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Comment

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COMMENT

SANFORD LEVINSON

Professor Macedo amply demonstrates¹ that he has carefully read and thought about my essay. Given his generally complimentary remarks, it would be churlish to take significant issue with them. More to the point, I do not have the time to engage in an equally careful analysis of his argument. These brief paragraphs, therefore, should in no way be taken as a "response." I do think it worth saying, though, that the differences between us may be of less operative import than may otherwise appear to be the case.

I accept Macedo's point that one cannot play the game of "thinking like a lawyer"—by, for example, offering an interpretation of the ninth amendment—and remain a full-scale skeptic (whatever that might mean). That is, to adopt the role of lawyer, law professor, judge, onlooking citizen, or whatever requires that one accept one's presence "within" the existing grammar of legal argumentation. Moreover, analysts indeed present what appear to them the "best" arguments available within that grammar. It is also clearly the case that what one thinks "best" will inevitably depend on the normative views, implicit or explicit, that one has.

However, we might indeed disagree on the importance placed on the "foundation" offered for one's normative views or the particularities of "internal" legal interpretation. As a "skeptic," I doubt that we can achieve any kind of firm foundation; more importantly, I doubt that this inability matters very much. After all, life goes on, pragmatically. Professor Macedo may believe both that foundations are attainable and that it matters whether one accepts these foundations. In any case, it is wholly unclear that our "meta"-differences have much to do with our interpretations of the ninth amendment. One does not discover the answer to concrete cases by learning that I am a "skeptic" or that Professor Macedo believes in natural law.

1. Macedo, *Reasons, Rhetoric, and the Ninth Amendment: A Comment on Sanford Levinson*, 64 CHI.-KENT L. REV. 163 (1988) (Professor Macedo's article appears in this symposium issue).

