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From the Selected Works of Seth Barrett Tillman

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December 15, 2010

LeElle B. Krompass, Preface, Harvard Journal of Law & Public Policy (2010), acknowledging Tillman

Seth Barrett Tillman



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# HARVARD JOURNAL *of* LAW & PUBLIC POLICY

VOLUME 33, NUMBER 1

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## SEPARATION OF POWERS IN AMERICAN CONSTITUTIONALISM

THE TWENTY-EIGHTH ANNUAL FEDERALIST SOCIETY  
NATIONAL STUDENT SYMPOSIUM ON  
LAW AND PUBLIC POLICY—2009

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## PREFACE

The separation of powers is a fundamental part of the structure of our Constitution. The Framers wisely developed a system whereby the power to enact laws was vested in Congress, the power to execute those laws and safeguard our country was vested in the President, and the power to interpret the laws was vested in the judiciary. This issue includes Essays on the Separation of Powers in American Constitutionalism from the Twenty-Eighth Annual Federalist Society National Student Symposium.

The principle of separation of powers has sparked numerous debates throughout our history. Mr. Seth Barrett Tillman reconsiders one of the most puzzling debates—what Alexander Hamilton meant by “displacing” federal officers in *Federalist* No. 77. After conducting a thorough and meticulous review of contemporaneous sources, including letters, congressional debates, and dictionaries, Tillman concludes that Hamilton meant “replace” and not “remove.” Professor Jeremy Bailey responds to this argument, claiming that Hamilton meant “remove” at the time he wrote *Federalist* No. 77, and that he continued to hold this view after the ratification of the Constitution.

Mr. Clark Neily and Mr. Robert Levy comment on *District of Columbia v. Heller*, the first Supreme Court case in seventy years to address the Second Amendment. Drawing on their experience as co-counsel for the plaintiffs, Neily and Levy separately address several important questions that the Court in *Heller* left unanswered, such as whether the Second Amendment applies to the states and what gun regulations are now permissible.

We are also pleased to publish a number of Articles on timely topics. Judge Douglas Ginsburg advocates for consistency and coherence in judicial decision making, using the influence of economic analysis in antitrust law and of historical originalism in constitutional law as methodologies to promote this end. Next, Professor Robert Bird argues for reviving the necessity doctrine in eminent domain law under a more measured standard of judicial review. Professor Richard Esenberg predicts the future of campaign-finance regulation following the Supreme Court’s recent decisions in *FEC v. Wisconsin Right to Life, Inc.* and *Davis v. FEC*. Finally, Mr. Ilya Shapiro reviews Professor Helen Knowles’ book, *The Tie Goes to Freedom: Justice Anthony M. Kennedy on Liberty*.

I would like to thank several people who made this Issue of the *Journal* possible. First, Madison Kitchens and James Schuelke selected a wonderful slate of articles to fill this publication. Their passion for conservative and libertarian legal scholarship is an inspiration to all of us. Our student writing program is the

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result of the unparalleled efforts of Seth Chadwell and Sam Gedge. Kathy DeAngelo, Jim Schultz, David Derusha, and David Duncan worked tirelessly to manage the *Journal's* staff and edit the Issue. David Derusha deserves further praise and immense gratitude for serving as the National Editor of the Student Symposium. Finally, nothing would have been possible without my Deputy Editor-in-Chief and friend, Daniel Thies. His expertise and devotion proved invaluable. Finally, I would like to thank all of our hardworking editors — without them the *Journal* would not exist.

I hope that y'all enjoy the fruits of our efforts.

LeElle B. Krompass  
Editor-in-Chief

## THE FEDERALIST SOCIETY



Presents

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### *Separation of Powers in American Constitutionalism*

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Yale Law School

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