

RANDY E. BARNETT

Carmack Waterhouse Professor of Legal Theory

Georgetown University Law Center

600 New Jersey Avenue NW

Washington, DC 20001

Phone: (202) 662-9936 FAX: (515) 322-0016

E-mail: rbarnett@gmail.com

Web Page: <http://www.randybarnett.com>

PROFESSIONAL:

Permanent:

GEORGETOWN UNIVERSITY LAW CENTER
Carmack Waterhouse Professor of Legal Theory, 2006-present

BOSTON UNIVERSITY SCHOOL OF LAW
Austin B. Fletcher Professor of Law, 1993-2006

ILLINOIS INSTITUTE OF TECHNOLOGY, CHICAGO-KENT COLLEGE OF LAW
Norman and Edna Freehling Scholar and Professor of Law: 1988-1993
Associate Professor of Law, 1986-1988
Assistant Professor of Law, 1982-1986

STATE'S ATTORNEY'S OFFICE OF COOK COUNTY, ILLINOIS
Assistant State's Attorney, November 1977 - October 1981
Assignments: Felony Trial Division, Homicide/Sex Unit, Narcotics Unit, Felony Review Unit,
Auto Theft Unit, Municipal Division, Courtroom of the Presiding Judge of the Criminal Division.

Visiting:

GEORGETOWN LAW CENTER, Fall 2005

HARVARD LAW SCHOOL, Spring 2002; Fall 1992

NORTHWESTERN UNIVERSITY SCHOOL OF LAW, 1990-91

UNIVERSIDAD FRANCISCO MARAQUIN SCHOOL OF LAW, Guatemala, May 1990

NORTHWESTERN UNIVERSITY SCHOOL OF LAW, Visiting Scholar, 1988-1989

UNIVERSITY OF CHICAGO LAW SCHOOL, Research Fellow, 1981-1982

SUBJECTS TAUGHT:

Constitutional Law, Contracts, Torts, Criminal Law, Cyberlaw (E-Commerce), Cyberlaw (Internet Speech), Evidence, Agency & Partnership, Jurisprudence. Seminars: Recent Books on the Constitution, Advanced Constitutional Law, Constitutional Theory, IP: Should it Exist?

DEGREES:

J.D. HARVARD LAW SCHOOL, 1977

B.A. NORTHWESTERN UNIVERSITY, 1974 (Philosophy)

PUBLICATIONS:**BOOKS:**

CONSTITUTIONAL LAW: CASES IN CONTEXT, Aspen Law & Business, 2008

CONTRACTS: CASES AND DOCTRINE, 4th edition, Aspen Law & Business, 2008
(3rd edition, 2003; 2nd edition, 1999; 1st edition, Little, Brown & Co., 1995)

RECENT DEVELOPMENTS IN CONSTITUTIONAL LAW, 2008 edition, Aspen Law & Business

PERSPECTIVES ON CONTRACT LAW, 3rd edition, Aspen Law & Business, 2005
(2nd edition, 2001, 1st edition, Little, Brown & Co., 1995)

RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY, Princeton University Press (2004); excerpted in CHOPER, FALLON, KAMISAR, SHIFFRIN, EDS., *CONSTITUTIONAL LAW: CASES, COMMENTS, QUESTIONS* 10th ed., 2006

THE STRUCTURE OF LIBERTY: JUSTICE AND THE RULE OF LAW, Clarendon (Oxford University) Press, 1998 (paperback edition, 2000; Japanese edition, 2000)
Awarded RALPH GREGORY ELLIOT BOOK AWARD. 1998

THE RIGHTS RETAINED BY THE PEOPLE: THE HISTORY AND MEANING OF THE NINTH AMENDMENT—VOLUME TWO (editor) George Mason University Press, 1993

THE RIGHTS RETAINED BY THE PEOPLE: THE HISTORY AND MEANING OF THE NINTH AMENDMENT—VOLUME ONE (editor) George Mason University Press, 1989

ASSESSING THE CRIMINAL: RESTITUTION, RETRIBUTION AND THE LEGAL PROCESS
(coeditor with John Hagel III) Ballinger Publishing Co., 1977

BOOKS UNDER CONTRACT:

THE RECONSTRUCTED CONSTITUTION, Cambridge University Press
A SHORT INTRODUCTION TO CONTRACT LAW, Oxford University Press

ARTICLES (by alphabetical subject):*CONSTITUTIONAL LAW***The Misconceived Assumption About Constitutional Assumptions**

in Symposium on “Original Ideas on Originalism”

NORTHWESTERN UNIVERSITY LAW REVIEW (forthcoming)

Constitutional Clichés

2007 John E. Sullivan Lecture Essay

CAPITAL UNIVERSITY LAW REVIEW (forthcoming)

Kurt Lash’s Majoritarian Difficulty

60 STANFORD LAW REVIEW 937 (2008)

Scrutiny Land

in Symposium on “Glucksberg and Quill at Ten: Death, Dying, and the Constitution”

106 MICHIGAN LAW REVIEW 1479 (2008)

Three Federalisms

in Symposium on “Checks and Balances Today: The Reality of Separation of Powers”

38 LOYOLA LAW JOURNAL 285 (2008)

Underlying Principles

in Symposium on Jack Balkin’s “Abortion and Original Meaning”

24 CONSTITUTIONAL COMMENTARY 405 (2007)

The People or the State? *Chisholm v. Georgia* and Popular Sovereignty

93 VIRGINIA LAW REVIEW 1179 (2007)

Constitutional Conventions

Reviewing OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT), by Sanford Levinson

CLAREMONT REVIEW OF BOOKS, Vol. 7, Number 3, Summer 2007

The Ninth Amendment: It Means What it Says

85 TEXAS LAW REVIEW 1 (2006)

Restoring the Lost Constitution, Not the Constitution in Exile

in Symposium on “A New Constitutional Order?”

75 FORDHAM LAW REVIEW 669 (2006)

Who’s Afraid of Unenumerated Rights

in Symposium: on “The Future of Unenumerated Rights”

9 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 1 (2006)

Scalia's Infidelity: A Critique of Faint-Hearted Originalism

2006 William Howard Taft Lecture
73 CINCINNATI LAW REVIEW 7 (2006)

The Presumption of Liberty and the Public Interest: Medical Marijuana and Fundamental Rights

Public Interest Law Speakers Series
22 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 29 (2006)

Caveat Blogger: Blogging and the Flight From Scholarship

84 Washington University Law Review 1145 (2006)

It's a Bird, It's a Plane, No, It's Super-Precedent: A Reply to Farber and Gerhard

in Symposium on "The Future of the Supreme Court: Institutional Reform and Beyond"
90 MINNESOTA LAW REVIEW 1232 (2006)

Clauses Not Cases: A Reply to Robert Post and Reva Siegel

YALE L.J. (The Pocket Part), Jan. 2006, <http://www.thepocketpart.org/2006/01/barnett.html>.

Trumping Precedent With Original Meaning: Not As Radical as it Sounds

22 CONSTITUTIONAL COMMENTARY 257 (2005)

Limiting *Raich*

in Symposium on "Federalism After *Gonzales v. Raich*?"
9 LEWIS & CLARK LAW REVIEW 743 (2005)

Grading Justice Kennedy: A Reply to Professor Carpenter

89 MINNESOTA LAW REVIEW 1582 (2005)

Why You Should Read My Book Anyway: A Reply to Trevor Morrison

90 CORNELL LAW REVIEW 873 (2005)

Constitutive Commitments and Roosevelt's Second Bill of Rights: A Dialogue

53 DRAKE LAW REVIEW 205 (2005) (with Cass Sunstein)

Was the Right to Keep and Bear Arms Conditioned on Service in an Organized Militia?

Reviewing *THE MILITIA AND THE RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT*
by H. Richard Uviller & William G. Merkel
83 TEXAS LAW REVIEW 237 (2004)

Foreword: What's So Wicked About *Lochner*?

1 NYU JOURNAL OF LAW & LIBERTY 325 (2005)

The Proper Scope of the Police Power

79 NOTRE DAME LAW REVIEW 429 (2004)

The Original Meaning of the Judicial Power

12 SUPREME COURT ECONOMICS REVIEW 115-138 (2004)

Constitutional Legitimacy Without Consent:**Do the Laws of a Nation State Ever Bind in Conscience?**

Kobe 2000 Lectures delivered at the University of Tokyo and Doshisha University, Kyoto

90 ARSPARCHIV FUER RECHTS- UND SOZIALPHILOSOPHIE 197-209 (2004)

Constitutional Legitimacy

103 COLUMBIA LAW REVIEW 111 (2003)

Justice Kennedy's Libertarian Revolution: *Lawrence v. Texas*

CATO SUPREME COURT REVIEW 2002-2003 21 (2003)

Excerpted in CONSTITUTIONAL LAW: CASES, COMMENTS, QUESTIONS (Choper, Fallon, Kamisar, Shiffrin, eds, 10th ed., forthcoming)

The Original Meaning of the Necessary and Proper Clause

6 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 185 (2003)

New Evidence of the Original Meaning of the Commerce Clause

in "Symposium on the Commerce Clause"

55 UNIVERSITY OF ARKANSAS LAW REVIEW 847 (2003)

Is the Rehnquist Court an "Activist" Court? The Commerce Clause Cases

in "Symposium on Conservative Judicial Activism"

73 UNIVERSITY OF COLORADO LAW REVIEW 1275 (2002)

The Original Meaning of the Commerce Clause

68 UNIVERSITY OF CHICAGO LAW REVIEW 101 (2001)

The Right to Liberty in a Good Society (with Douglas Rasmussen)

in "Symposium on the Constitution and the Good Society."

69 FORDHAM LAW REVIEW 1603 (2001)

Commentary on the Second Amendment

in "Symposium on the Second Amendment"

10 Seton Hall Const. L.J. 849 (2000)

An Originalism for Nonoriginalists

The Brendon Brown Lecture

45 LOYOLA LAW REVIEW (1999)

Was Slavery Unconstitutional Before the Thirteenth Amendment? Lysander Spooner's Theory of Interpretation

Distinguished Speakers Series
28 PACIFIC LAW JOURNAL 977 (1997)

Necessary and Proper

44 U.C.L.A. LAW REVIEW 745 (1997); and in
THE SUPREME COURT AND AMERICAN CONSTITUTIONALISM, Rowman & Littlefield, (1998)

The Relevance of Framers' Intent

in "Symposium on Originalism"
19 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 403 (1996)

Under Fire: The New Consensus on the Second Amendment (coauthor)

45 EMORY LAW JOURNAL 1139 (1996)

Getting Normative: The Role of Natural Rights in Constitutional Adjudication

12 CONSTITUTIONAL COMMENTARY 93 (1995); and in
NATURAL LAW, LIBERALISM, AND MORALITY
(Robert P. George, ed.) Oxford University Clarendon Press (1996)

Guns, Militias and Oklahoma City

Foreword to the "Symposium on the Second Amendment"
62 TENNESSEE LAW REVIEW 433 (1995)

Reinventing the First Amendment

in ETHICS AND THE UNIVERSITY: COMMUNITY, DIVERSITY AND MORALITY IN THE AMERICAN ACADEMY (M. N.S. Sellers, ed.) Berg Publishers 163, 1994

The Intersection of Natural Rights and Positive Constitutional Law

in "Commentary on Frederick Shauer's *Constitutional Positivism*"
25 CONNECTICUT LAW REVIEW 853 (1993)

Implementing the Ninth Amendment

Introduction to THE RIGHTS RETAINED BY THE PEOPLE: THE HISTORY AND MEANING OF THE NINTH AMENDMENT—VOLUME TWO (Fairfax, VA: George Mason University Press, 1993)

A Ninth Amendment for Today's Constitution

26 VALPARAISO LAW REVIEW 419 (1991); and in
THE BILL OF RIGHTS IN MODERN AMERICA: AFTER 200 YEARS
(D. Bodenhamer & J. Ely, eds) Indiana University Press, 1993

Unenumerated Constitutional Rights and the Rule of Law

Foreword to the "Symposium on Rules and the Rule of Law"
14 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 615 (1991)

Two Conceptions of the Ninth Amendment

12 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 29 (1989)

Reconceiving the Ninth Amendment

74 CORNELL LAW REVIEW 1 (1988)

The Ninth Amendment and Constitutional Legitimacy

Foreword to the "Symposium on Interpreting the Ninth Amendment"
64 CHICAGO-KENT LAW REVIEW 37 (1988)

Are Enumerated Constitutional Rights The Only Rights We Have? The Case of Associational Freedom

10 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 101 (1987)

Judicial Conservatism v. A Principled Judicial Activism

Foreword to the "Symposium on Law and Philosophy"
10 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 273 (1987)

**Review of TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN
by Richard Epstein, 97 ETHICS 669 (1987)*****CONTRACTS*****Theory and Anti-Theory in the Work of Allan Farnsworth**

International Contracts Law Conference Discussion
13 TEXAS WESLEYAN LAW REVIEW 1 (2006)

Consenting to Form Contracts

in "Symposium in Honor of Professor Joseph Perillo"
71 FORDHAM LAW REVIEW 627 (2002)

Is Reliance Still Dead?

in Symposium on "W(h)ither the Reliance Interest"
38 SAN DIEGO LAW REVIEW 1 (2001)

How a Consent Theory of Contract Compares with Relational Theory

3 WASEDA (JAPAN) PROCEEDINGS OF COMPARATIVE LAW 41 (2000)

The Richness of Contract Theory

Reviewing THE RICHNESS OF CONTRACT LAW by Robert Hillman
97 MICHIGAN LAW REVIEW 1413 (1999)

Free to Choose

21 SEATTLE LAW REVIEW 721 (1998)

The Death of Reliance

In "AALS Workshop Symposium: The Last Ten Years"
46 JOURNAL OF LEGAL EDUCATION 518 (1996)

. . . and Contractual Consent

in "Symposium on Default Rules and Contractual Consent"
3 SOUTHERN CALIFORNIA INTERDISCIPLINARY LAW REVIEW 421 (1994)

Conflicting Visions: A Critique of Ian Macneil's Relational Theory of Contract

78 VIRGINIA LAW REVIEW 1175 (1992)

The Sound of Silence: Default Rules and Contractual Consent

78 VIRGINIA LAW REVIEW 821 (1992)

Reprinted in THE INTERNATIONAL LIBRARY OF ESSAYS IN LAW AND LEGAL THEORY (2d Series)
(B. Bix, ed.) Ashgate Publishing, forthcoming 1999

Some Problems With Contract as Promise

77 CORNELL LAW REVIEW 1022 (1992)

Rational Bargaining Theory and Contract: Default Rules, Hypothetical Consent, the Duty to Disclose, and Fraud

in "Symposium on Risks and Wrongs"
15 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 783 (1992)

The Function of Several Property and Freedom of Contract

in "Symposium on Economic Rights"
9 SOCIAL PHILOSOPHY AND POLICY 62 (1992)

Compensation and Rights in the Liberal Conception of Justice

in COMPENSATORY JUSTICE: NOMOS XXXIII
(J. Chapman & J. Coleman, eds.) New York University Press, 1991

Squaring Undisclosed Agency Law With Contract Theory

75 CALIFORNIA LAW REVIEW 1969 (1987)

Beyond Reliance: Promissory Estoppel, Contract Formalities and Misrepresentation

(with Mary Becker)
15 HOFSTRA LAW REVIEW 445 (1987)
Excerpted in CASES AND MATERIALS ON CONTRACTS 2d ed.
(R. Hamilton & A. Rau, eds.) West Publishing Co., 1992

Contract Remedies and Inalienable Rights

in "Symposium on Philosophy and Law"
4 SOCIAL POLICY AND PHILOSOPHY 179 (1986)

Reprinted in PHILOSOPHY AND LAW
(J. Coleman & E. Paul, eds.) Basil Blackwell, 1987

Revised and incorporated in:

Rights and Remedies in a Consent Theory of Contract

in LIABILITY: NEW ESSAYS IN LEGAL PHILOSOPHY
(R.G. Frey & C. Morris, eds.) Cambridge University Press, 1991

A Consent Theory of Contract

86 COLUMBIA LAW REVIEW 269 (1986)

Reprinted in THE INTERNATIONAL LIBRARY OF ESSAYS IN LAW AND LEGAL THEORY
(L. Alexander ed.) Dartmouth Publishing Co., 1991

Excerpted in STUDIES IN CONTRACT LAW, 4th ed.

(E. Murphy & R. Speidel eds.) Foundation Press, 1991

Excerpted in A CONTRACTS ANTHOLOGY

(P. Linzer ed.) Anderson Publishing Co., 1989 & 1995

Revised and incorporated in:

Rights and Remedies in a Consent Theory of Contract

in LIABILITY: NEW ESSAYS IN LEGAL PHILOSOPHY

(R.G. Frey & C. Morris, eds.) Cambridge University Press, 1991

Excerpted in CONTRACT LAW

(S. Wheeler & J. Shaw) Oxford University Press, 1994.

Contract Scholarship and The Reemergence of Legal Philosophy

Reviewing CONTRACTS by E. Allan Farnsworth

97 HARVARD LAW REVIEW 1223 (1984)

Excerpted in A CONTRACTS ANTHOLOGY

(P. Linzer ed.) Anderson Publishing Co., 1989

CRIMINAL JUSTICE

Getting Even: Restitution, Preventive Detention, and the Crime-Tort Distinction

in "Symposium on the Crime-Tort Distinction"

76 BOSTON UNIVERSITY LAW REVIEW 157 (1996)

Bad Trip: Drug Prohibition and The Weakness of Public Policy

Reviewing AMERICA'S LONGEST WAR by Stephen Duke & Albert Gross

103 YALE LAW JOURNAL 2593 (1994)

Curing the Drug Law Addiction: The Hidden Side-Effects of Legal Prohibition

in DEALING WITH DRUGS (R. Hamowy, ed.) Lexington Books, 1987

Reprinted in ADDICTIONS: OPPOSING VIEWS

(Jennifer A. Hurley, ed.) Greenhaven Press (2000)

Reprinted in DRUGS: SHOULD WE LEGALIZE, DECRIMINALIZE, OR DEREGULATE?

(Jeffrey A. Schaler, ed.) Prometheus Books (1998)

Resolving the Dilemma of the Exclusionary Rule: An Application of Restitutive Principles of Justice

32 EMORY LAW JOURNAL 937 (1983)

The Justice of Restitution

25 AMERICAN JOURNAL OF JURISPRUDENCE 117 (1980)

Reprinted in MORAL ISSUES

(J. Narveson, ed.) Oxford University Press, 1983

Restitution: A New Paradigm of Criminal Justice

87 ETHICS 279 (1977)

Reprinted in *WHAT'S WRONG? AN INTRODUCTION TO APPLIED ETHICS WITH READINGS*

(David Boonin & Graham Oddie) Oxford University Press, 2004

Reprinted in *LAW AND PHILOSOPHY: AN INTRODUCTION WITH READINGS*

(Thomas W. Simon, ed) McGraw-Hill College Textbook Division, 2000

Reprinted in *ANALYZING MORAL ISSUES*

(Judith A. Boss, ed) Mayfield Publishing Co., 1999

Reprinted in *PHILOSOPHICAL PROBLEMS IN THE LAW* (2d ed.)

(David M. Adams, ed.) Wadsworth Publishing Co., 1996

Reprinted in *THE PHILOSOPHY OF LAW*

(W. Sinnott-Armstrong & F. Schauer, eds.) Harcourt Brace & Co., 1996

Reprinted in *THE PHILOSOPHY OF LAW*, 5th ed.

(J. Feinberg & H. Gross, eds.) Wadsworth Publishing Co., 1995

Reprinted in *THE NATURE AND SOURCES OF LAW*

(P. Smith, ed.) Oxford University Press, 1993

Reprinted in *PUNISHMENT AND REHABILITATION* (2d ed.)

(J. Murphy, ed.) Wadsworth Publishing Co., 1985

Reprinted in *READINGS IN THE PHILOSOPHY OF LAW*

(J. Arthur & W. Shaw, eds.) Prentice-Hall, 1984

Reprinted in *PERSPECTIVES ON CRIME VICTIMS*

(B. Galaway & J. Hudson, eds.) C.V. Mosby Co., 1981

Assessing the Criminal: Restitution, Retribution and the Legal Process

(coauthor with John Hagel III) in *ASSESSING THE CRIMINAL: RESTITUTION, RETRIBUTION AND THE LEGAL PROCESS*, (R. Barnett & J. Hagel III, eds.) Ballinger Publishing Co., 1977

CYBERLAW**Reds in Suits**

Review of *THE FUTURE OF IDEAS: THE FATE OF THE COMMONS IN A CONNECTED WORLD*
by Lawrence Lessig, *REGULATION*, Vol. 25, No. 3 (Fall 2002), p. 64

JURISPRUDENCE AND LEGAL THEORY**The Moral Foundations of Modern Libertarianism**

in Peter Berkowitz, ed. *VARIETIES OF CONSERVATISM IN AMERICA*, Hoover Institution Press (2004), p. 51

The Imperative of Natural Rights in Today's World

THE GOOD SOCIETY, Vol. 12, No. 3 (2003), p. 1.

The Structure Still Stands: A Reply to Narveson, Winston, & Tushnet

in "Books in Review—Randy Barnett's *The Structure of Liberty*"
8 *THE GOOD SOCIETY* 56 (No 2. 1998)

A Law Professor's Guide to Natural Law and Natural Rights

20 *HARVARD JOURNAL OF LAW AND PUBLIC POLICY* 655 (1997)

Coping With Partiality: Justice, The Rule of Law, and the Role of Lawyers

Distinguished Lecture

3 ROGER WILLIAMS LAW REVIEW 1 (1997)

The Power of Presumptions

Foreword to the "Symposium on Presumptions and Burdens of Proof"

17 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 613 (1994)

The Virtues of Redundancy in Legal Thought

in "Symposium on the Practical Applications of Jurisprudential Thought"

38 CLEVELAND-STATE LAW REVIEW 153 (1990)

The Internal and External Analysis of Concepts

Comment on Peter Benson's, "Abstract Right and the Possibility of a Nondistributive Conception of Contract: Hegel and Contemporary Contract Theory"

11 CARDOZO LAW REVIEW 525 (1990)

Post-Chicago Law and Economics

Foreword to the "Symposium on Post-Chicago Law and Economics"

65 CHICAGO-KENT LAW REVIEW 3 (1989)

Of Chickens and Eggs—The Compatibility of Moral Rights and Consequentialist Analyses

Foreword to the "Symposium on the Compatibility of Moral Rights and Consequentialism"

12 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 611 (1989)

Can Justice and the Rule of Law Be Reconciled?

Foreword to the "Symposium on Law and Philosophy"

11 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 597 (1988)

Four Senses of the Public Law - Private Law Distinction

Foreword to the "Symposium on the Limits of Public Law"

9 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 267 (1986)

Why We Need Legal Philosophy

Foreword to the "Symposium on Law and Philosophy"

8 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 1 (1985)

Pursuing Justice in a Free Society: Part Two—Crime Prevention and the Legal Order

CRIMINAL JUSTICE ETHICS, Winter/Spring 1986, at 30.

Pursuing Justice in a Free Society: Part One—Power vs. Liberty

CRIMINAL JUSTICE ETHICS, Summer/Fall 1985, at 50.

Public Decisions and Private Rights

Reviewing THE HARDEST DRUG by John Kaplan

CRIMINAL JUSTICE ETHICS, Summer/Fall, 1984, at 50

LEGAL EDUCATION**Caveat Blogger: Blogging and the Flight From Scholarship**

in "Symposium on Bloggership"
84 WASHINGTON UNIVERSITY LAW REVIEW 1145 (2006)

Beyond the Moot Law Review: A Short Story With a Happy Ending

in "Symposium on Law Review Editing"
70 CHICAGO-KENT LAW REVIEW 123 (1994)

ENCYCLOPEDIA ENTRIES:**The Commerce Clause**

THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY (Barbara Black, Lawrence Friedman & Laura Kalman, eds.), Oxford University Press (forthcoming)

Retained Rights

in THE ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES, (Paul Finkelman ed.) Routledge (forthcoming)

Lysander Spooner

in YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW (Roger Newman, ed.) Yale University Press (forthcoming)

The Bill of Rights**Lysander Spooner**

in ENCYCLOPEDIA OF LIBERTARIANISM (forthcoming)

The Ninth Amendment

in THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES (Kermit Hall, ed.) Oxford University Press 589, 1992; Revised version in 2d edition (2005)

The Ninth Amendment

in THE ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, SUPPLEMENT II (Leonard W. Levy, Kenneth L. Karst, & Adam Winkler, eds.) Macmillian Publishing (2000), pp. 1813-15.

DISTINGUISHED LECTURES:**Is the Constitution Libertarian?**

B. KENNETH SIMON LECTURE IN CONSTITUTIONAL THOUGHT, The Cato Institute, September 2008

The People or the State? *Chisholm v. Georgia* and Popular Sovereignty

JOHN E. SULLIVAN LECTURE, Capital Law School, April 2007
INAUGURAL LECTURE, CARMACK WATERHOUSE PROFESSORSHIP IN LEGAL THEORY, Georgetown University Law Center, February 2007

Scalia's Infidelity: A Critique of Faint-Hearted Originalism

WILLIAM HOWARD TAFT LECTURE, University of Cincinnati Law School, February 2006

Moot Court in *Ashcroft v. Raich*

BRENNAN DISTINGUISHED LECTURER, Oklahoma University School of Law, November 2004

The Presumption of Liberty

DISTINGUISHED ENDRIES LECTURER, SYRACUSE UNIVERSITY COLLEGE OF LAW, October 2004

Restoring the Lost Constitution: The Presumption of Liberty

TULANE COLLEGE SENATE LECTURE, March 2004

Constitutional Legitimacy

GEORGE MASON UNIVERSITY SCHOOL OF LAW, November 2001

The Kobe 2000 Lectures on Legal Philosophy

UNIVERSITY OF TOKYO, Tokyo, Japan June 2000

DOSHISHA UNIVERSITY, Kyoto, Japan, July 2000

Lecture on Restitution as an Alternative Paradigm of Criminal Justice

KANSAI UNIVERSITY SCHOOL OF LAW, Osaka, Japan, July 2000

Lecture on Consent and the Relational Theory of Contract

WASEDA UNIVERSITY SCHOOL OF LAW, Tokyo, Japan, June 2000

An Originalism for Nonoriginalists

The Brendon Brown Lecture, LOYOLA UNIVERSITY NEW ORLEANS SCHOOL OF LAW, April 1999

ST. THOMAS UNIVERSITY SCHOOL OF LAW, October 1999

Lawyers and the Problem of Partiality

ROGER WILLIAMS SCHOOL OF LAW, April 1997

Spooner on Slavery: Natural Rights and Constitutional Interpretation

UNIVERSITY OF THE PACIFIC, MCGEORGE SCHOOL OF LAW, March 1997

COURT APPEARANCES:***Raich v. Ashcroft*** (medical cannabis suit against the federal government)

Oral argument (pro bono) in the Circuit Court of Appeals for the Ninth Circuit, March 2006

Oral argument (pro bono) in the Supreme Court of the United States, November 2004

Oral argument (pro bono) in the Circuit Court of Appeals for the Ninth Circuit, October 2003

Oral argument (pro bono) in the Northern District of California, March 2003

U.S. v. Oakland Cannabis Buyers Cooperative (medical cannabis suit brought by federal government)

Oral argument (pro bono) in the Circuit Court of Appeals for the Ninth Circuit, September 2003

AMICUS BRIEFS:***Hamdan v. Rumsfeld***

Brief in support of petitioner-defendant with Richard Epstein, Bruce Ackerman & Geoffrey Stone, 2005

Lawrence v. Texas

Co-authored brief in support of petitioner-defendants on behalf of the Institute for Justice, 2003

FILM APPEARANCES:**InAlienable**

Role: Assistant Prosecutor, feature film (filmed 2007, not yet released)

In Search of the Second Amendment

Role: Myself, documentary (released 2007)

The Trials of Law School: A Journey in Law

Role: Myself, documentary (released 2007)

FACULTY WORKSHOPS AND OTHER PRESENTATIONS:**American Constitution Society's 2008 Supreme Court Term In Review**

National Press Club, Washington DC, July 2008.

Our Enduring Constitution: Applications and Interpretations

American Constitution Society 2008 National Convention, Washington DC, June 2008.

ABA National Town Hall Meeting on The Rule of Law

Newseum, Washington DC, April 30, 2008

The Misconceived Quest for Constitutional Assumptions

Conference on Originalism, Northwestern University School of Law, April 2008

Yale Legal Theory Workshop, April 2008

University of Pennsylvania Constitutional Theory Workshop, April 2008

Washington & Lee School of Law, April 2008

The Golden Mean Between Kurt & Dan: A Moderate Reading of the Ninth Amendment.

Conference on Unenumerated Rights

Drake Law School, April 2008

Our Counter-Majoritarian Constitution: A Comment on Sandy Levinson's *Our Undemocratic Constitution*

University Honors Symposium, George Washington University, March 2008

AALS Annual Meeting, Washington, DC., January 2007

Curing the Drug Law Addiction: The Harmful Side-Effects of Prohibition

Conference on Drug Policy, University of Utah College of Law, March 2008

Constitutional Clichés

Legal Studies Institute, The Fund for American Studies, July 2008

University of Connecticut School of Law, April 2008

Widener University School of Law, April 2008

University of Pennsylvania School of Law, April 2008

University of Virginia School of Law, April 2008

Vanderbilt University School of Law, April 2008

Wayne State Law School, March 2008

Las Vegas Lawyers Chapter of the Federalist Society, March 2008

University of Arizona, Rogers College of Law, March 2008

Tulane Law School, February 2008
Loyola university New Orleans School of Law, February 2008
Northwestern University School of Law, February 2008

Who is Federalism For?: Liberals, Conservatives, Everyone, or National Political Losers
Panel at AALS Annual Meeting organized by the Institute for Constitutional Studies, January 2008

Scrutiny Land

Symposium on “Glucksberg and Quill at Ten: Death, Dying, and the Constitution,” University of Michigan Law School, November 2007

Is America Different from Other Major Western Democracies?

Panel at the Federalist Society National Lawyers Convention, Washington, DC, November 2007

Supreme Court Preview

Georgetown Law Center, September 2006 and 2007
The Cato Institute, September 2006
College of William and Mary School of Law, September 2006

What’s New About the New Originalism?”

Panel at the American Political Science Association Meeting, Chicago, September 2007

Three Federalisms

“Symposium on Separation of Powers,” Loyola (Chicago) Law School, March 2007

Three Cheers for Student Edited Law Reviews

Symposium on “Writing about the Law: From Bluebook to Blogs and Beyond”
New York Law School, February 2007

Two Moralities

The Federalist Society Annual Student Symposium on “Morality and the Law”
Northwestern University, February 2007

The People or the State? *Chisholm v. Georgia* and Popular Sovereignty

The University of Chicago Law School, April 2007
Florida State University School of Law, March 2007
University of Florida Law School, March, 2007
Stetson University Law School, March, 2007
George Mason University School of Law, February 2007

Underlying Principles

University of Maryland Discussion Group on Constitutional Law, December 2006

Blogging and Scholarship

Symposium on How Blogs Are Transforming Legal Scholarship, Harvard Law School, April 2006
Panel, Section on Scholarship, AALS Annual Meeting, January 2006

Constitutions in Exile: Is the Constitution a Charter of Negative Liberties or a Charter of Positive Benefits?

Conference on A New Constitutional Order?, Fordham University School of Law, March 24-25, 2006

Scalia's Infidelity: A Critique of Faint-Hearted Originalism

Suffolk Law School, April 2006
U.C.L.A School of Law., April 2006
University of Iowa, April 2006
University of San Francisco School of Law, March 2006
Golden Gate University School of Law, March 2006
University of Pennsylvania Law School, February 2006
University of Texas School of Law, February 2006

The Presumption of Liberty and the Public Interest

Washington University in St. Louis, February 2006

Contract Theory and the Scholarship of Alan Farnsworth

Texas Wesleyan University School of Law, February 2006

Who's Afraid of Unenumerated Rights?

Symposium on Unenumerated Rights, University of Pennsylvania Law School, February 2006

The Ninth Amendment: It Means What it Says

University of Iowa, April, 2006
Brooklyn Law School, January 2006
Boston University School of Law, January 2006
Harvard Public Law Workshop, October 2005
Faculty Workshop, Georgetown Law Center, September 2005

The Constitution in Exile

Panel with Cass Sunstein, Section on Constitutional Law, AALS Annual Meeting, January 2006

The Federalist Society at a Crossroads

George Washington University School of Law, December 2006

The Original Meaning of the Necessary and Proper Clause

Panel at the Federalist Society National Lawyers Convention, Washington DC, November 2005 (broadcast on C*SPAN)

It's a Bird, It's a Plane, No, It's Super-Precedent

Conference on "The Future of the Supreme Court: Institutional Reform and Beyond"
University of Minnesota Law School, October 2005

Debate on *Gonzales v. Raich*

Yale Law School, October 2005

The Nomination of John Roberts

Panel sponsored by the American Constitution Society at the Georgetown Law Center, September 2005
(broadcast on C*SPAN)

The Supreme Court Term In Review

Panel sponsored by the American Constitution Society at the National Press Club, Washington DC, June 2005.

The Role of Precedent in Originalism

Constitutional Law Section, AALS Annual Meeting, January 2005

Moot Court for *Ashcroft v. Raich*

Harvard Law School, November 2004

Oklahoma City University School of Law, November 2004 (Brennan Distinguished Lecturer)

Georgetown Law Center, November 2004

Medical Cannabis and the Commerce Clause: *Ashcroft v. Raich*

Faculty Workshop, University of Illinois College of Law, December 2004

Faculty Workshop, University of Alabama School of Law, February 2005

Speeches at:

Northwestern University School of Law, February 2005

Milwaukee Federalist Society, Lawyers Chapter, February 2005

Duke University School of Law, February 2005

Wake Forest School of Law, February 2005

Cumberland Law School, February 2005

University of Alabama School of Law, February 2005

New York University School of Law, March 2005

Columbia University School of Law, March 2005

Is the Right to Keep and Bear Arms Conditioned on a Militia?

Faculty Workshop, George Mason University School of Law, October 2004

Faculty Workshop, Seton Hall University School of Law, September 2004

Symposium, William and Mary School of Law, January 2003

Restoring the Lost Constitution: The Presumption of Liberty

Panel at NEW ENGLAND POLITICAL SCIENCE ASSOCIATION, Portsmouth, NH, April 2004

Panel at the CATO INSTITUTE, February 2004

Panel at AALS jointly sponsored by Constitutional Law and Jurisprudence sections, Atlanta, January 2004

Speeches at:

University of Oregon School of Law, April 2004

University of Washington School of Law, April 2004

Seattle University School of Law, April 2004

Notre Dame Law School, April 2004

Arizona State University College of Law, April 2004

University of Georgia School of Law, April 2004

Emory Law School, April 2004

Georgia State School of Law, April 2004

Florida State University College of Law, April 2004

Yale Law School, April 2004

University of Nebraska School of Law, March 2004

University of Michigan School of Law, March 2004

Indiana University (Bloomington) School of Law, March 2004

St Louis University School of Law, March 2004

UC Hastings College of Law, March 2004

Stanford Law School, March 2004
University of Santa Clara School of Law, March 2004
Chapman University School of Law, March 2004
UCLA School of Law, March 2004
Pepperdine University School of Law 2004
USC Law Center, March 2004
Loyola-Marymount University School of Law, March 2004
University of San Diego School of Law, March 2004
University of Pennsylvania School of Law, February 2004
Temple University School of Law, February 2004
Vanderbilt University School of Law, February 2004
University of Houston School of Law, February 2004
South Texas College of Law, February 2004
St. Mary's University School of Law February 2004
University of Minnesota School of Law, February 2004
William Mitchell College of Law, February 2004
St. Thomas University School of Law, February 2004
John Marshall Law School (Chicago), February 2004
New York University School of Law, February 2004
Columbia University School of Law, February 2004
Cornell University School of Law, February 2004
Boston University School of Law, February 2004
Georgetown Law Center, January 2004
George Mason University School of Law, January 2004
George Washington University School of Law, January 2004
Catholic University School of Law, January 2004
University of Virginia School of Law, January 2004
Washington & Lee School of Law, January 2004
William and Mary, Marshall-Wythe College of Law, January 2004

Lawrence v. Texas and the Presumption of Liberty

Lewis & Clark School of Law, April 2004
University of San Diego School of Law, March 2004
Northwestern University School of Law, January 2004
Duke University School of Law, October 2003
University of Texas School of Law, September 2003

The Imperative of Natural Rights for Today's World

Annual Meeting, AMERICAN POLITICAL SCIENCE ASSOCIATION, August 2003

Debate on Conservative Judicial Activism

Annual Meeting, STATE BAR ASSOCIATION OF NORTH DAKOTA, Medora, ND, June 2003

Speech on The Rule of Law and the War on Terrorism

Annual Meeting, PHILADELPHIA SOCIETY, New Orleans, LA, April 2003

Constitutional Legitimacy

University of Pennsylvania, May 2003
Notre Dame University, September 2002
Harvard Law School, February 2002
University of Chicago Law School, January 2002
Villanova University School of Law, January 2002

George Washington University School of Law, November 2001
University of Houston School of Law, March 2001
NYU AUSTRIAN ECONOMICS WORKSHOP, January 2000

New Evidence on the Original Meaning of “Commerce”

Conference on the Commerce Clause: Past, Present & Future
University of Arkansas School of Law, March 2002

The Original Meaning of the Commerce Clause

Yale Law School, December 2001

The Future of the American Legal System

ST. THOMAS UNIVERSITY, Minneapolis, MN, November 2002

Is the Rehnquist Court an “Activist” Court?

University of Chicago School of Law, November 2002
Northwestern University School of Law, November 2002
Western New England School of Law, September 2002
University of Pennsylvania School of Law, January 2002
University of Colorado School of Law, October 2001
Conference on “Conservative Judicial Activism”

Debate on the War of Drugs

Cato Institute, May 2001

Debate on the Constitutional Protection of Unenumerated Rights

Yale Law School, April 2001

Constitutional Legitimacy and the Fiction of Popular Sovereignty

University of Houston School of Law, March 2001
NYU AUSTRIAN ECONOMICS WORKSHOP, January 2000

Human Flourishing and the Structure of Liberty (with Doug Rassmussen)

Murphy Institute of Political Economy, TULANE UNIVERSITY, March 2001

The Right to Liberty in the Good Society

Conference on Constitution and the Good Society
Fordham U. School of Law, September, 2000

Eight Tips for Navigating Law School Politics

AALS NEW PROFESSORS' WORKSHOP, July 2000

Panelist at Symposium on the Second Amendment

Seton Hall Law School, February, 2000

Speech on An Originalism for Nonoriginalists

Suffolk, Nova University, Indiana, Nebraska, Iowa, Chicago-Kent, Yale & Virginia

Guest Lecture on The Structure of Liberty

George Mason University School of Law, November 1999

Speech on the Second Amendment

Indiana University School of Law, October 1999
Suffolk Law School, April 2000

An Originalism for Nonoriginalists

Notre Dame School of Law, September 2002
Case Western Reserve School of Law, September 2002
University of Michigan School of Law, January 2002
Federalist Society Law Professors Annual Meeting, January 2000
University of Nebraska School of Law, November 1999
George Mason University School of Law, November, 1999
University of Florida School of Law, October 1999 2000
Boston University School of Law, March 1999

Panel on Gun Control and the Second Amendment

BOSTON CHAPTER OF THE ANTI-DEFAMATION LEAGUE, August 1999

Eight Tips for Navigating Law School Politics

AALS NEW TEACHER'S WORKSHOP, July 2000
AALS NEW TEACHER'S WORKSHOP, July 1999

The Structure of Liberty

JURISPRUDENCE & INTERPRETATION SECTIONS, AALS ANNUAL MEETING, January 1999
Stanford University School of Law, March 1999
Philosophy Department, Bowling Green State University, February 1997
Quinnipiac College School of Law, October 1996
Boston University School of Law, March 1996

Spooner on Slavery: Natural Rights and Constitutional Interpretation

University of Iowa, November 1997

A Law Professor's Guide to Natural Law and Natural Rights

JURISPRUDENCE SECTION, AALS ANNUAL MEETING, January 1997
Law and Philosophy Society, Harvard Law School, April 1997

Intention to be Legally Bound

Conference on Freedom of Contract, George Mason University School of Law, December 1996

Necessary and Proper

Ashland University, April 1996

The Death of Reliance

AALS MINIWORKSHOP, January 1996
University of Denver School of Law, March 1996

The Role of Natural Rights in Constitutional Adjudication

Georgia State University School of Law, September 1995
Seton Hall Law School, October 1994
Boston University School of Law, May 1994
Rutgers-Camden School of Law, April 1994
Symposium on Rights, University of North Carolina-Greensboro, April 1994
Loyola Law School, Loyola marymount University, February 1994
Symposium on Liberalism, Modernity and Natural Law,
AMERICAN PUBLIC PHILOSOPHY INSTITUTE, September 1993

The Function of Restitutive Justice

AUSTRIAN ECONOMICS WORKSHOP, New York University, April 1994
LAW & ECONOMICS WORKSHOP, University of Toronto School of Law, March 1993

. . . and Contractual Consent

Conference on Default Rules and Contractual Consent,
University of Southern California Law Center, March 1993

Implementing the Ninth Amendment

Boston University School of Law, October 1992
Harvard Law School, February 1993

Default Rules and Contractual Consent

Nova University Center for the Study of Law, February 1992

The Function of Several Property and Freedom of Contract

Loyola University School of Law, New Orleans, March 1991

The Virtues of Redundancy in Legal Thought

Legal Theory Workshop, Columbia University of School of Law, November 1989
Western New England College School of Law, April 1990
Northwestern University School of Law, November 1991

Knowledge, Interest, and Power: The Fusion of Justice and the Rule of Law

Legal Theory Workshop, University of Toronto, April 1989
Case Western Reserve School of Law, April 1989

A Consent Theory of Contract and its Limits

UCLA School of Law, October 1988

Squaring the Law of Undisclosed Agency with Contract Theory

American Bar Foundation/Northwestern University School of Law, March 1987

Normative Legal Philosophy and the Recent History of Legal Scholarship

Legal History Workshop, University of Illinois College of Law, September 1984

OTHER:

Senior Fellow, The Cato Institute, Washington DC.
Senior Fellow, The Goldwater Institute, Phoenix, AZ
Chair, Planning Committee for AALS Workshop for Pretenure Minority Law School

Professors, Workshop for New Law Teachers Workshop & Workshop for Beginning Legal Writing Teachers, 2008-2009
Executive Committee, AALS Section on Constitutional Law, 2004-2005
Chair, AALS Section on Constitutional Law, 2003-2004
Executive Nominations Committee, National Order of the Coif, 2003
Member, Planning Committee Meeting, AALS Conference on Constitutional Law, 2001
Chair, AALS Section on Scholarship, 1997-1998
Chair, AALS Section on Jurisprudence, 1996-1997 -1993
National Executive Committee, THE ORDER OF THE COIF, 1992-1994
Legal Affairs Contributor, WBEZ-FM CHICAGO (National Public Radio affiliate), 1990
Member, Supreme Court Bar
Member, Ninth Circuit Bar