have learned in part through revelation and in part through the long and painful experience of the human race. When the Christian humanist says that much is wrong with our time, that it is out of joint, he does not mean that things ever were ordered perfectly, in all respects, in some past epoch; nor does he have a vision of a future society in which all the imperfections of human nature will be wiped away, and all desires will be perfectly satisfied. He can be a historical eclectic: he may approve this feature of one age, and that feature of another age, and disapprove a great deal in any period. It is simply silly to ask him whether he would like to live in the eighteenth century, or the thirteenth century, or the first century. No living man would find life tolerable, even were such existence con-

ceivable, in any age but his own; it is like asking a man if he would care to annihilate his personality and be someone else. A man of the eighteenth or thirteenth or first century, transposed to our age, would find this epoch similarly intolerable for him." (pp. 176-77). This combination of fixed basic principles and deep regard for changed circumstances resulting from historical development, so reminiscent of Montesquieu and Burke, makes Mr. Kirk's Christian humanism at once conservative and humane. It is a formidable position from which to combat not only the ancient heresy of Gnosticism, but also its chief modern derivations as embodied in the thought of Hobbes, Locke, Rousseau, Bentham, Marx, Freud and Dewey. Against these real or disguised enemies of religion, Mr. Kirk wields defensive and offensive weapons of our Christian culture with formidable skill.

In place of the sterile "defecated rationality" which the modern world inherited from Hobbes, Locke and the eighteenth century "Enlightenment," Mr. Kirk exalts the culture of the classical and Christian traditions, the Hellenic sense of beauty and order, Ciceronian "right reason" and personal honor, and the New Testament message of love and faith. Properly blended, this Christian humanism creates a genuine and vital individuality, rooted in the rich soil of over twenty centuries of living tradition. The spiritual and cultural principles embodied in Mr. Kirk's Christian humanism stand in the sharpest contrast to the secular conception of civilization, a system of human relationships based upon commerce and finance, physical science and mechanical inventions, industrial mass production, commercial mass education, statistics, social planning, and all the creature comforts which feed on gluttony and avarice. Mr. Kirk's criticism of modern man's dreams of avarice illustrates that the best social thought of our era is necessarily in opposition to the assumptions, methods and objectives of secular liberalism.

If man is to rise beyond such dreams of avarice he must first distinguish between the divine discontent of the true Christian humanist and the mere animal agitation of the stunted secularist. True religion and culture are always centered in the community, the family, Church, guild, and other local associations. These traditional sources of community association require ascetic self-discipline, and supply the enormous personal energy which leads toward moral and intellectual self-perfection and a healthy civil society. In contrast, the stunted secularist ignores the institutions which act as a check upon the absolute power of the state. He assumes that he is sufficient unto himself, but his disassociated freedom soon reduces him to an atomized individual, to Swift's "single man in his shirt." Without any corporate character, he becomes part of an impersonal mass, wholly uprooted from the vital traditions of the past. Ultimately, to escape his desperate loneliness and personal insecurity, he gives himself enthusiastically to his social counterpart, the leviathan state. The sweep toward collectivism in our time is a sign of how far modern man has severed himself from his vital traditions. Leviathan serves modern man's hunger for material things and emotional security, and supplies a collective substitute for true religion and culture. In the fleckless mirror of Mr. Kirk's faultless prose the contrast between the Christian humanist and liberal secularist is reflected perfectly, through a vast range of subjects and social problems. This is an ideal book to make a skeptic of a confirmed secularist. It will also do much to enrich the orthodoxy of those Christians who do not yet fully appreciate the civilizing power of religion.

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THE LAW OF AWOL. By Alfred Avins. Oceana Publications, New York: 1957. Pp. 228.

The volume is dedicated to the purpose of unfolding the Law of AWOL and its related offenses for the convenience of law students and others interested in Military Law. It is designed to inform those who lack skill in legal research or who have no easy access to the materials of research.

The general scope of the volume embraces the basic offense of simple unauthorized absence as well as those in which the absence is compounded by specific intent, namely: the intent to remain away permanently, or the animus non revertendi, comprising the offense of desertion; the intent to avoid particular duties or responsibilities, constituting matter in aggravation of the unauthorized absence; and the intent to miss the movement of a ship, aircraft or unit with which a soldier is required to move in the course of duty. The latter offense is committed when the soldier misses the movement "through neglect or design."

The work is a scholarly compilation of the various cases, military-legal authorities and precedents essential to an understanding of the basic rationale and history of the quality of the offense of unauthorized absence and of the several related offenses which find their inception in absence without leave.

A meticulous research is evident throughout. Recourse is had to primary sources. Each statement of principle and rule is thoroughly documented by reference to a broad body of authority embracing within its scope material accessible only in the exercise of painstaking research.

There are three main subdivisions. Part I embraces a discussion of the rationale, importance and history of the offense and its relation to other offenses. Part II includes a detailed consideration and analysis of the entire body of military law necessary to the adequate preparation of the prosecution's case. Part III accords partial consideration to the law essential to the proper preparation of the defense's case.

The author draws upon sources such as the opinions of the Attorneys General, Comptrollers' decisions and decisions of the Comptroller General. It should be noted, however, that these sources are of limited application in disciplinary proceedings. "Whatever may be the duration of an absence for the purpose of the Bureau of Supplies and Accounts, the Bureau's view is hardly conclusive of the question when raised in a punitive proceeding."¹

The chapter on constructive termination would benefit from the inclusion of a reference to the cases holding that the failure of the military to pick up an unauthorized absentee, even though it knows of his whereabouts, does not change an unauthorized absence into an authorized one.²

Similarly, on the principle of the termination of an unauthorized absence by the apprehension of the absentee by civil authorities as agents of the Armed Forces, the volume would profit from a reference to the prevailing and dissenting opinions in *United States v. Garner*.³

Army Regulations⁴ grant authority to any civil officer described in the Uniform Code of Military Justice to "apprehend an absentee or deserter from the Army."

1. *United States v. Coates*, 2 U.S.C.M.A. 625, 629, 10 C.M.R. 121, 127 (1953).

2. See *United States v. Korzeniewski*, 7 U.S.C.M.A. 314, 22 C.M.R. 104 (1956); *United States v. Ferreti*, 1 U.S.C.M.A. 323, 3 C.M.R. 42 (1952).

3. 7 U.S.C.M.A. 578, 23 C.M.R. 42 (1957).

4. AR 630-10 (March 31, 1955).

And the Judge Advocate Section, Headquarters First Army, has recently opined that "the term 'deserters' when used in the context of Article 8, UCMJ, and Par. 23, MCM 1951, signifies the entire class of individuals who may be apprehended by civil authorities, and includes within it *any* unauthorized absentee from the Armed Forces."⁵

Accordingly, the principle of termination of an unauthorized absence by an agent of the Armed Forces assumes an importance justifying more exhaustive consideration than that accorded it by the author.

A more detailed discussion of missing important duties, as an aggravating circumstance of unauthorized absence, would have enhanced the book. Whether the importance of the particular duty or service is a question of fact to be determined by the court has recently been the subject of consideration by the Court of Military Appeals.⁶ The value of the book as a lawyer's working tool would have been increased, moreover, by the inclusion of a chapter on the evidence problems incident to AWOL cases. The intricacies of the Morning Report, the use of stipulations and other media of proof, all merit inclusion in a work of this nature.

The format of the book would have been substantially improved by the use of the hornbook method, embodying a concise statement of established principles followed by the supporting research data. And the index leaves much to be desired. Nevertheless, students of military law and others whose interest stimulates an inquiry into basic sources, will find in the volume a wealth of material otherwise accessible only after laborious research.

ARTHUR LEVITT†

5. Official opinion, rendered by Staff Judge Advocate to Commanding General, First United States Army (July 2, 1957).

6. *United States v. Hyatt*, 8 U.S.C.M.A. 67, 23 C.M.R. 291 (1957).

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