

THE ORIGINS OF THE NECESSARY AND PROPER CLAUSE

The Necessary and Proper Clause is one of the most important parts of the U.S. Constitution. Today this short thirty-nine-word paragraph is cited as the legal foundation for much of the modern federal government. Yet constitutional scholars have pronounced its origins and original meaning a mystery.

Through three independent lines of research, the authors trace the lineage of the Necessary and Proper Clause to the everyday law of the founding era – the same law that American founders such as Madison, Hamilton, and Washington applied in their daily lives. The origins of the Necessary and Proper Clause can be found in the founding-era law governing agency, public administration, and corporations. All of those areas were undergirded by common principles of fiduciary responsibility – reflecting the founders' view that a public office is truly a public trust. This explains the choice of language in the clause and provides clues about its meaning. This book thus serves as a reference source for scholars seeking to understand the intellectual foundations of one of the Constitution's most important clauses.

Gary Lawson is a professor of law and the Abraham and Lillian Benton Scholar at Boston University School of Law. Professor Lawson has authored (with Guy Seidman) *The Constitution of Empire: Territorial Expansion and American Legal History*, five editions of a casebook on *Federal Administrative Law*, and more than sixty articles in law reviews and other journals.

Geoffrey P. Miller is the Stuyvesant P. Comfort Professor of Law at New York University Law School. Miller is the director of NYU Law School's Center for the Study of Central Banks and Financial Institutions and is a founder of the Society for Empirical Legal Studies.

Robert G. Natelson is Senior Fellow in Constitutional Jurisprudence at Independence Institute, and formerly professor of law at the University of Montana. He is an expert on the framing and adoption of the United States Constitution, and on several occasions he has been the first to uncover key background facts about the Constitution's meaning.

Guy I. Seidman is an assistant professor of law at the Interdisciplinary Center in Herzliya, Israel. He is a former visiting scholar at the University of Chicago and Northwestern University. Dr. Seidman is primarily interested in administrative and constitutional law, and in comparative law and legal traditions.

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Gary Lawson

Boston University School of Law

Geoffrey P. Miller

New York University School of Law

Robert G. Natelson

Independence Institute

Guy I. Seidman

The Interdisciplinary Center, Herzliya, Israel



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As with all things, to Patty, Nathaniel, and Noah.

Gary Lawson
March 2010

*This book is dedicated in loving memory to my parents,
Ady Seidman (1930–2009) and Lea Seidman
(né Carmi, 1934–1999).*

Guy Seidman
March 2010

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Gary Lawson and Guy I. Seidman
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Geoffrey P. Miller
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Robert G. Natelson
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