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- THE AMERICAN DEMOCRACY AND
JUDICIAL REVIEW *Allan Ides* 1

This essay explores judicial review in the context of two recurring themes in democratic theory: participatory democracy and liberal democracy. The idea is to look at judicial review as a variable component within these very different democratic theories rather than as a separate construct to be squared with an abstraction called democracy.

- THE END OF INSUBORDINATION *Donal M. Sacken* 43

Professor Sacken argues that Arizona courts have created an unnecessarily harsh insubordination doctrine for public school administrators to use against teachers. The doctrine is not only based on an outmoded view of schools, but it also stands as an impediment to important reform.

Articles

- THE RECOGNITION OF AN ACCUSED'S CONSTITUTIONAL RIGHT TO INTRODUCE EXPERT TESTIMONY ATTACKING THE WEIGHT OF PROSECUTION SCIENCE EVIDENCE: THE ANTIDOTE FOR THE SUPREME COURT'S MISTAKEN ASSUMPTION IN CALIFORNIA
V. TROMBETTA *Edward J. Imwinkelried & Robert G. Scofield* 59

In *California v. Trombetta*, after testing physical evidence obtained from an accused, the police innocently destroyed the evidence and thereby prevented a defense retest. Nevertheless, the Supreme Court held that the prosecution could introduce inculpatory scientific testimony about the test. The Court assumed that there would be a fair adversary balance at trial because the defense could introduce rebuttal evidence attacking the weight of the prosecution's scientific testimony. In this article, the authors demonstrate that the Court's assumption was mistaken and analyze the evidentiary implications of the mistake.

- "BECAUSE THAT'S WHERE THE WATER IS":
RETIRING CURRENT WATER USES TO
ACHIEVE THE SAFE-YIELD OBJECTIVE
OF THE ARIZONA GROUNDWATER
MANAGEMENT ACT *Robert Jerome Glennon* 89

The objective of the 1980 Arizona Groundwater Management Act was "safe-yield," an equilibrium between groundwater withdrawal and recharge. Professor Glennon's review of experience under the Act demonstrates that the

safe-yield objective will not be achieved without retiring some current water uses. Agricultural irrigation accounts for eighty-five percent of Arizona's water use yet, as Professor Glennon's history demonstrates, changes in the state's economy have resulted in a relative decline in the role of agriculture so that agriculture now contributes only one to two percent to the state's economy. Professor Glennon proposes to reduce irrigation by requiring new development to purchase and retire existing water rights. His proposal offers a case study of how a state might encourage a market system of water rights.

HABEAS CORPUS, QUALIFIED IMMUNITY, AND CRYSTAL BALLS: PREDICTING THE COURSE

OF CONSTITUTIONAL LAW*Kit Kinports* 115

This article compares the extent to which the courts require accurate predictions concerning developments in constitutional law in three contexts: the qualified immunity defense in section 1983 cases; the rules governing procedural defaults in habeas cases; and the retroactive application of new Supreme Court rulings on habeas. The article analyzes the relevant case law and concludes that courts apply very different standards in these cases. Public officials and state court judges are readily forgiven for erroneous interpretations of constitutional norms, while prisoners and their attorneys are held to a much higher standard. The article suggests that the courts should not apply such disparate standards in these three areas, but should instead require in each case that the actor have acted reasonably for one in similar circumstances.

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