

---

# University of Pennsylvania

## JOURNAL OF CONSTITUTIONAL LAW

---

### ARTICLES

THE ORIGINAL MEANING OF THE NECESSARY AND PROPER CLAUSE

*Randy E. Barnett*

RELIGIOUS MINORITIES AND THE FIRST AMENDMENT:  
THE HISTORY, THE DOCTRINE, AND THE FUTURE

*Stephen M. Feldman*

TOO CLOSE TO THE RACK AND THE SCREW: CONSTITUTIONAL  
CONSTRAINTS ON TORTURE IN THE WAR ON TERROR

*Seth F. Kreimer*

REPLY:  
TORTURE WITHOUT VISIBILITY AND  
ACCOUNTABILITY IS WORSE THAN WITH IT

*Alan M. Dershowitz*

SURREPLY:  
CONSTITUTIONAL PRINCIPLES AND COLLATERAL DAMAGE

*Seth F. Kreimer*

### COMMENTS

DOES NEW JERSEY'S SOLUTION TO ITS EDUCATION CRISIS RUN AFOUL  
OF THE UNITED STATES CONSTITUTION?

*John P. Di Tomo*

(UN)EQUAL PROTECTION FOR THE POOR: EXCLUSIONARY ZONING  
AND THE NEED FOR STRICTER SCRUTINY

*Mandara Meyers*

FEDERAL JUDGES AND FEARING THE "FLOODGATES OF LITIGATION"

*Toby J. Stern*



**University of Pennsylvania**  
**JOURNAL OF CONSTITUTIONAL LAW**

---

**TABLE OF CONTENTS**

ARTICLES

The Original Meaning  
of the Necessary and Proper Clause  
*Randy E. Barnett*..... 183

Religious Minorities and the First Amendment:  
The History, the Doctrine, and the Future  
*Stephen M. Feldman* ..... 222

Too Close to the Rack and the Screw: Constitutional  
Constraints on Torture in the War on Terror  
*Seth F. Kreimer*..... 278

Reply:  
Torture Without Visibility and Accountability Is  
Worse Than with It  
*Alan M. Dershowitz* ..... 326

Surreply:  
Constitutional Principles and Collateral Damage  
*Seth F. Kreimer*..... 327

COMMENTS

Does New Jersey's Solution to Its Education Crisis Run  
Afoul of the United States Constitution?  
*John P. Di Tomo*..... 328

(Un)Equal Protection for the Poor:  
Exclusionary Zoning and the Need for Stricter Scrutiny  
*Mandara Meyers*..... 349

Federal Judges and Fearing  
the "Floodgates of Litigation"  
*Toby J. Stern*..... 377