

THE CONSTITUTION'S TEXT IN *TRUMP V. BARBARA*: COMMON LAW, CITIZENSHIP, AND THE LIMITS OF NATURAL RIGHTS THEORY

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Professor Linda Denno¹ believes that the Supreme Court has profoundly erred in *Trump v. Barbara*² and hopes that either it, or Congress, will reverse it. That will not happen any time soon. This is not just because the Court almost never reverses itself soon after issuing a major precedent. It is not even because Congress lacks the power under Section 5 of the Fourteenth Amendment to change the substance of a Court ruling. I tend to think Congress's Section 5 powers are broader than admitted by *City of Boerne v. Flores*,³ even though Congress itself does not seem to believe it.

Instead, the Court will not reverse *Barbara* because the majority made no mistakes that demand it. The majority and dissent differ on the best method to answer a constitutional question on which the text is not clear. The majority used standard approaches to answer the question whether the Fourteenth Amendment changed the standard for recognizing birthright citizenship. The dissent reads the historical record differently, but seems to agree with the majority that the original understanding of the constitutional text should govern. Professor Denno, however, would fill this constitutional ambiguity with a political philosophy that does not govern legal interpretation.

To begin, I assume that Professor Denno agrees that policy concerns should not dictate the answer to the question of constitutional interpretation. For example, the argument that the Court's expansive definition of birthright citizenship might encourage illegal entry, strategic birth tourism, or the creation of "anchor babies" that complicate the enforcement of immigration laws may or may not be true. But it does not change the proper interpretation of the Constitution. If the Founders adopted a constitutional provision with a clear meaning, even if it advances a policy that does more harm than good, we must still follow the original understanding.

I believe Professor Denno further agrees that the original understanding of the Constitution, not external considerations, such as economic, social, or political theory, should govern interpretation. If the Constitution adopts a provision that is immoral under her preferred political philosophy, we must still follow the original understanding. The constitutional text permits the government to impose the death penalty.⁴ Even if we personally disagree with the morality of the state putting a convicted felon to death, we cannot interpret the Constitution to prohibit capital punishment. Or, to put it more controversially, the original Constitution allowed states to permit slavery. Although it violated the most fundamental of individual rights, Christianity, and enlightened morality, even Abraham Lincoln had to promise that, as President, he would not interfere with slavery in the states where it already existed.⁵

Thus, the answer to whether the Fourteenth Amendment makes any baby born on American territory a citizen, regardless of whether the parents are in the country legally, depends solely on the best reading of the constitutional text. The Fourteenth Amendment simply declares: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."⁶ The case for birthright

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¹ Linda Denno, *The Supreme Court's Error in Trump v. Barbara: Citizenship, Consent, and the Self-Governing Republic*, 49 HARV. J.L. & PUB. POL'Y PER CURIAM No. 5 (2026).

² *Trump v. Barbara*, 146 S. Ct. 2438 (2026).

³ *City of Boerne v. Flores*, 521 U.S. 507 (1997).

⁴ See U.S. CONST. amend. V.

⁵ Abraham Lincoln, First Inaugural Address (Mar. 4, 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 262, 263 (Roy P. Basler et al. eds., 1953).

⁶ U.S. CONST. amend. XIV, § 1.

citizenship is straightforward. The text of the Fourteenth Amendment, the historical record of its drafting and ratification, the common-law tradition it incorporated, and 128 years of Supreme Court precedent all support birthright citizenship. The Fourteenth Amendment text sought to codify the traditional American and British rule that the place of birth determined citizenship on the one hand, and to remove the great stain on that principle: the prohibition of slaves from citizenship. No Congress, no President, and no Supreme Court appear to have ever denied American citizenship to a baby born on American territory, except for the case of Indians—who were excluded under the original understanding of the Fourteenth Amendment’s text.

I believe the fatal flaw in Professor Denno’s argument is that she would elevate political philosophy above the original understanding. She argues, in brief, that our nation is built on a social compact formed by the consent of individuals with inherent natural rights. She claims that Americans rejected the British theory of the relationship between the sovereign and the subject, which Professor Denno dubs a feudal status of perpetual subjectship owed to a monarch’s person.

Professor Denno believes that the Declaration of Independence’s citation of natural rights and natural law means that citizenship must be consistent with natural rights theory. She does not clearly explain whether this natural rights theory is that of the philosophers of that time (Thomas Hobbes and John Locke) or of today (John Finnis and Harry Jaffa), or even whether there is any disagreement between the two. She apparently believes that, according to natural rights theory, citizenship must arise from the consent of both the state and the individual. The children of those who enter or remain in defiance of that consent, or who visit only temporarily, do not automatically inherit membership. She appears to conclude, therefore, that the child of illegal aliens cannot be a citizen because of the parents’ violation of immigration law—this amounts to society refusing its consent to the child joining the American polity.

Even if this were the governing theory, it does not resolve the question. If the Fourteenth Amendment recognizes that birthright citizenship is the governing rule, that would qualify as the consent of society, rather than compliance by the parents with immigration law. But Professor Denno has not yet proven that natural rights must govern where the Constitution is silent. Both Professor Denno and I agree that there is no positive law in the original Constitution that dictates a rule of citizenship—that would not come until the Fourteenth Amendment. The constitutional structure generally requires that, where the text does not grant a power to the federal government, the states should govern. The *Barbara* majority correctly found that the determination of citizenship during the antebellum period was for the states to decide.⁷

Professor Denno, however, believes that political philosophy, not the states, sets the rule because that political philosophy gave rise to the Declaration of Independence.

I do not think it is so easy to invoke the natural rights language of the Declaration of Independence and then claim that natural rights theory must supply the answer to every question left open by the constitutional text. It is not clear what those natural rights are, why and when they may override constitutional structures—such as federalism and the separation of powers—and whether there must be agreement in society to adopt natural rights as governing philosophy. Suppose the Framers did not share a consensus that natural rights should act as a governing philosophy that would automatically fill in the gaps left by the constitutional text. Professors Gordon Wood and Bernard Bailyn, the leading historians of the American Revolution of the last half-century, have shown that the colonists rebelled not out of an attachment to abstract natural rights, but because of the belief that the British were imposing a tyranny.⁸ Even if Professor Denno were to deny the weight of these historians’ work on the ideological origins of the Revolution and the Constitution, she has not shown that the Framers would have agreed that the content of natural law should prevail over the separation of powers and federalism limits on the powers of the national government.

If Professor Denno’s interpretive maneuver were applied, it would override the Constitution’s location of the primary policymaking authority in the states. She would instead transfer power from our decentralized state-based system to federal judges. A similar exercise would find that the Supreme Court erred in the recent *B.P.J.* case, which found that states retained the authority to ban biologically male athletes from participating in women’s sports.⁹ Instead, as

⁷ See *Barbara*, 146 S. Ct. at 2446–48.

⁸ See generally BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967); GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787* (1969).

⁹ *West Virginia v. B.P.J.*, 146 S. Ct. 2356 (2026).

Professor Denno would have it, the Court should have declared that the Constitution does not recognize transgender rights at all, since natural law would not permit the existence of anything other than biological sex as determined at birth. The Court not only should have rejected the idea that the Constitution required gay marriage,¹⁰ but it should have prohibited states from recognizing the practice, since gay marriage violates natural rights. *Dobbs* was a mistake too, because it overruled *Roe v. Wade*¹¹ but allowed states to permit abortion; natural law would seem to require that the Court interpret the Constitution to ban abortion nationwide.

But instead of imposing such a national rule, the antebellum Constitution left citizenship up to the states. This is why the majority is correct to conclude that citizenship was determined by the common law rule of birthplace. This is not because, as Professor Denno appears to believe, the Court erred in imposing the mysterious, feudal ideology of the common law upon the true natural rights system of the Framers. Instead, the states were free to adopt their own approaches to determining citizenship—and they all used this discretion to adopt the common law rule of birthright. This is not all that remarkable. Upon independence, the states enacted laws that incorporated the British common law. After all, the common law had been the law of the colonies before independence, and without continuing it in existence, the states either would have had to pass law after law to adopt the common law rules one by one or invite legal chaos. If we must reject birthright citizenship because the common law somehow conveys a feudal system of belief at odds with natural rights and the Declaration, we must also reject all the other bodies of common law, such as the laws governing contracts, torts, property, and criminal justice. In fact, much of this allegedly feudal law continues to govern the everyday conduct of every American to this day. The common law was not a political ideology, as Professor Denno suspects, but instead is the foundation of the Anglo-American legal system.

The radicalism of Professor Denno's argument is not even accepted by the dissenters in *Barbara*. Writing for the dissent, Justice Thomas does not advance a broad argument based on the revolution in political theory that she theorizes. He does not argue that the United States, upon independence, rejected the birthright rule of the common law because it conflicted with natural rights and the idea of a social contract. Instead, Justice Thomas accepts that the states adopted the rule of citizenship and, like the majority, sees the Fourteenth Amendment as codifying that rule to overrule *Dred Scott*.¹² The dissent's argument is that the majority has erred in its definition of the common law rule. Justice Thomas claims that the common law rule was one of birthplace plus domicile—domicile refers to the intention to remain as a resident in a state.¹³ But the federal structure of our Constitution still reserves to the states—not an omnipresent, mandatory, natural law—the authority to set the rule of citizenship.

Because of this acceptance of the common law and federalism, Justice Thomas's narrower dissent finds potential common ground where Professor Denno sees only chasms. Justice Thomas argues that the birthright-plus-domicile rule rules out the children of temporary visitors from citizenship. But he does not argue that his rule would ban the children of illegal aliens who do in fact reside in the United States. In a critical footnote, he says: "Because this case presents a facial challenge and no one disputes that lawful temporary visitors and some illegal aliens are not domiciled here, I would reserve for another day the question whether the children of illegal aliens can be domiciled here."¹⁴ If Professor Denno's view held sway, this footnote would be entirely unnecessary. In fact, the footnote would be contradictory, because it admits the possibility that an alien could be here illegally—which, in Professor Denno's view, signifies the refusal of the community to consent to the addition of a new member—and yet still give birth to a citizen by a) giving birth on U.S. territory, and b) continuing to remain on U.S. territory long enough to become a resident (which would seem to make the illegality worse). Professor Denno's alleged reconceptualization of citizenship, wrought *sub silentio* by a theory of natural rights, as articulated in the Declaration of Independence, is too radical even for the most originalist justices on the U.S. Supreme Court.

Once we have cleared away Professor Denno's claim that a moral theory of natural rights allows the government to reject birthright citizenship, we can identify the actual difference

¹⁰ See *Obergefell v. Hodges*, 576 U.S. 644 (2015).

¹¹ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (overruling *Roe v. Wade*, 410 U.S. 113 (1973)).

¹² *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

¹³ See *Trump v. Barbara*, 146 S. Ct. 2438, 2474–75 (2026) (Thomas, J., dissenting).

¹⁴ *Barbara*, 146 S. Ct. at 2505 n.10 (Thomas, J., dissenting).

between the majority and the dissent. Both the Court majority and the dissent agree on the basic sequence of events. First, at the time of the Founding, the states had the authority under our federal system of government to set the rule on citizenship. That rule, drawn from the common law, rooted citizenship in birth on U.S. territory. Second, *Dred Scott v. Sandford* overturned that rule by finding that blacks—whether free or slave—could never become citizens, even though they were born on U.S. territory. Third, the Fourteenth Amendment sought to overturn *Dred Scott* and codify the antebellum common law rule.

The main difference is whether the common law rule required “domicile” in addition to birthplace. Chief Justice Roberts follows the traditional reading and concludes that neither the common law nor post-Fourteenth Amendment practice required anything more than birthplace. Justice Thomas’s dissent finds that it did, and that the phrase “subject to the jurisdiction thereof” in the Fourteenth Amendment’s text incorporated the “domicile” requirement. Both *Wong Kim Ark* and the *Barbara* Court reply that “subject to the jurisdiction thereof” instead incorporates the international public law rule that the children of ambassadors and of occupying forces were beyond domestic law and hence were not citizens at birth.¹⁵

The definitive piece of evidence needed to decide the case still rests undiscovered in the historical record. Both the Chief Justice and Justice Thomas rely upon a few scattered judicial decisions and commentaries in the first half of the nineteenth century to divine the common law rule on citizenship. But the authorities are actually few and far between. Neither the Chief Justice nor the dissent provides much evidence on states’ practice in granting citizenship. When someone appeared for jury service, filed a lawsuit, tried to vote, or entered the country from abroad, a court or the executive branch would have had to determine whether the juror, litigant, voter, or traveler was a citizen. Immigration historians report that birthright is the general rule, but they do not address whether domicile was also required.¹⁶

To complicate matters, it is fair to say that the drafters of the Fourteenth Amendment were not thinking about immigration. Throughout the antebellum period, the nation did not pursue an exclusionary immigration policy. The states instead sought to attract foreign immigration. Congress would not enact a major federal immigration law until the Chinese Exclusion Act of 1882, with perhaps the sole exception of the very different law ending the slave trade.¹⁷ The drafters and ratifiers of the Fourteenth Amendment were focused, as Justice Thomas correctly observes, on reversing *Dred Scott*.

Barbara asks instead how a constitutional amendment, adopted by the nation to address one problem, would apply to the very different, unanticipated phenomenon of illegal immigration. And not just immigration, but immigration in violation of federal laws enacted pursuant to a federal power whose existence the Court would not recognize for another two decades.¹⁸ I believe that those who support Trump’s anti-birthright executive order have failed to produce definitive historical evidence from the founding, the antebellum period, and the ratification history of the Fourteenth Amendment to overturn the long understanding of citizenship as based on birthright.

Writing for a 5-4 majority, Chief Justice John Roberts properly found that the starting point for answering the question of citizenship rests in the Fourteenth Amendment’s phrase: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The text clearly grants citizenship to “persons” born in the United States. The only dispute between the majority, Justice Thomas’s dissent, and the Trump executive order is whether “subject to the jurisdiction thereof” creates broad or narrow exceptions to the rule.

Barbara recognizes no exception to birthright citizenship other than for occupying armies, foreign diplomats, children born on foreign public ships, and members of the Indian tribes. Like *Wong Kim Ark*, *Barbara* rejected the argument that the conduct of the parents could deprive children of citizenship by birth. “What the Court held in *Wong Kim Ark* was simple: the Citizenship Clause incorporated the common law and granted citizenship to nearly all children born in the United States,” Chief Justice Roberts wrote. “Not surprisingly, then, in the 128 years

¹⁵ See *United States v. Wong Kim Ark*, 169 U.S. 649, 682, 693 (1898).

¹⁶ See generally JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608–1870* (1978); Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833 (1993).

¹⁷ Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882); Act of Mar. 2, 1807, ch. 22, 2 Stat. 426; see also Page Act of 1875, ch. 141, 18 Stat. 477.

¹⁸ See *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

since, we have repeatedly understood the rule of *Wong Kim Ark* to guarantee citizenship to all children born in the United States and subject to its power. We see no reason to depart from that view today.”¹⁹

Barbara, of course, does not settle the matter. A President has the right—even the duty—under the Take Care Clause²⁰ to advance his good faith reading of the Constitution in the areas under his constitutional responsibility. He cannot force the courts to agree, just as the courts cannot force him to adopt their opinions. But Trump has the right, which he exercised in *Barbara*, to attempt to persuade the Court to change precedent. If he wanted to press his executive powers to the extreme, he could even continue to order subordinate executive officers not to apply *Barbara* when they enforce the law—for example, in refusing to issue Social Security numbers or passports to children born here as part of birth tourism schemes. And the Court could hold those decisions illegal and order the granting of citizenship to each baby in an individual case, one-by-one. I have little doubt that the Court will continue to enforce *Barbara*, even as President Trump raises doubts about its reasoning and even challenges its reach. The federal and state governments have ample powers to deter birth tourism, such as barring pregnant aliens from entering the country, prosecuting individuals and businesses that are aiding and abetting the conduct, or even arresting the mothers for immigration fraud.

To defend his continuing campaign against birthright citizenship, Trump can invoke no less an example than President Abraham Lincoln. Lincoln argued that, as President, he had no obligation to enforce the notorious *Dred Scott* beyond the parties to the case. “[N]or do I deny that such decisions must be binding in any case, upon the parties to a suit, as to the object of that suit,” Lincoln explained in his First Inaugural Address. Decisions of the Court should receive “very high respect and consideration, in all paral[lel] cases, by all other departments of the government.” It might even be worth following erroneous decisions at times because the costs of reversing them might be high. But “if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court,” Lincoln argued, “the people will have ceased to be their own rulers, having, to that extent, practically resigned their government, into the hands of that eminent tribunal.”²¹ Lincoln followed in the footsteps of Andrew Jackson, who properly argued that he could veto the re-authorization of the Bank of the United States even though the Court had upheld its constitutionality in *McCulloch v. Maryland*.²² But a President who over-uses the power claimed by Jackson or Lincoln in the wrong circumstances risks undermining his cause and the long-term institutional strength of his office.

This struggle between the Trump White House and the majority and minority opinions in *Barbara* makes plain the error made by those, like Professor Denno, who demand a broader rejection of birthright citizenship on political theory grounds. Professor Denno’s argument cannot find the support it needs in case law, the proper approach to constitutional interpretation, or, indeed, the natural rights theory that she believes governs all questions in the American republic. Professor Denno argues that the Framers universally believed in natural rights as shown by the Declaration of Independence, that the purpose of government is to protect those rights as shown by the Constitution, and that therefore the Constitution must be read in harmony with a social contract theory of government along the lines proposed by John Locke. In her view, the newly independent states did not adopt the common law rule because it reflected a political theory of monarchy. Instead, they replaced it with a social contract approach in which both the individual and society agree to admit a new member.

Professor Denno’s argument is at odds with the Court’s majority and minority, and, by extension, the Trump White House. Neither Chief Justice Roberts nor Justice Thomas disagree about the textual, structural, or methodological starting points to answering the birthright question. They share the view that the Constitution looked to the states, not the federal government, to set the conditions for citizenship. The states could have adopted any system they chose, but they all chose to adopt the system of the British common law. And neither Chief Justice Roberts nor Justice Thomas disputes that the British common law used place of birth to determine citizenship. Their disagreement stems from whether the common law also included the domicile

¹⁹ *Barbara*, 146 S. Ct. at 2453.

²⁰ U.S. CONST. art. II, § 3.

²¹ Lincoln, *supra* note 5, at 268.

²² Andrew Jackson, Veto Message (July 10, 1832), https://avalon.law.yale.edu/19th_century/ajveto01.asp [<https://perma.cc/L2ZX-V4VJ>]; see *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

of the parents as part of the birthright rule. And on this point, as Chief Justice Roberts points out, Justice Thomas's dissent does not identify examples of the U.S. government in the antebellum period denying U.S. citizenship to children born on U.S. territory, but whose parents were not domiciled here. Instead, the dissent draws an analogy to scattered cases where state A held that the citizens from state B were not automatically the citizens of state A, unless the movers demonstrated domicile—the intent to remain—in state A. But that analogy may not hold: no matter if this were the rule or not, the citizens of both state A and B were U.S. citizens. To prevail, Justice Thomas's dissent would have to present evidence of the government denying citizenship, through rejecting applicants of the right to benefits, or the right to vote and serve on juries, because of the absence of domicile on the part of their parents. Such cases may never have arisen due to the United States' encouraging attitude toward immigration in the years before and after the Civil War.

That disagreement over the initial common law rule of citizenship drives the rest of *Barbara*. Both majority and minority agree that *Dred Scott* grievously misread the Founding to deprive blacks—both slave and free—of citizenship, even though they were entitled to it under the common law rule of birthright. They both agree that the Fourteenth Amendment overruled *Dred Scott* but otherwise sought to work no great change in the common law rule, other than to establish it nationwide and henceforth outside the powers of the states. They even both agree that *Wong Kim Ark* recognized this history of American citizenship. Chief Justice Roberts and Justice Thomas only disagree over whether the original birthright starting point included domicile as a requirement. For this reason, Justice Thomas's dissent does not argue that the children of illegal aliens who intend to remain within the United States, which would satisfy his domicile condition, fail to benefit from birthright citizenship. His dissent only addresses birth tourism: children whose parents give birth on U.S. territory but then leave. On this point, President Trump's new executive order has withdrawn from the broader claim of his first order, which attempted to deny citizenship to any children of mothers in the U.S. illegally.²³

Professor Denno's argument would replace this unobjectionable, even normal disagreement over the original understanding with a radical theory rooted in philosophy, not history. She believes that a natural rights republic requires that the people and a new member both agree to citizenship—this is the very meaning of government by consent at the heart of social contract theory. But there is no evidence that the antebellum states adopted this social contract theory of citizenship for children born on U.S. territory. Neither the majority nor the minority opinions in *Barbara* present evidence—or even argue—that citizenship in the antebellum states switched from the common law to a consent-based approach. If so, we should see cases where the law held that children either were not citizens or were only presumptively citizens, because they could not yet give their consent. We should expect to see cases where states sought some perfection of a presumed citizenship when children became adults. We would expect to see cases where states denied the rights and duties of citizenship—jury duty, voting, veterans benefits—to adults who did not consent to citizenship through a formal process upon turning 18.

Instead, both the majority and minority in *Barbara* agree that birthright was the rule universally applied to citizenship by the states before the Fourteenth Amendment. Even if domicile were part of that rule, as Justice Thomas claims, this does not impose a social contract theory of citizenship, as even illegal aliens can have a domicile if they intend to remain in the United States. But neither the majority nor dissent seeks any sign of any consent mechanism for citizenship because one did not exist and, more importantly, neither side adopts Professor Denno's radical approach to citizenship. In fact, as far as I can tell, there is no evidence that any antebellum state rejected the common law rule, nor is there any evidence that any antebellum state adopted anything like her consent-based theory of citizenship. The consistent practice of the states, as recorded by historians of American immigration and by the majority and minority in *Barbara*, adopted the common law rule of birthplace citizenship.

Professor Denno's claim about practice during the Revolution does not prove the contrary. Of course, at the time of the Revolution, every American started out as a British subject. During the War for Independence, they had to choose whether they wanted to retain their status or break that relationship and become a new society. That was a choice that had to be made because, by default, every adult was already a British subject, and so had to declare whether they would abjure their

²³ Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51991 (Aug. 11, 2026); cf. Exec. Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, 90 Fed. Reg. 8449 (Jan. 29, 2025).

former status and join the independent United States. But sorting out individual citizenship in the wake of a revolution does not somehow dictate the rule that the new society will choose to recognize new citizens in the future. Professor Denno's argument is like saying that when two teams choose their players from an existing pool, they start out with a random assignment, and that therefore they must forever choose new players randomly too. The starting point for choosing, however, does not dictate the method afterwards. Professor Denno may think that it is logical for one to follow the other, but the constitutional text does not require it; instead, the federalist structure of the Constitution gave this question to the antebellum states, which chose the common law.

After reading Professor Denno's essay, it has become clear to me that the fundamental problem with political theorists interpreting the Constitution is that they are not interpreting it. Instead, they are using the Constitution to advance a political theory. Whether a reader agrees with Professor Denno will depend, in part, on whether one agrees with her theory, not with the Constitution. One could also hold my view, which agrees with parts of her natural rights theory, but acknowledges that we advance it through the democratic process of elections and legislation, not courts and constitutional interpretation. The question becomes whether Americans want their fundamental constitutional questions settled by lawyers such as Chief Justice Roberts or Justice Thomas or even Presidents like Donald Trump, who, despite their differences in outcomes, operate within a shared framework of original constitutional meaning. Or do Americans want to be governed by philosophers like Harry Jaffa or Leo Strauss (or even their friendly disciples)? I expect most Americans today, and at the time of the Framing, would vote for the former. Professor Denno and her fellow Claremont-inspired philosophers would choose the latter. And maybe some of her philosopher friends would also secretly pick the former, if they wanted to respect constitutional text, history, and practice over abstract theory.