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From the Selected Works of Seth Barrett Tillman

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Extract from Stephen B. Presser & Jamil S.
Zainaldin's Law and Jurisprudence in American
History

Seth Barrett Tillman



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LAW AND JURISPRUDENCE IN AMERICAN HISTORY

CASES AND MATERIALS

Fifth Edition

By

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lar, from the advice I received this time from Richard Bernstein, Alfred Brophy, Brannon Denning, Mary Dudziak, Scott Gerber, Patrick J. Kelley, Thomas McAfee, and Polly Price. As usual (and customary) I was able to follow it only in part, so any errors and outrages that remain are attributable to me, not them. As before, the book remains a work in progress, and Zainaldin and I hope for future editions, so that critical comments from adopters and users of this edition are solicited and would be much appreciated.

STEPHEN B. PRESSER

Chicago, Illinois
October, 2003

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- Tushnet, Mark, with Levin, Katya, *What Really Happened in Brown v. Board of Education*, 91 *Col.L.Rev.* 1867 (1991), 827.
- Twining, William, *Karl Llewellyn and the Realist Movement* 72, 73, 80 (1973), 811, 821.

The Federalist continues to be the most influential text in American politics, at least where appeals to original understanding are involved. For a sample of recent scholarship on these essays, see, e.g., Alan Brinkley, Nelson W. Polsby, and Kathleen M. Sullivan, *New Federalist Papers: Essays in Defense of the Constitution* (1997), Ira C. Lupu, "The Most-Cited Federalist Papers," 15 *Const. Comm.* 403 (1998), Ira C. Lupu, "Textualism and Original Understanding: Time, The Supreme Court, and the Federalist," 66 *Geo. Wash. L. Rev.* 1324 (1998), J. Michael Martinez and William D. Richardson, "The Federalist Papers and Legal Interpretation," 45 *S.D.L.Rev.* 307 (2000), and Seth Barrett Tillman, "The Federalist Papers as Reliable Historical Source Material for Constitutional Interpretation," 105 *W. Va. L. Rev.* 601 (2003).

6. With the next group of selections we begin to find out whether the national judiciary evolved along the lines Hamilton promised. As you read these materials, determine whether the Federal judges were performing according to the theory of popular sovereignty that seems to underlie Federalist 78.

* David Hume, I *Essays* 128, "The Rise of Arts and Sciences."