

**RANDY E. BARNETT**

*Carmack Waterhouse Professor of Legal Theory*

**Georgetown University Law Center**

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**Washington, DC 20001**

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**PROFESSIONAL:**

*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

*Permanent:*

GEORGETOWN UNIVERSITY SCHOOL OF LAW  
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.

**SUBJECTS TAUGHT:**

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

**DEGREES:**

J.D. HARVARD LAW SCHOOL, 1977

B.A. NORTHWESTERN UNIVERSITY, 1974 (Philosophy)

**PUBLICATIONS:****BOOKS:**

**RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY**, Princeton University Press (2004); excerpted in *CONSTITUTIONAL LAW: CASES, COMMENTS, QUESTIONS* (Choper, Fallon, Kamisar, Shiffrin, eds, 10th ed., forthcoming)

**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**

**CONTRACT CASES AND DOCTRINE**, 3<sup>rd</sup> edition, Aspen Law & Business, 2003  
(2<sup>nd</sup> edition, 1999; 1<sup>st</sup> edition, Little, Brown & Co., 1995)

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

**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  
**CONTRACT LAW: PRINCIPLES AND THEORY**, Oxford University Press  
**CONSTITUTION LAW: CASES IN CONTEXT**, Aspen Law & Business  
**RECENT DEVELOPMENTS IN CONSTITUTIONAL LAW**, Aspen Law & Business

**ARTICLES (by alphabetical subject):***CONSTITUTIONAL LAW***The People or the State? *Chisholm v. Georgia* and Popular Sovereignty**

VIRGINIA LAW REVIEW (forthcoming)

**Three Federalisms**

in Symposium on Checks and Balances Today: The Reality of Separation of Powers  
LOYOLA LAW JOURNAL (forthcoming)

**Underlying Principles**

in Symposium on Jack Balkin's "Abortion and Original Meaning"  
CONSTITUTIONAL COMMENTARY (forthcoming)

**The Commerce Clause**

THE OXFORD 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 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)

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

22 CONSTITUTIONAL COMMENTARY 257 (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)

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>.

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)

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)

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)

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)

**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.

**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***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 Compatability 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"  
WASHINGTON UNIVERSITY LAW REVIEW (forthcoming)

**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)

**DISTINGUISHED LECTURES:****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

**FACULTY WORKSHOPS AND OTHER PRESENTATIONS:****Three Federalisms**

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

**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

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

AALS Annual Meeting, Washington, DC., January 2007

### Underlying Principles

University of Maryland Discussion Group on Constitutional Law, December 2006

### Supreme Court Preview

The Cato Institute, September 2006  
College of William and Mary School of Law, September 2006  
Georgetown Law Center, September 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 Rasmussen)**

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 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

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