

Constitution Class Handout
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Lesson 09

Concerning the States

Full Faith and Credit

Article IV, Section 1 begins with The **Full Faith and Credit** Clause. The clause reads, “*Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.*”

In simple, modern day language, under the Full Faith and Credit Clause judgments rendered in one State are acknowledged in others; when a U.S. citizen resolves an issue within one of the States that resolution must be recognized by all other States.

The Founding Fathers originally intended, with the Full Faith and Credit Clause, to protect the self-government autonomy of the States, while also promoting the union of the sovereign States as well. To do this, the Founding Fathers needed to make sure that judicial rulings in one State would be respected by all States, because otherwise there would be a substantial opportunity for abuse. Doing so affirmed the autonomy of the individual States, while also ensuring that the states remained unified.

Without the Full Faith and Credit Clause, something as simple as a marriage would not be recognized outside the State where the proceeding took place. If the married couple moved to another state, it would be necessary to marry all over again, otherwise they would still be considered unmarried. However, thanks to the Full Faith and Credit Clause, the State that serves as the new home of the transplanted married couple recognizes the marriage contract agreed upon in the State of origin.

The Full Faith and Credit Clause also protects against abusive litigation. If someone in one State sues someone and the court delivers a valid judgment in favor of the defendant, the person who filed the suit cannot file the same suit in another State against the same person. Under the Full Faith and Credit Clause, the outcome of the suit in the first State is recognized and considered to be the final judgment. Likewise, someone who is ruled against in litigation in a State cannot flee to another State to evade punishment, because the ruling in the first State's court is still valid in the new State.

As a result of the Full Faith and Credit Clause, professionals like doctors and lawyers only need to go to school once. As they move to new States, they can apply for **reciprocity** in certification so that they can practice in their new location. State privileges like drivers licenses also benefit from the Full Faith and

Credit Clause, because when people move to different States, they can renew their driving licenses in the new State without having to go through drivers' education a second time, as long as the standards for licensure are similar between the two States.

Privileges and Immunities

Article IV, Section 2, Clause 1 gives the people of each state all the same privileges and immunities uniformly in each state. In other words, if a Texan moved to California, the Texan must be treated by California in no different manner than the State treats Californians. A State could not pass a law keeping Texans out of their state, but letting others in. This violates the Constitution. A State cannot play favoritism in such a manner for any reason. All persons must be treated uniformly in the eyes of the law. This is the clause the 14th Amendment's Equal Protection Clause sought to broaden, in order to ensure that the former slaves would also be afforded the same protection, privileges, and immunities.

Extradition

Article IV, Section 2, Clause 2 provides that "*A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.*"

Fugitives that flee a State from justice to another State will be **extradited** on the demand of executive authority (governor) of the State from which the person fled from. The Constitution, in this clause, demands the extradition of fugitives who have committed "treason, felony or other crime," which means that it includes all acts prohibited by the laws of a State, including misdemeanors and small, or petty, offenses.

Since the word "shall" is used regarding the extradition order by the governor of the State, that means the extradition order will not be questioned. That also means the accused cannot defend himself against the charges in the extraditing State. The fugitive may only defend himself against the charges in the State receiving him.

The courts have determined that the accused may prevent extradition by offering clear evidence that he was not in the State he allegedly fled from at the time of the crime in the case, *Hyatt v. People ex rel. Corkran* (1903).

Fugitive Slaves

Article IV, Section 2, Clause 3 is obsolete because of the abolition of slavery, as per the 13th Amendment. During the era the Constitution was written, slavery remained in place, and slaves were seen as property by the States in which slavery was legal. The Constitution, as a compromise to assure that southern States ratified the document, included Article IV, Section 2, Clause 3, as a compromise, which demanded that escaped slaves be returned to their owners in the south, even if that slave was in a northern State.

The Fugitive Slave Act of 1850 supported this clause of the Constitution, hoping to ensure under penalty of law that the slaves were in fact returned should they turn up in the north. Northern States were refusing to return escaped slaves, and the federal government refused to enforce the Fugitive Slave Act and the Constitution, creating, in the minds of the Southern States, a constitutional crisis.

Nullification is often blamed for its part in the onset of the American Civil War. Those that argue that nullification was a part of bringing about the War Between the States will argue that the Southern States were guilty of nullifying perfectly reasonable federal laws. In reality, the Southern States did not nullify any federal law. It was the northern States that actively nullified federal law. They nullified The Fugitive Slave Act by ignoring the legislation, and refusing to abide by it. However, since The Fugitive Slave Act was constitutional, the nullification of the law by the northern States was unlawful, and unconstitutional. Threatened by the fact that the northern States were ignoring constitutional law, the federal government was refusing to enforce the law, and anti-slave candidate Abraham Lincoln had won the presidential election without even being on the ballot in the South, eleven southern States withdrew from the union in 1860.

New States

Article IV, Section 3, Clause 1 gives Congress the authority to admit new States. If a new State is formed within the borders of an existing State, from a portion of an existing State, or by combining two States, then the State legislatures of all States affected must also get involved. This provision came into play is when West Virginia was formed from part of Virginia during the Civil War. The Virginia State legislature had to approve the formation of the new State of West Virginia before the new State could claim it was a separate sovereign State.

In California, there has been a number of recommendations for breaking up the large State, from a 2014 suggestion of forming six States from the former Golden State, to thirteen counties that threatened to secede in 2010 as suggested by a local politician. If any of these plans for new States out of the existing State of California had an opportunity to follow through with their threat, the approval process would still need to go through the existing California State Legislature. The loss of taxation, and representation in Congress, would probably convince the legislature to deny losing any portion of their State to the formation of a new State.

Territories and Federal Property

Article IV, Section 3, Clause 2 gives the Federal Government "*power over the territory and property of the United States.*" Territories like Puerto Rico fall under this clause, treating the territories not as individual sovereign states, but as territories under the control of the U.S. Government. Territories still enjoy a certain amount of autonomy, but ultimately, their governance falls under the authorities granted to Congress. Washington DC also falls under this clause, which means that Congress has authority over the functions of the city. In reality, Washington DC was supposed to only be the seat of government, and was not supposed to contain any residencies. Many of the framers envisioned Washington DC as being a thriving commercial center.

Border Security and Insurrection

Article IV, Section 4 reads, "*The United States shall guarantee to every State in this Union a Republican Form of Government,*" meaning that each State may have its own constitution, as well as a representative government based on the rule of law.

The second part of Article IV, Section 4 provides that the United States "*shall protect each of them [the States] against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.*"

The Federal Government, according to the final clause of Article IV, must protect each State from invasion, which, in line with the **Necessary and Proper** clause of Article I, Section 8, is a firm directive

to the federal government to keep the national borders secure so as to protect the States from foreign invasion. If executive agencies fail to take the actions necessary to secure the border in order to protect the States from invasion, the militia can be called into service by either the Congress, or the governor of the State being invaded, in order to repel the invasion.

The Federal Government, in this clause, is also tasked with quelling domestic violence. This part of the clause refers to insurrection, and it is likely the writing of this clause was directly influenced by the occurrence of **Shays' Rebellion** in 1786.

Terms:

Extradite: The surrender of a person charged with a crime by one state or country to another state or country.

Full Faith and Credit: In the context of the U.S. Constitution, Article IV, the phrase is defined as requiring all States in the U.S. to recognize and give effect to the legislation, public records, and judicial decisions of other States in the United States. Full Faith and Credit also means: An unconditional commitment to pay interest and principal in debt, usually issued or guaranteed by the U.S. Treasury or another government entity.

Nullification: State power to ignore unconstitutional federal law.

Questions for Discussion:

1. What kind of issues does the Full Faith and Credit Clause affect in today's American society?
2. How does the Full Faith and Credit Clause protect the autonomy of the State, while protecting their unity?
3. For what kind of crimes may a person be extradited for?
4. The northern States believed the Fugitive Slave Act to be a bad law, even though it was Constitutional, and believed that they had a right to nullify it because they perceived it to be immoral. The Federal Government failed to enforce it, possibly for the same reasons. How did this make the Southern States feel, and how did this action contribute to the secession of the Southern States?
5. The federal government is tasked with the duty of protecting the States against invasion. How does this affect the issue of illegal immigration?

Resources:

Doris Kearns Goodwin, *Team of Rivals: The Political Genius of*

Abraham Lincoln; New York: Simon & Schuster Paperbacks (2005)

Hyatt v. People ex rel. Corkran, 188 U.S. 691 (1903) (“We are of opinion

that, as the relator showed...he was not within the state of Tennessee at the times stated in the

indictments found in the Tennessee court, nor at any time when the acts were, if ever, committed,

he was not a fugitive from justice within the meaning of the Federal statute upon that subject...”)

Joseph Andrews, *A Guide for Learning and Teaching The Declaration of*

Independence and The U.S. Constitution - Learning from the Original Texts Using Classical Learning Methods of the Founders; San Marcos: The Center for Teaching the Constitution (2010).

Madison's Notes Constitutional Convention, Avalon Project, Yale

University: http://avalon.law.yale.edu/subject_menus/debcont.asp

Philip B. Kurland and Ralph Lerner, *The Founder's Constitution* –

Volume Four – Article II, Section 8, Clause 5 to Article VII; Indianapolis: Liberty Fund (1987)

Thomas J. DiLorenzo, *The Real Lincoln: A New Look at Abraham*

Lincoln, His Agenda, and an Unnecessary War; Roseville, California: Prima Publishing, a division of Random House (2002)

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