

SURREPLY

CONSTITUTIONAL PRINCIPLES AND COLLATERAL DAMAGE

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I am pleased that Professor Dershowitz joins me in the belief that torture should be held unconstitutional.¹ As the body of the article² makes clear, I think that our constitutional law and tradition would support federal courts in so holding; I understand Professor Dershowitz now to join me in that conclusion. We apparently diverge in predicting whether federal judges would in practice have sufficient integrity to follow that law rather than the winds of public fear if faced with the choice.

Even if Professor Dershowitz were right in his prediction, it seems to me that September 11 has already generated more than enough legislation that corrodes our constitutional heritage. Members of Congress, like members of the executive branch, have an independent duty to support and defend the Constitution even if they believe that judges reviewing their work product would lack the will to do the same.

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¹ Alan M. Dershowitz, *Reply: Torture Without Visibility Is Worse Than with It*, 6 U. PA. J. CONST. L. 326 (2003).

² Seth F. Kreimer, *Too Close to the Rack and the Screw: Constitutional Constraints on Torture in the War on Terror*, 6 U. PA. J. CONST. L. 278 (2003).