

Chicago-Kent Law Review

Volume 64

Issue 1 *Symposium on Interpreting the Ninth
Amendment*

Article 1

April 1988

Table of Contents - Issue 1

Chicago-Kent Law Review

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

Recommended Citation

Chicago-Kent Law Review, *Table of Contents - Issue 1*, 64 Chi.-Kent L. Rev. i (1988).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol64/iss1/1>

This Front Matter is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

CHICAGO-KENT LAW REVIEW

VOLUME 64

1988

NUMBER 1

CONTENTS

THE KENNETH M. PIPER LECTURE

JUDICIAL REVIEW OF LABOR ARBITRATION

AWARDS: THE CLASH BETWEEN THE PUBLIC

POLICY EXCEPTION AND THE DUTY

TO BARGAIN

Hon. Harry T. Edwards 3

SYMPOSIUM ON INTERPRETING THE NINTH AMENDMENT

RANDY E. BARNETT

SYMPOSIUM EDITOR

FOREWORD

THE NINTH AMENDMENT AND CONSTITUTIONAL LEGITIMACY

Randy E. Barnett 37

On what basis may we conclude that a constitution imparts sufficient legitimacy on legislation enacted under its auspices to create a duty of obedience in the citizenry? In his Foreword, Professor Barnett offers a two-stage analysis of this question and then suggests how the judicial protection of the rights "retained by the people" has an important role to play in ensuring that legislation is legitimate.

THE NINTH AMENDMENT: INKBLOT OR ANOTHER

HARD NUT TO CRACK?

Sotirios A. Barber 67

Professor Barber argues that constitutional tradition and ordinary moral experience favor a constitutionalism that aspires to simple justice. Emblematic of such a constitutionalism, the ninth amendment is an open-ended commitment to vindicate unenumerated rights. These rights may also be linked to established constitutional rights and traditional aspirations to reasonableness and truth in public affairs. Morally skeptical objections to such a constitutionalism based on "framers' intent" and "democracy" proceed from arbitrary and degraded versions of these ideas. (Principal Paper)

A MORAL REALIST DEFENSE OF CONSTITUTIONAL

DEMOCRACY

Michael W. McConnell 89

Professor McConnell denies that a believer in objective moral reality must espouse an open-ended interpretation of the Constitution. There are, instead, reasons to prefer a constrained interpretation, under which representative bodies retain the authority to resolve questions of justice not resolved by the Constitution itself. (Commentary)

WHITHER MORAL REALISM IN CONSTITUTIONAL THEORY?
A REPLY TO PROFESSOR MCCONNELL *Sotirios A. Barber* 111

Professor Barber argues that Professor McConnell's brand of "moral realism" is problematic. It would deny reason a central role in constitutional thought and adjudication, and it would substitute total and therefore unreflective immersion in the framers' intent. McConnell's depreciation of reason and its attendant scholarly conventions seems to result from his negative view of the legal profession's concern for moral and scientific truth. (Reply)

**CONSTITUTIONAL RHETORIC AND THE
NINTH AMENDMENT** *Sanford Levinson* 131

Professor Levinson, after first examining the place (or absence) of the ninth amendment in our established rhetoric of constitutional argument, poses two problems generated by its revival. The first involves our assessment of (and teaching about) the constitutional case law of chattel slavery. The second is that of developing a methodology of ninth amendment interpretation that does not depend on unacceptable ("premodernist") theories of natural law. (Principal Paper)

**REASONS, RHETORIC, AND THE NINTH AMENDMENT:
A COMMENT ON SANFORD LEVINSON** *Stephen Macedo* 163

Professor Macedo applauds Professor Levinson's arguments on behalf of taking the ninth amendment more seriously and tries to push him further in several ways. But he also expresses doubts about Levinson's self-professed skepticism and wonders whether it is entirely consistent with an otherwise serious engagement in constitutional interpretation. (Commentary)

COMMENT *Sanford Levinson* 175

**THE NINTH AMENDMENT AND THE UNWRITTEN
CONSTITUTION: THE PROBLEMS OF
CONSTITUTIONAL INTERPRETATION** *Andrzej Rapaczynski* 177

Professor Rapaczynski analyzes a number of theories of constitutional interpretation and concludes that the ninth amendment does not state anything that we would not know without it. It may in fact mislead us into improperly substituting moral and religious discourse for the more appropriate language of political theory in constitutional law. (Principal Paper)

THE USES OF AN UNWRITTEN CONSTITUTION *Thomas C. Grey* 211

Professor Grey, responding to Professor Rapaczynski's critique, defends the concept of an unwritten constitution as a useful and constructive heuristic device in constitutional commentary. (Commentary)

**YOU CAN RAISE THE FIRST, HIDE BEHIND THE FOURTH,
AND PLEAD THE FIFTH. BUT WHAT ON EARTH
CAN YOU DO WITH THE NINTH AMENDMENT?**
Lawrence G. Sager 239

Professor Sager puts forth an "obvious" interpretation of the ninth amendment which holds that the liberty-bearing provisions of the Constitution are to be understood as prominent and accessible instantiations of a general sense of the proper relationship of a government and its citizens, but not as a complete set of the limitations on government necessary to perfect that relationship. The ninth amendment undercuts majoritarians who wish to view the Constitution as a closed system of textual stipulations but who cannot do so without ignoring the ninth amendment and so radically compromising the interpretation of the remaining text as to make the endeavor worthless. (Principal Paper)

**DOING MORE THAN REMEMBERING THE
NINTH AMENDMENT**

Hon. Morris S. Arnold 265

Judge Arnold applauds Professor Sager's contribution to ninth amendment scholarship but is troubled by Sager's conclusion that what we can mainly do with the ninth amendment is remember it. (Commentary)

NOTES

**FEDERAL EMPLOYEES, FEDERAL UNIONS, AND FEDERAL
COURTS: THE DUTY OF FAIR REPRESENTATION IN
THE FEDERAL SECTOR**

Stephen L. Wood 271

**GOD AND DARWIN IN THE CLASSROOM: THE
CREATION/EVOLUTION CONTROVERSY**

Judith A. Villarreal 335

**COPYRIGHT, COMPILATIONS, AND PUBLIC POLICY:
LINGERING ISSUES AFTER THE WEST PUBLISHING-
MEAD DATA CENTRAL SETTLEMENT**

Cary E. Donham 375

THE IMPASSE DOCTRINE

Peter Guyon Earle 407

Cite this volume as: 64 CHI.-KENT L. REV. — (1988).

The *Chicago-Kent Law Review* is published three times a year by the students of the IIT Chicago-Kent College of Law, 77 South Wacker Drive, Chicago, Illinois 60606. Phone 312-567-5013. The subscription price is \$23.00 (\$26.00 foreign) for a one year, three issue subscription that includes the annual *Seventh Circuit Symposium*. Single issues are available for \$10.00.

Authors may submit manuscripts for publication in the *Chicago-Kent Law Review*. Submissions must be typed and double-spaced with footnotes at the end of the article. All citations must conform to *A Uniform System of Citation* (14th ed. 1986). If subscription is to be discontinued at expiration, notice to that effect should be sent; otherwise it will be renewed as usual. All notifications of change of address should include the old and new address and zip code.

Copyright © 1988 by IIT Chicago-Kent College of Law