BOOK REVIEW

CONSTITUTIONAL GOVERNMENT IN AMERICA, edited by Ronald K. L. Collins. North Carolina: Carolina Academic Press. 1979, Pp. 497. $17.50.

Some years ago, the literary editor of a Philadelphia newspaper, having been assigned the improbable task of reviewing the *Encyclopaedia Britannica*, wrote this first sentence: "Reviewing the *Encyclopaedia Britannica* is like sitting down to eat a battleship." *Constitutional Government in America*[1] is not exactly a battleship, but *Jane's Fighting Ships* might rate it as a light cruiser. The editor, Ronald K. L. Collins, has brought together in this volume all of the papers and addresses delivered at the Southwestern University's First West Coast Conference on Constitutional Law in 1977, a project in which he was the prime mover. The resulting 497-page book presents the views of what is almost certainly the most distinguished group of American constitutional scholars ever gathered together within the covers of one volume. The papers total thirty on eleven major themes.[2] In addition, the volume includes addresses given at the general conference sessions by Max Lerner,[3] Henry Steele Commager,[4] John P. Frank,[5] Charles E. Wyzanski Jr.[6] and Frank R. Strong.[7] Of necessity this review will consider only the panel papers, and not all of them.

This was a conference for legal scholars, practitioners and students, not for the general public. If it had been available to the public, the session which would have attracted the greatest attention would

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1. CONSTITUTIONAL GOVERNMENT IN AMERICA: ESSAYS AND PROCEEDINGS FROM SOUTHWESTERN UNIVERSITY LAW REVIEW'S FIRST WEST COAST CONFERENCE ON CONSTITUTIONAL LAW (R. Collins ed. 1979) [hereinafter cited as ESSAYS].

2. These eleven major themes are: the First Amendment, the First Amendment and the Media, Privacy, Criminal Justice, Due Process, Equal Protection, Affirmative Action, Access to the Courts, Federalism, Land Use, and Constitutional History. The collection also includes a final chapter on Judicial Review.

3. Lerner, *Four Ways of Looking at the Court—and a Fifth*, in ESSAYS, *supra* note 1, at 457. *See also* note 6 *infra*.

4. Commager, *Equal Protection as an Instrument of Revolution*, in ESSAYS, *supra* note 1, at 467. *See also* note 6 *infra*.

5. Frank, *The Bill of Rights: Physics, Idealism and Pragmatism*, in ESSAYS, *supra* note 1, at 475.

6. *Judicial Review in America: Some Reflections*, in ESSAYS, *supra* note 1 at 485-97 (Wyzanski, *Opening Statement*, at 485; Strong, *Response*, at 491; Commager, *Response*, at 492; Lerner, *Response*, at 494).

7. *See* note 6 *supra*.

have been the one on affirmative action. Lino A. Graglia[8] spoke against affirmative action; Louis H. Pollak,[9] Charles B. Renfrew[10] and Terrance Sandalow[11] favored it. The shadow of *Bakke*,[12] which had not yet been decided, hung over this panel, and perhaps the most effective way to summarize the positions taken is to see how close the participants came to reading the Supreme Court's mind (if that is the right word for the *Bakke* opinions).

The views of Justice Powell, who announced the judgment of the Court,[13] came in two parts. The first part held that professional school admissions could not be based solely on racial and ethnic classifications. The second held that race could be taken into account as one factor in attempting to secure a diverse student body. Of the four commentators, only Graglia would have supported the first part of Powell's opinion. Graglia's assertion that "[t]he principle that no person should be disadvantaged by government because of race . . . is perhaps as valuable and as close to an absolute as any principle we have"[14] is replicated by Powell: "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids."[15]

The other three panelists would have allowed the university's medical school admissions procedure to stand. Pollak stressed the Court's past acceptance of race-conscious programs, citing *United Jewish Organizations of Williamsburgh, Inc. v. Carey*,[16] *Morton v. Mancari*,[17] and *Katzenbach v. Morgan*.[18] Those whites who disagree with modest programs to redress centuries of minority handicaps are not, he thought, "the 'discrete and insular minorities' whose political helpless-

8. Graglia, *Racially Discriminatory Admission to Public Institutions of Higher Education*, in ESSAYS, *supra* note 1, at 255 [hereinafter cited as Graglia].

9. Pollak, *Mister Chief Justice: May it Please the Court*, in ESSAYS, *supra* note 1, at 247 [hereinafter cited as Pollak].

10. Renfrew, *Affirmative Action: A Plea for a Rectification Principle*, in ESSAYS, *supra* note 1, at 267 [hereinafter cited as Renfrew].

11. Sandalow, *Minority Preference in Law School Admissions*, in ESSAYS, *supra* note 1, at 277. [hereinafter cited as Sandalow].

12. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

13. *Id.* at 269.

14. Graglia, *supra* note 8, at 255.

15. 438 U.S. at 307.

16. 430 U.S. 144 (1977) (upholding the use of racial criteria as a means of complying with the Voting Rights Act of 1965).

17. 417 U.S. 535 (1974) (upholding an employment preference for qualified Indians provided by the Indian Reorganization Act of 1934 against due process and equal protection challenges).

18. 384 U.S. 641 (1966) (holding that New York's English-literacy voting requirement was unenforceable to the extent that it was inconsistent with § 4(e) of the Voting Rights Act of 1965 which allowed certain non-English speaking Americans to vote).

ness gives them a special claim on this Court's protective authority."[19] Relying upon the premise that "race is a socially significant characteristic,"[20] Sandalow bypassed the legal issues "to discuss the social context within which the constitutionality of so-called 'special admission' programs must be determined."[21] Renfrew advanced a "rectification principle"[22] which should operate where "minority status [is] paired with a history of pervasive discrimination by the majority."[23]

All four would have opposed the second part of Powell's opinion. Graglia considered and flatly rejected the "educational diversity" argument for racial preference. Assuming diversity was desirable, he considered differences in economic status as "more important indicators of different experiences and perceptions" than race.[24] Although the other three panelists would no doubt reluctantly accept the Powell compromise as a way of permitting race-conscious admissions programs to continue, they clearly regarded "diversity" as an unacceptable evasion of the problem. Having specifically rejected the suggestion of Justice Mosk in his opinion for the California Supreme Court,[25] as well as that of Justice Douglas in *DeFunis v. Odegaard*,[26] that the remedial standard should be "the disadvantaged students of all races,"[27] they emphasized that nothing short of a fully race-conscious affirmative action program would bring the desired number of minorities into professional schools.[28] Renfrew seemed to anticipate Powell's Harvard admissions model[29] when he said: "[T]he concept that a racial classification becomes permissible if it accords with a university's or

19. Pollak, *supra* note 9, at 253 (footnote omitted).

20. Sandalow, *supra* note 11, at 278.

21. *Id.* at 277.

22. Renfrew, *supra* note 10, at 269-74.

23. *Id.* at 272.

24. Graglia, *supra* note 8, at 258.

25. Bakke v. Regents of the Univ. of Cal., 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976).

26. 416 U.S. 312, 320 (1974) (Douglas, J., dissenting).

27. 18 Cal. 3d at 55, 553 P.2d at 1166, 132 Cal. Rptr. at 694 (1976), *quoted in* Sandalow, *supra* note 11, at 286.

28. *See* Pollak, *supra* note 9, at 250; Renfrew, *supra* note 10, at 269; Sandalow, *supra* note 11, at 286.

29. In an effort to demonstrate that "the assignment of a fixed number of places to a minority group is not a necessary means toward [achieving the educational diversity valued by the First Amendment]," 438 U.S. at 316, Powell cited the admissions program of Harvard College. Harvard's scheme, aimed at achieving educational pluralism, considers several elements of diversity, including "exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, [and the] ability to communicate with the poor." *Id.* at 317. Thus, race or ethnic background is only one of several factors considered, and "the weight attributed to a particular quality may vary from year to year depending upon the 'mix' both of the student body and the applicants for the incoming class." *Id.* at 317-18.

court's sense of a healthy and interesting racial, ethnic, and cultural blend is unprincipled."[30] Sandalow was bitter about admissions procedures which reject affirmative action on the surface but permit race to be taken into account *sub rosa*: "[A] Constitutional principle designed to be flouted should not be imposed on schools dedicated to teaching the role of law in our society."[31]

After the affirmative action papers, this reviewer found the federalism essays the most interesting. Charles A. Lofgren,[32] warning that as an historian rather than a lawyer he feels "no obligation to produce an answer to the question of what the Tenth Amendment originally meant,"[33] nevertheless generally supports Madison's view that the Amendment was merely declaratory, adding nothing to the existing Constitution and "probably" reaffirming the "centralizing tendencies" of the new system.[34] But even if the Amendment is declaratory, Lofgren adds, still it is declaratory of a regime that is partly federal and partly national.[35]

It is a system, moreover, that has worked better in practice than in theory. Martin Shapiro,[36] with characteristic pungency, charges that federalism as a legal concept is absurd, and that neither the Marshall nor the Taney Courts could explain away "two-sovereignty federalism."[37] The widely-admired solution developed in *Cooley v. Board of Wardens*[38] is dismissed by Shapiro as "rigamarole."[39] *Wickard v. Filburn*[40] "deleted" the interstate commerce clause from the Constitution and, at least in theory, "abolished" the federal system.[41] The Court's effort in *Oregon v. Mitchell*[42] to preserve state control over voting ages in state elections was promptly overriden by the 26th Amendment, and

30. Renfrew, *supra* note 10, at 268.

31. Sandalow, *supra* note 11, at 288.

32. Lofgren, *The Origin of the Tenth Amendment: History, Sovereignty, and the Problem of Constitutional Intention*, in nESSAYS, *supra* note 1, at 331.

33. *Id.* at 332. The Tenth Amendment of the United States Constitution reads: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people."

34. *Id.* at 349.

35. *Id.*

36. Shapiro, *American Federalism*, in ESSAYS, *supra* note 1, at 359 [hereinafter cited as Shapiro].

37. *Id.* at 360.

38. 53 U.S. (12 How.) 299 (1851). The *Cooley* solution was that states could regulate interstate and foreign commerce where matters of unique, local concern were involved, whereas matters of a national character were within the exclusive purview of Congress.

39. Shapiro, *supra* note 36, at 360.

40. 317 U.S. 111 (1942) (holding that Congress, acting under the commerce clause, could restrict the amount of wheat produced by American farmers even to the extent of forbidding production for one's needs).

41. Shapiro, *supra* note 36, at 361.

42. 400 U.S. 112 (1970).

its latest attempt to rescue federalism, *National League of Cities v. Usery*,[43] "rests on no more elegant logic than 'too much is too much.' "[44] But Shapiro's final statement suggests that all of his preceding evidence may be irrelevant: "Whether or not legal protections of state sovereignty remain in the Constitution and the opinions of the Supreme Court, federalism will continue as long as the states are significant focuses of political activity."[45]

Jesse H. Choper[46] is even more critical of *Usery*. The decision, he asserts, is "out of line,"[47] "irrelevant,"[48] "highly ambiguous,"[49] and "may well amount to very, very little"[50] except to confuse constitutional law students. Indeed, according to Choper, *Usery* does little to preserve the authentic force of state and local powers.[51] It is addressed to only a limited and insignificant aspect of state decision making:[52] "It seeks only to protect their judgments about what 'the States qua States' may do, but not their policies concerning what the people within the states may do."[53] Choper notes that, interestingly enough, the wage and hour restriction on state employees struck down by the Court in *Usery* as violating state sovereignty was adopted in the United States Senate, the traditional guardian of states' rights, by a vote of 65 to 29.[54]

The First Amendment is the concern of six essays. In any discussion of First Amendment theory, the late Harry Kalven is sorely missed; however, his famous *Supreme Court Review* article, *The Central Meaning of the First Amendment*,[55] provides the central theme for papers by Steven Shiffrin[56] and Lee C. Bollinger.[57] Both commentators find that Kalven's high hopes for *New York Times Co. v. Sullivan*[58]—

43. 426 U.S. 833 (1976) (holding that Congress' attempt to use the commerce clause to regulate minimum wages and maximum hours of state employees does not comport with the federal system of government embodied in the Constitution).

44. Shapiro, *supra* note 36, at 368.

45. *Id.* at 369.

46. Choper, *Federalism*, in ESSAYS, *supra* note 1, at 373.

47. *Id.* at 375.

48. *Id.* at 376.

49. *Id.* at 376, 378.

50. *Id.* at 378.

51. *Id.* at 376.

52. *Id.* at 375.

53. *Id.*

54. *Id.* at 378.

55. Kalven, *The New York Times Case: A Note on the Central Meaning of the First Amendment*, 1964 SUP. CT. REV. 191.

56. Shiffrin, *Defamatory Non-Media Speech and First Amendment Methodology*, in ESSAYS, *supra* note 1, at 9 [hereinafter cited as Shiffrin].

57. Bollinger, *Elitism, The Masses and the Idea of Self-Government: Ambivalence About the "Central Meaning of the First Amendment,"* in ESSAYS, *supra* note 1, at 99 [hereinafter cited as Bollinger].

58. 376 U.S. 254 (1964) (to encourage the "uninhibited, robust, and wide-open" debate

that it would establish Meiklejohn's self-government theory of the First Amendment—have been dashed.

The more extended of the two papers, Steven Shiffrin's analysis of "defamatory non-media speech,"[59] examines the effect of *Gertz v. Robert Welch, Inc.*[60] and *Time, Inc. v. Firestone*[61] on *New York Times*, including the possibility that these decisions may have downgraded *New York Times* from a disquisition on free speech theory to just another free press case.[62] Rather than eliminating two-level theory, clear and present danger and balancing, as Kalven hoped *New York Times* had done, Shiffrin finds that the Court has now constructed a three-level theory, and that clear and present danger is "sometimes trotted out and sometimes left in the stable."[63] As for balancing, he contends that the Court's "First Amendment methodology is rooted in general balancing principles which sometimes counsel *ad hoc* approaches and other times dictate rules of general application."[64]

Lee C. Bollinger's more limited paper[65] is a regretful farewell to the Kalven-Meiklejohn "world view"[66] which assumed that citizens are "mature, open-minded, cautious, independent, responsible and self-reliant"[67]—in short, that the country could be run like a New England town meeting. Bollinger doubts that even libertarians now trust the "people" that much.[68] We are all elitists, and twentieth century history and social science have provided too many grounds for distrusting the results of the open marketplace.[69] For illustrative purposes, Bollinger confines his exposition to the regulation of the electronic media, where he believes that "our skepticism of the self-government notion has most successfully intruded into our system of expression."[70] The limits of First Amendment protection as applied to broadcasting are also the subject of Henry Geller's paper.[71]

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on public issues contemplated by the First Amendment, a public official suing for defamation must prove that the defendant published with "actual malice"—knowing falsity or reckless disregard of the truth).

59. Shiffrin, *supra* note 55.

60. 418 U.S. 323 (1974) (where a private individual sues a media defendant for defamation, the *New York Times* requirement of "actual malice" need not to be shown; rather the states may allow recovery upon a showing of negligence).

61. 424 U.S. 448 (1976) (a prominent socialite held not to be a "public figure" within the meaning of *New York Times* and its progeny).

62. Shiffrin, *supra* note 56, at 11-15.

63. *Id.* at 21.

64. *Id.* at 9.

65. Bollinger, *supra* note 57.

66. *Id.* at 100.

67. *Id.* at 101.

68. *Id.*

69. *Id.*

70. *Id.* at 102.

71. Geller, *First Amendment and Broadcasting*, in ESSAYS, *supra* note 1, at 109.

The most serious, extensive and original treatment of the First Amendment is that of C. Edwin Baker,[72] who develops three theories of the scope of speech protected by the First Amendment. Briefly, the first is the classic "marketplace of ideas" model,[73] stemming from John Stuart Mill. Second is the "market failure" model,[74] which justifies state intervention to correct for such market failures as monopoly control of the media, lack of access by disfavored groups, techniques of behavior manipulation, irrational responses to propaganda and the nonexistence of value-free, objective truth. An excellent example of this second model is Donald McDonald's paper, "For the American Press: The Freedom to be Responsible."[75] Third is the "liberty" model,[76] which posits not a marketplace but rather an area of individual liberty free from certain types of governmental restriction. Baker asserts that "[s]peech is protected not as a means to a collective good but because of the value of speech conduct to the individual"[77] and argues for this third model of protected speech, contending that it cures the major inadequacies of the marketplace models. He rejects the traditional distinction between protected expression and restrainable conduct, and suggests instead that all "noncoercive, nonviolent, substantially valued conduct"[78] be protected.

In the remaining First Amendment paper, Laurence H. Tribe,[79] who recognizes that a satisfactory free speech theory is probably as mythical as the unicorn, nevertheless undertakes a brief description of what it would look like. According to Tribe, such a theory should describe premises, take a position on structure, identify a set of acceptable methods and specify boundaries of content and substance.[80] The advice should be useful for anyone planning to go looking for unicorns.

There are no unicorns in the three equal protection articles, which are strictly limited to review and analysis of recent Supreme Court decisions. Barbara Brudno[81] traces the Court's declining concern about discrimination against the poor, from Justice Black's seminal decision in *Griffin v. Illinois*[82] down to the denial of Medicaid funds to disadvan-

72. Baker, *Scope of the First Amendment Freedom of Speech*, in ESSAYS, *supra* note 1, at 45 [hereinafter cited as Baker].

73. *Id.* at 46.

74. *Id.* at 53.

75. McDonald, *For the American Press: The Freedom to be Responsible*, in ESSAYS, *supra* note 1, at 129.

76. Baker, *supra* note 72, at 58.

77. *Id.* at 46.

78. *Id.*

79. Tribe, *Toward a Metatheory of Free Speech*, in ESSAYS, *supra* note 1, at 1.

80. *Id.* at 2.

81. Brudno, *Wealth Discrimination in the Supreme Court: Equal Protection for the Poor From Griffin to Maher*, in ESSAYS, *supra* note 1, at 229.

82. 351 U.S. 12 (1956) (holding that a state must, in accordance with due process and

taged pregnant women in *Maher v. Roe*.[83] Ruth Bader Ginsburg[84] reviews the Court's recent thinking about gender-based discrimination, particularly the decisions of the 1976 Term. Both articles, while partisan, are models of case analysis. Unfortunately, the same cannot be said for the comments of Nathaniel R. Jones[85] on recent racial discrimination decisions.

The due process theme is present in two oddly assorted papers. Charles Wiggins,[86] President Nixon's most effective defender during the House Judiciary Committee impeachment proceedings, reviews that experience, as well as earlier impeachment efforts, and tests congressional procedures against constitutional due process standards. Recognizing that impeachment is basically a political inquest[87] rather than a court trial, Wiggins is generally satisfied that such proceedings meet due process requirements.[88]

Bernard Schwartz[89] discusses administrative due process, and specifically the hearing requirement in "mass administrative justice."[90] According to Schwartz, *Goldberg v. Kelly*[91] threatened an impossible inundation of hearings in welfare benefit and Social Security cases, but this threat has been averted by the Court's subsequent limitation of hearing rights and deletion of judicial-type proceedings. Schwartz approves this trend, as it accords with a flexible concept of due process: "The Constitution does not require full judicialization in every conceivable case."[92]

Two thoughtful papers on access to the federal courts overlap

equal protection, provide indigent criminal appellants with a free transcript of the trial if it is necessary for the preparation of their appeal papers).

83. 432 U.S. 464 (1977).

84. Ginsburg, *Gender and the Supreme Court: The 1976 Term*, in ESSAYS, *supra* note 1, at 217.

85. Jones, *A Judicial Short Circuiting of the Equal Protection Promise*, in ESSAYS, *supra* note 1, at 209.

86. Wiggins, *Limitations Upon the Power of Impeachment: Due Process Implications*, in ESSAYS, *supra* note 1, at 199.

87. *Id.* at 201-02.

88. *Id.* at 205. In reaching this conclusion, Wiggins rejects Raoul Berger's bizarre contention that a Senate impeachment conviction should be subject to Supreme Court review: "If there ever were a case where finality of decision is required, and the instant transfer of power imperative, it is with respect to a judgment of impeachment following a Senate trial of a President." *Id.* at 206.

89. Schwartz, *Changing Conceptions of Administrative Due Process*, in ESSAYS, *supra* note 1, at 185 [hereinafter cited as Schwartz].

90. *Id.* at 190.

91. 397 U.S. 254 (1970) (holding that since welfare benefits are a matter of statutory entitlement, and the benefits are essential to the livelihood of their recipients, procedural due process requires a hearing, with timely and adequate notice, prior to their termination).

92. Schwartz, *supra* note 89, at 194.

somewhat. Scott H. Bice[93] is concerned mainly with the power of Congress to confer standing, given the case or controversy limitation on federal jurisdiction[94] and other elements of the Court's justiciability doctrine. In general, he believes that the "injury in fact" requirement[95] can be interpreted to permit the conferral of standing by congressional creation of "citizen interests," similar to the citizen interest in enforcement of the establishment clause recognized by the Court in *Flast v. Cohen*.[96]

Carole E. Goldberg-Ambrose's thesis[97] is that the Court has a double standard for ascertaining standing. It rejects for lack of standing constitutional claims resting solely on 42 U.S.C. § 1983,[98] whereas similar claims backed by recent, specific federal statutes have been accepted.[99] She denies that this practice can be justified on any theory of congressional superiority in defining jurisdiction, and contends that it has produced an overly restrictive interpretation of access where congressional authorization for suit is lacking.[100]

In a third access paper, by William M. Kunstler,[101] the Court's recent limitations on standing are seen as part of a general erosion of constitutional rights and privileges. *Dombrowski*[102] and federal injunctive relief are dead at the hands of *Younger v. Harris*.[103] Federal

93. Bice, *Congress' Power to Confer Standings in the Federal Courts*, in ESSAYS, *supra* note 1, at 291 [hereinafter cited as Bice].

94. U.S. CONST. art. III, § 2.

95. In order to have standing, a plaintiff must allege "that the challenged action has caused him injury in fact, economic or otherwise." Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970). Standing also requires that "the interest sought to be protected by the complainant [be] arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Id.* at 153.

96. Bice, *supra* note 93, at 299, citing Flast v. Cohen, 392 U.S. 83 (1968).

97. Goldberg-Ambrose, *Access to the Federal Courts in Constitutional Cases*, in ESSAYS, *supra* note 1, at 311 [hereinafter cited as Goldberg-Ambrose].

98. 42 U.S.C. § 1983 states: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

99. Goldberg-Ambrose, *supra* note 97, at 325.

100. *Id.*

101. Kunstler, *Our Constitutional Liberties: Myths or Realities?* in ESSAYS, *supra* note 1, at 305 [hereinafter cited as Kunstler].

102. Dombrowski v. Pfister, 380 U.S. 479 (1965)(holding that a federal court may enjoin enforcement of an overbroad state criminal statute which threatens free expression) (discussed in Kunstler, *supra* note 101, at 307).

103. 401 U.S. 37 (1971) (holding that the federal courts will not enjoin enforcement of a state criminal statute solely because the statute abridges First Amendment rights) (discussed in Kunstler, *supra* note 101, at 307).

habeas corpus is being destroyed, along with the removal statutes.[104] *Monroe v. Pape*[105] and *Hague v. CIO*[106] have disappeared. According to Kunstler, "[t]his is the system's reaction to the use of the courts to redress fundamental constitutional violations and to achieve equality of treatment."[107]

Emphasis at the Southwestern Conference on current constitutional problems is countered by a section on constitutional history, with papers by Irving Dilliard,[108] George Anastaplo[109] and Daniel Sisson.[110] Privacy is discussed by John J. Shattuck[111] and Alan F. Westin.[112] There are three papers on criminal justice by James L. Oakes,[113] Gerald F. Uelman[114] and Constance Baker Motley,[115] and one on land use by R. Marlin Smith.[116] Absent are discussions of obscenity and of the free exercise and establishment of religion. However, this volume is not a treatise on constitutional law, and Collins is to be commended for having conquered the many logistical obstacles involved in bringing together such a distinguished group for consideration of constitutional principles.

*C. Herman Pritchett**

104. Kunstler, *supra* note 101, at 308-09.

105. 365 U.S. 167 (1961) (holding that 42 U.S.C. § 1983 grants standing to challenge unconstitutional actions taken "under the color of" state authority, even though such actions were not actually authorized by the state) (discussed in Kunstler, *supra* note 101, at 309).

106. 307 U.S. 496 (1939) (holding that Judicial Code § 24(14) with language similar to its modern counterpart, 42 U.S.C. § 1983, confers federal jurisdiction where the U.S. Constitution or federal law has been abridged, regardless of the complainants' citizenship or the amount in controversy) (discussed in Kunstler, *supra* note 1011, at 309).

107. Kunstler, *supra* note 101, at 309.

108. Dilliard, *Change on the Supreme Court: An Instance Appraised*, in ESSAYS, *supra* note 1, at 447.

109. Anastaplo, *Abraham Lincoln's Emancipation Proclamation*, in ESSAYS, *supra* note 1, at 421.

110. Sisson, *The Idea of Revolution in the Declaration of Independence and the Constitution*, in ESSAYS, *supra* note 1, at 403.

111. Shattuck, *Privacy of Information*, in ESSAYS, *supra* note 1, at 139.

112. Westin, *The Personal and Political Dimensions of Privacy*, in ESSAYS, *supra* note 1, at 145.

113. Oakes, *The Exclusionary Rule—A Relic of the Past?* in ESSAYS, *supra* note 1, at 151.

114. Uelman, *Federal Sentencing Reform: The Emerging Constitutional Issues*, in ESSAYS, *supra* note 1, at 159.

115. Motley, *Eliminating Disparities and Disproportionality in Sentencing*, in ESSAYS, *supra* note 1, at 177.

116. Smith, *The Constitutional Limits on Land Use Controls*, in ESSAYS, *supra* note 1, at 381.

* Professor Emeritus of Political Science, University of California, Santa Barbara. A.B., 1927 Milliken University; Ph.D., University of Chicago, 1937.