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Retained by the People: The "Silent" Ninth Amendment and the Constitutional Rights Americans Don't Know They Have

Dan Farber

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The Ninth Amendment lurks like an unexploded mine within the Bill of Rights. Its wording is direct: “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” However, there is not a single Supreme Court decision based on it. Even the famously ambitious Warren Court preferred to rely on the weaker support of the Fourteenth Amendment’s Due Process Clause for many of its decisions on individual rights. Since that era, mainstream conservatives have grown actively hostile to the very mention of the Ninth Amendment. Daniel Farber, a law professor at the University of California at Berkeley, makes an informed and lucid argument for employing the Ninth Amendment in support of a large variety of rights whose constitutional basis is now shaky. The case he makes for the application of this unused amendment has profound implications in almost every aspect of our daily lives.

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