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Seth Barrett Tillman

Roger Sherman and the Creation of the American Republic

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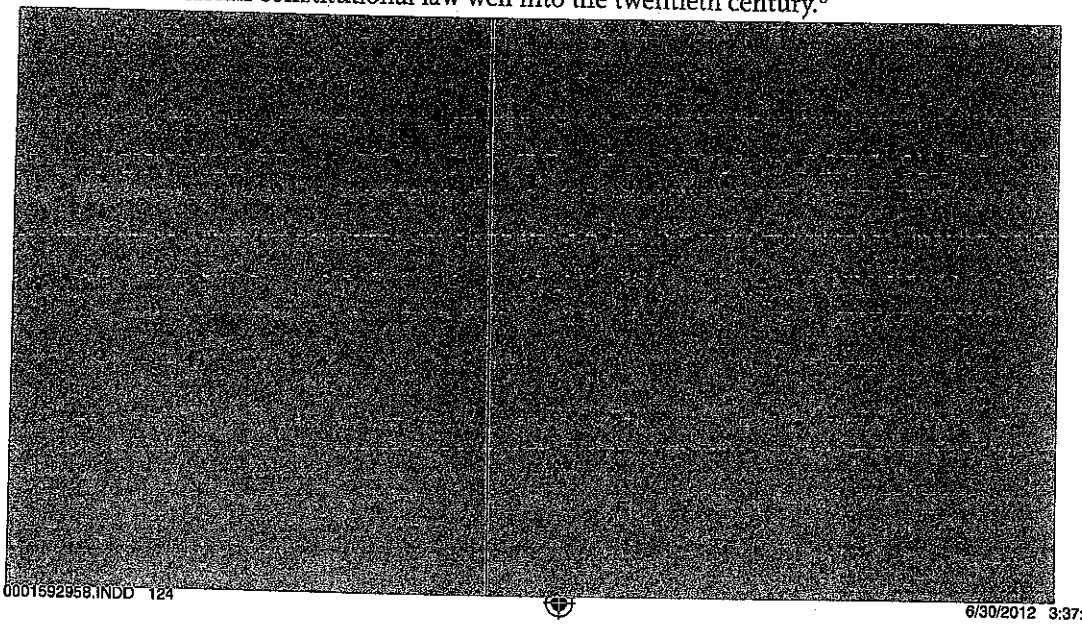
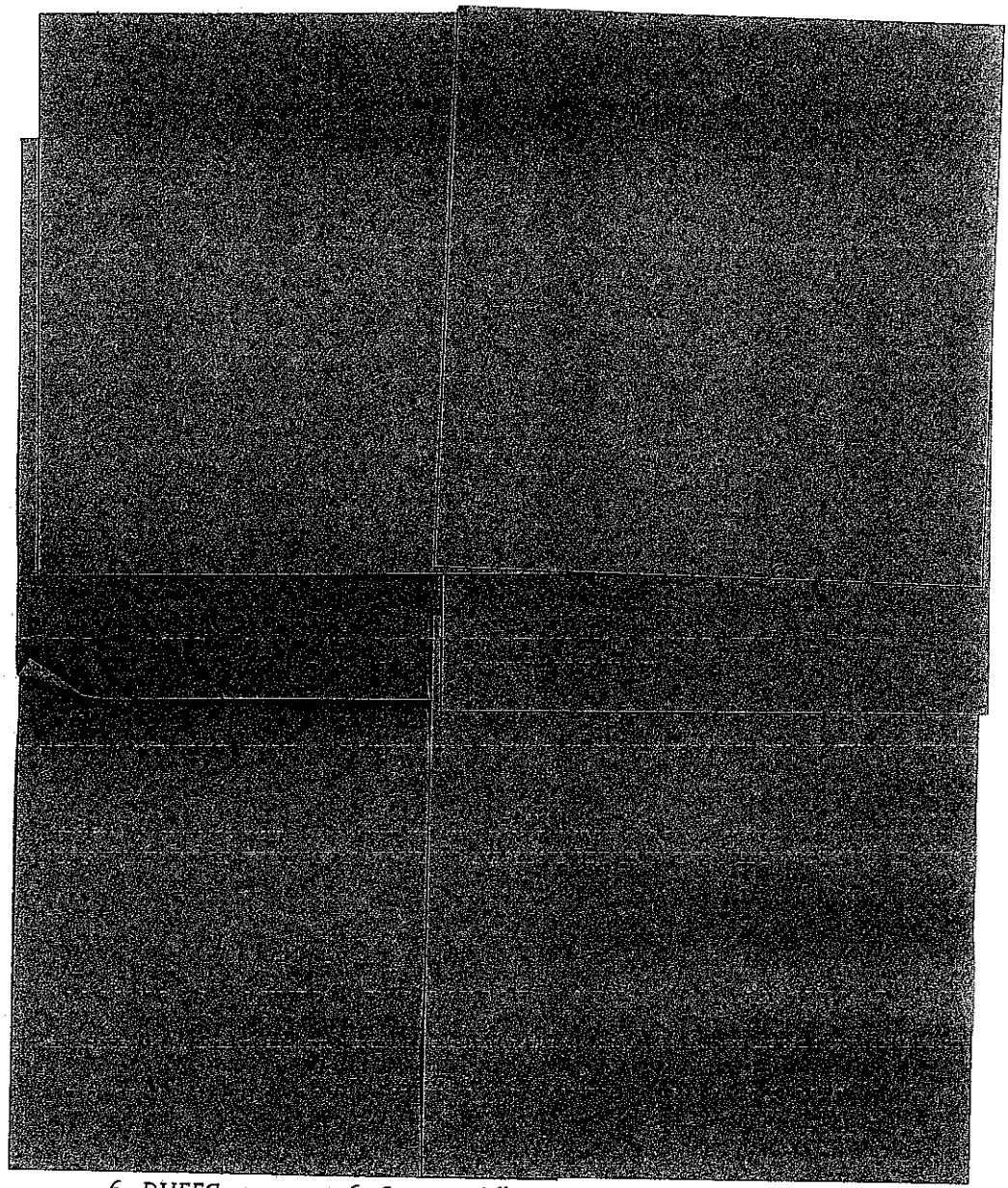
political thinkers he continually argued that the common good is the end of government. As Alan Heimert remarked with respect to evangelical ministers of the era (with whom Sherman had much in common), "In their thought, the purposes of society and of government were one, and their very terms of discussion evinced the urgency with which all their thinking drove to the question of the 'general good.'"[5] He believed the legislature was the institution best suited to this task.

Executive Power

In the Constitutional Convention, Sherman had suggested that executive functions might be fulfilled by an executive committee composed of an unspecified number of appointed officials serving at the will of the national legislature. He never reconciled himself to a single executive independent of the legislature, an executive veto, or executive prerogatives. Sherman continued to fight the growth and concentration of executive power while in Congress. The first significant battle on this issue was sparked on May 19, 1789, when representatives began discussing the organization of the executive branch. Madison proposed a "department of foreign affairs; at the head of which there should be an officer, to be called, the secretary to the department of foreign affairs, who shall be appointed by the president, by and with the advice and consent of the senate; and to be removable by the president." No one doubted that there would be such an officer, or that he would be appointed by the president with the advice and consent of the Senate. The critical issue, as William Smith immediately pointed out, is whether the president could unilaterally remove the secretary. The Constitution does not address the removal of executive branch officials by the president, and the issue remained hotly contested in American constitutional law well into the twentieth century.[6]





6. *DHFFC*, 10: 725–726. See especially *Myers v. U.S.*, 272 U.S. 52 (1926); *Humphreys' Executor v. U.S.*, 295 U.S. 602 (1935); and *Morrison v. Olson*, 487 U.S. 654 (1988). Alexander Hamilton, that great advocate of executive power, had written in "Federalist #77" that the "consent of that body [the Senate] would be necessary to displace as well as to appoint [executive branch officers]." Rossiter, *The Federalist Papers*, 459. After William Smith quoted "Federalist #77" in debates on the issue, he received a note from Egbert Benson reporting that

"*Publius* had informed him since the preceding day's debate, that upon mature reflection he *had changed his opinion* & now was convinced that the President alone should have the power of removal at pleasure," in Rakove, *Original Meanings*, 350. Seth Barrett Tillman points out that this account is "akin to triple hearsay," and offers an intriguing way to reconcile Hamilton's apparently contradictory positions in "The Puzzle of Hamilton's *Federalist* No. 77," *Harvard Journal of Law and Public Policy*, 33 (Winter 2010): 149–166, 164.