

CAN WE EXERCISE OUR NINTH AMENDMENT RIGHTS IN 2009?

By Ann Fagan Ginger¹

"The enumeration in the Constitution, of **certain rights**, shall not be construed to deny or disparage others **retained by the people.**" Ninth Amendment

In 2009, we, as a nation, face catastrophic global warming, corporate takeovers in a Great Depression, and undeclared wars in the Middle East.

We, as individuals, face the loss of political rights and economic rights, loss of the ability to protect the rights of our children, loss of control of our culture, of our own destinies.

Where can we turn?

Political Rights

We are experiencing:

- violations of our right to privacy;
- denial of immediate access to basic information collected by the Government and Corporations.

Now, in 2009, we are collecting information, sending emails, writing blogs, meeting, participating in conference calls, organizing, and acting on our new issues. We constantly face International corporations and Insurance companies and the DOD, DHS, CIA, FBI, ICE, NSA, FCC, NRA, and the Media -- denying us immediate access to information, demanding that we stop, threatening us, misquoting us, getting us isolated, fired, and arrested.

These issues did not exist when the Constitution was written. So our right to work on these issues is not spelled out in the Constitution or the Amendments.

In 1789, there were no U.S.-owned cameras or gadgets to record what our ancestors were doing, writing, talking about. There were no major reports by Government agencies kept secret from our ancestors.

In 1789, citizens were not getting arrested for demonstrating effectively to save the environment, to save our rivers and forests. This right was not spelled out, but clearly comes

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within the Bill of Rights. (Native peoples were struggling to save their tribal lands and their environment, but their rights were not considered in the Constitution.)

At the end of the Revolutionary War, men were not being required to go back for a second and third tour of duty in a foreign undeclared war as U.S. troops are today. So that right is not spelled out, but is certainly a basic right for men and women who volunteer today for a tour of duty in the U.S. military. In 1945 the U.S. helped draft the United Nations Charter, a treaty that supports the right not to go to war,² and a treaty, under the Constitution, is "the supreme law of the land."³

Economic Rights

Today we face many economic issues U.S. residents did not face in 1791 when they adopted the Bill of Rights. In those days, many workers (free and slave) lived on land owned by their bosses (farmers), so they did not have to worry about a right to housing. Their bosses had to provide it or lose their labor. (Not that they provided the kind of housing to their workers that they had for themselves!)

And they did not have to worry about getting unemployment compensation until they got a new job because they had jobs for life. (Again, not necessarily good jobs, but jobs that would not end at the end of a season.)

Health care for slave workers and other farm workers had to be provided by the boss or the workers couldn't do the work that had to be done during the growing season. So employers provided some kind of health care to their workers.

Employers had to permit some wives and children to take care of the younger children so the basic workers could do the work -- on the farm -- that the employer needed done.

The economic systems when the Constitution and Bill of Rights were being written were slavery, feudalism, and early capitalism. The right to housing, medical care, and child care were not on the minds of the white men who wrote the Constitution or demanded a Bill of Rights, and they were not written down explicitly in these basic documents.

Still, the men who wrote the Bill of Rights were wise enough to know that they might be leaving out some essential rights that were not yet apparent but might grow into important issues in the future. That's why they wrote the Ninth Amendment.

After World War Two, the majority of workers in the United States and its territories⁴ needed:

- A right to housing
- A right to medical care⁵
- A right to child care
- A right to care of disabled relatives

² U.N. Charter, Art. 2.4: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

³ U.S. Constitution, Art. VI, cl. 2.

⁴ Thousands of U.S. citizens live in American Samoa, Baker Island, Guam, Howland Island, Jarvin Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, Northern Mariana Island, Palmyra Atoll, Puerto Rico, Virgin Islands, Wake Island, and on U.S.737 military bases in 156 other countries all over the world. Global Research Centre in 2007.

⁵ Sometimes called health care.

They needed these rights whether or not they had a job because their employers did not provide these necessities.

So when the representatives of the U.S. worked to establish the United Nations, and when they wrote the United Nations Charter, they included these concepts in the preamble, in several articles, and especially in Articles 55⁶ and 56⁷ enumerating human rights and the commitment of each member nation to enforce these rights.

They repeatedly listed rights: human rights⁸, health care⁹, economic¹⁰, social¹¹, cultural¹², and the right not to be discriminated against in the exercise of these rights based on being a minor, or noncitizen, as well as based on gender or race.

Based on these broad principles, the U.S. helped the U.N. write a series of treaties the U.S. ratified: on Civil and Political Rights¹³, on elimination of Racial Discrimination¹⁴, forbidding Torture.¹⁵ Recently the U.S. signed a treaty on the Rights of Persons with Disabilities¹⁶, spelling out rights covered in a more general way in the earlier treaties.

Cultural Rights

People from every culture live in the United States and its territories today.

Almost everyone today feels pressured by speed-ups at work, or no time between two jobs, or limited access to stating their views in the media. Many feel, and have stated, that they have no cultural rights any more.

Each person, and each community of persons, has the right to exercise their culture:¹⁷

- music • art • theatre • literature • dance • religion
- tribal/community celebrations
- family time

Do We Actually Have Political, Economic, and Cultural Rights in the U.S. ?

Are these actually "rights" protected by the Constitution and Bill of Rights if they are not mentioned there?

Yes, they are. They are rights in the penumbra of the Ninth Amendment.

⁶ Art. 55: "... the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and ..."

⁷ Art. 56: "All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

⁸ U.N. Charter, Art. 55.

⁹ See U.N. Charter, Art. 55b.

¹⁰ See U.N. Charter, Art. 55b.

¹¹ See U.N. Charter, Art. 62.

¹² See U.N. Charter, Art. 55b.

¹³ International Covenant on Civil and Political Rights: ratified by the U.S. in 1992. ICCPR Art. 19.1 asserts the freedom to seek information; Art. 17 the right to privacy.

¹⁴ International Convention on the Elimination of all forms of Racial Discrimination, ratified by the U.S. in 1994.

¹⁵ International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the U.S. in 1994.

¹⁶ Convention on the Rights of Persons with Disabilities, signed by the U.S. in 2009.

¹⁷ U.N. Charter, Art. 55-56; International Covenant on Civil & Political Rights, Art. 27.

"Penumbra," you may ask. "What's that?"

Rights in the Penumbra of the Ninth Amendment

According to the U.S. Supreme Court in *Griswold v. Connecticut* (381 U.S. 479 (1965)), the right to privacy is in the **penumbra of the First¹⁸ and Ninth Amendments¹⁹**. The third definition of "penumbra" in Merriam Webster Dictionary is clear: "a body of rights held to be guaranteed by implication in a civil constitution."

What if we started claiming our rights under the Ninth and First Amendments every time they try to stop us?

Can this become as effective as claiming our rights under the First and Fifth Amendments were a few years ago?

When they say we have no right to stop them from clear cutting an area, we can say: "Yes we do, under the penumbra of the 1st and 9th Amendments!"

When they say we can't stay in our homes till we get bailed out, we can say "We have a right under the 9th Amendment."

Will this work in 2009? Or 2010?

Probably not immediately.

But we used the First and Fifth Amendments in refusing to answer questions before the House Un-American Activities Committee for awhile before the media reported on this. Finally our rights were upheld in the courts and the media had to report it.

Now knowing that we are exercising rights set forth in the Constitution and the Bill of Rights gives us strength, as the First and Fifth gave us strength in the Cold War/McCarthy period.

New issues, basic rights -- a good combination under the United States Constitution 9th Amendment written by revolutionaries who succeeded in freeing themselves from a top down, royal, feudal government.

¹⁸ First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

¹⁹ We looked up "penumbra" in Black's Law Dictionary (1968 edition) but it wasn't there.