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# Constitutional Displacement

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## Constitutional Displacement

Posted By [Timothy Zick](#) On September 12, 2007 @ 2:52 pm In [Constitutional Law](#) | [2 Comments](#)

I have posted my most recent piece, entitled "Constitutional Displacement," on SSRN. In recent First Amendment scholarship, I have focused on the intersection of speech and place or spatiality. This project, which is more expansive, considers the many respects in which governmental control of *territory* affects constitutional liberties. The draft can be downloaded [here](#) <sup>[1]</sup>, and comments are of course welcome. Here is the abstract:

This Article examines the largely overlooked intersection between territory and constitutional liberty. Territoriality — the attempt to affect, influence, or control people, phenomena, and relationships by delimiting and asserting control over a geographic area — affects constitutional liberty in profound ways. The effects have been apparent in certain infamous historical episodes, including the hyper-territoriality of racial segregation, the internment of Japanese-Americans during World War II, and isolation of the sick and mentally ill. Today, governments are resorting to territorial restrictions in an increasing number of circumstances, including the detention of enemy combatants at Guantanamo Bay, the expulsion of illegal immigrants from local communities, the banishment of convicted sex offenders from vast geographic areas, the exclusion of homeless persons from public spaces, and the proposed isolation and quarantine of victims of pandemics and bio-terrorist attacks. These measures have produced what the Article refers to as Geographies of Justice, Membership, Punishment, Purification, and Contagion. Within these geographies persons and groups are subject to constitutional displacement — the territorial restriction or denial of fundamental liberties. The displacements examined in the Article substantially restrict or deny basic liberties including access to justice, migration, movement, communal and political membership, and the ability to be present in places of one's own choosing. The Article demonstrates that the Constitution provides remarkably little protection from certain forms of displacement. Analyzing the Constitution itself as a spatial framework, one that relies upon place, geography, and territory for various purposes, the Article shows that displacement arises from extra-territorial and intra-territorial "spatial gaps" in text and structure. The Article proposes that these spatial gaps be narrowed or closed.

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URLs in this post:

[1] here: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1011159](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1011159)

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