

National University of Ireland, Maynooth

From the Selected Works of Seth Barrett Tillman

October 4, 2013

PRESENTATION: Luke Beck, Under the Commonwealth: The Royal Succession and the Religious Tests Clause of the Australian Constitution, After Williams Colloquium (University of Southern Queensland Oct. 4, 2013), citing Teachout-Tillman Exchange and Tillman's Interpreting Precise Constitutional Text

Seth Barrett Tillman



Available at: https://works.bepress.com/seth_barrett_tillman/396/

Extract From

**Under the Commonwealth: The Royal Succession and the Religious Tests
Clause of the Australian Constitution**

Luke Beck

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There might, however, be a hurdle to accepting this interpretation as the correct or preferable interpretation. That hurdle is the interpretation might include state officials as holding their positions ‘under the Commonwealth’. State officials are in a familial relationship with the relevant State in the same way federal officials are in a familial relationship with the Australian nation. Since the States are themselves in a familial relationship with the Australian nation it follows that so too are State officials, albeit a degree removed. This result does not necessarily pose a problem of coherence. Indeed, it appears to be a result open when a comparison is made with the religious tests clause of the *United States Constitution*. Article VI of the *United States Constitution* states in part:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

It would appear open to read that provision as meaning that ‘officers of the United States and of the several States’ hold their offices ‘under the United States’.⁷¹

⁷¹ It should be noted that the *United States Constitution* uses various ‘office’-related language, including ‘office of honour, trust or profit under the United States’, ‘Office under the United States’, ‘Civil office under the authority of the United States’, and ‘civil officers of the United States’. The meaning of these expressions and the relationship between them is the subject of going debate. See, eg, Seth Barrett Tillman, ‘Interpreting Precise Constitutional Text: The Argument for a “New” Interpretation of the Incompatibility Clause, the Removal & Disqualification Clause, and the Religious Test Clause – A Response to Professor Josh Chafetz’s Impeachment & Assassination’ (2013) 61 *Cleveland State Law Review* 285; Zephyr Teachout, ‘Gifts, Offices and Corruption’ (2012) 107 *Northwestern University Law Review Colloquy* 30; Seth Barrett Tillman, ‘Citizens United and the Scope of Professor Teachout’s Anti-Corruption Principle’ (2012) 107 *Northwestern University Law Review Colloquy* 1; Zephyr Teachout, ‘The Anti-Corruption Principle’ (2009) 94 *Cornell Law Review* 341.