

Constitution Class Handout
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Lesson 5: Establishing the Executive Branch

Article II, Section 1, Executive Power Established

Article II establishes the *Executive Branch*. The Founding Fathers were anxious regarding the creation of the office of the executive because they feared that a leader with too much power had the potential of being tyrannical. Many of the founders even argued that there should not be one executive, but many, so that they may serve as checks against each other. Their concerns were well placed, if one considers that their frame of reference was the authoritarian king of the British Empire.

Despite their fears, they knew that the authorities of the president under the Articles of Confederation were too few, leaving the office of the president much too weak to adequately serve the union. The founders were looking for a strong leader that also recognized the limitations on the authorities of the federal government as granted by the States through the articles of the Constitution. The best model for the presidency was a simple choice. Article II was written, some believe, with George Washington in mind.

Article II, Section 1, Clause 1 states that the powers of the executive are “vested.” This word, as we learned when we went over Article I, Section 1, carries a meaning similar to that of the word “granted.” Vested means “legally transferred.” The President’s authorities are powers given to him through a legal transfer of authorities. The powers vested to the Executive Branch were granted by the States.

The founders understood that whenever there is a “leader,” there is a struggle for power. America has been no different. The office of the president has increased its powers over the years, mostly through unconstitutional means. The Founding Fathers sought to limit the powers to the executive. Among those limitations of powers is also a term-limit. The executive is limited to a term of four years, as is the Vice President.

Election

The election of the President and Vice President is not accomplished by direct election. Appointed electors vote for the President and Vice President. The electors were originally appointed by the States during the early elections of American History. The

formula for determining the number of electors is determined by taking the number of Representatives and Senators the State is entitled in Congress, and combining those two numbers. This method of indirect election is also known as The *Electoral College*, which was designed in this manner specifically to protect the United States against the excesses of democracy.

After the 2000 election, where the winner of the popular vote was denied the presidency because he did not win the fight for electors, questions regarding the Electoral College arose. It was only the fourth time in history such an event occurred. To find precedents resembling the 2000 election one has to go back to the 19th century, to the elections of 1888, 1876, and 1824. Those were the only elections in American history prior to the election in 2000 where a winner in the popular vote was denied the presidency through the Electoral College system.

Recently, there has been a number of officials promising to introduce legislation to abolish the Electoral College, claiming that it no longer serves a good purpose in modern politics. The reasoning of these folks that oppose the Electoral College suggests that the United States should simply allow the popular vote of the American people be followed every four years when we elect our president.

A number of Americans have voiced their agreement with this opinion, arguing that the individual running for President receiving the most votes should win. An indirect election such as the Electoral College, argue these folks, is simply unfair and undemocratic. In other words, they believe the American political system should operate as a direct *democracy*.

The Founding Fathers purposely did not make this country a democracy. The United States is a *Republic*, equipped with checks and balances at all levels of government, including the voting process. Democracies were proven, according to the founders, to be failures.

John Adams was quoted to say, *“Democracy never lasts long. It soon wastes, exhausts, and murders itself. There is never a democracy that did not commit suicide.”*

Thomas Jefferson said, *“The democracy will cease to exist when you take away from those who are willing to work and give to those who would not.”*

The founders are not the only historical figures to recognize that a democracy opposes liberty.

Karl Marx once said, *“Democracy is the road to socialism.”*

Karl Marx, the father of communism, understood that the implementation of a democracy is a necessary step in the process of destroying our Constitutional Republic. Once the

people are fooled to believe that they can receive gifts from the treasury rather than achieve for their livelihood, they will continually vote in the people who ensure the entitlements continue to flow. Eventually, this mindset becomes the majority. This group then changes over time from an involved and informed electorate to a populace that lacks the understanding of the principles of liberty and can easily be manipulated into believing that sacrificing individual liberty in exchange for social justice and security is a price that we must be willing to pay. A group that is dependent upon the government in such a manner, then, is prime to vote into power a tyranny. Eliminating the Electoral College would make it easier for these members of our society to vote into office those that promise more entitlements.

Once the majority of the voters in a Democracy become the recipients of benefits from the Federal Government, the government achieves unchecked power, and may then violate the property rights of the productive members of society in order to provide benefits to the non-productive members of society. This is best characterized in the "tax the rich," or "redistribution of wealth," scheme we are now seeing emerge as the rally cry by the current administration. The founders called this method a "scheme of *leveling*."

The founders were aware of this danger, which is why they established our system of government, and the electoral college, in the manner they did. A true democracy becomes "mob rule," and the principles of liberty become a target for elimination.

"A democracy is nothing more than mob rule, where fifty-one percent of the people may take away the rights of the other forty-nine." -- Thomas Jefferson

In order to preserve our Constitutional Republic it was imperative for the vote of the people to be indirect, except when it came to voting for their representatives in the House of Representatives. The Founding Fathers divided power as much as possible, including the power of the vote.

Originally, the State Legislatures appointed the electors that cast their votes in the Presidential Election. That changed in 1824 when all but six states decided the electors should to vote in line with the popular vote.

U.S. Senators were initially appointed by the State Legislatures, which ensured the voice of the States was present in the federal government. That changed in 1913 with the 17th Amendment, which transferred the vote for the U.S. Senators to the popular vote. The 17th Amendment took away from the States their representation in the federal government.

The Founding Fathers divided the voting power as they did partially because if the power to vote for president, the House, and the Senate all fell to the people, and if the people were fooled by some political ideology that wished to destroy the republic by fundamentally changing the American System, a tyranny could be easily voted into

control of all parts of the government without any checks present whatsoever. When the majority of voters are uninformed in such a manner, and are given the full voting power, tyranny is inevitable.

Winston Churchill understood the dangers of trusting an uninformed electorate with the capacity to govern. He was quoted as saying, *“The best argument against democracy is a five minute conversation with the average voter.”*

The elimination of the Electoral College would take away the voice of the smaller states, give the election of the President to the seven largest metropolitan centers in the United States, and lead America even closer to becoming a democracy.

Democracy is a transitional governmental system that ultimately leads to tyranny. This was true in the days of the French Revolution no less than it is true today.

While democracy lasts it becomes more bloody than either aristocracy or monarchy... Democracy never lasts long. It soon wastes, exhausts, and murders itself. There is never a democracy that did not commit suicide. -- John Adams

Democracy is two wolves and a sheep voting on what to have for dinner” -- James Bovard

Our country is not a democracy. Our nation was founded as a constitutionally limited republic. The indirect election of the President through the Electoral College reflects that truth, and the Electoral College is one of the last vestiges of the system of checks and balances as they apply to the voters.

Article II, Section 1, Clause 4 indicates that the Congress may determine the time and day the electors are chosen, and give their votes. The day they vote for President and Vice President, according to this clause, will be the same day nationally. The rules for the popular election, if you will remember from Article I, are to be established by the State legislatures.

Eligibility

Article II, Section 1, Clause 5 states that the eligibility for President includes the requirement that the individual be a natural born Citizen.

Notice that the Constitution says a natural born citizen, “or” a citizen of the United States at the time of the adoption of the Constitution. This was to ensure that anyone alive at the time of the adoption of the Constitution who was a citizen was eligible, and anyone born after the adoption of the Constitution had to be a natural born citizen to be eligible. The word “or” gives us a clue that there is a difference between “natural born citizen,” and “citizen.”

Some people will use the Fourteenth Amendment as an argument regarding the definition

of natural born citizen. The Fourteenth Amendment says, *“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”*

The Fourteenth Amendment, in this clause, as it states, only addresses “citizenship” - not the concept of being a natural born citizen. Therefore, it does not apply when discussing the concept of natural born citizenship. The clause was written as it was to protect the citizenship of the children of the emancipated slaves. The word “jurisdiction” was placed in that clause to mean “full allegiance.” There was a fear during that time, as there had been during the founding of this nation, of divided allegiance, or divided loyalties.

Natural Born Citizen is not defined in the Constitution primarily because it was common knowledge. People understood what the term “Natural Born Citizen” meant.

Today we have a number of terms that are understood without needing to be defined. One of those terms is “fast food.” Without needing a definition provided, most people know what “fast food” is. That does not mean the term will be readily understood by some historian of the future. He may ask himself, when he comes across that term in our literature, “Why is it their food was fast? Did it run quickly away from them?” To understand what “fast food” meant to us, he may have to refer to a number of writings before he finally comes across the definition.

One of the sources the Founding Fathers used when it came to establishing the definition of “Natural Born Citizen” was Vattel’s “Law of Nations.”

Vattel’s Law of Nations is mentioned once in the Constitution in Article I, Section 8, Clause 10, and it is capitalized - which suggests the mention of the Law of Nations to be a proper noun, thus supporting the argument that it is a direct reference to Vattel’s writings.

Recently, it was discovered that George Washington failed to return a couple library books to the New York City Public Library. One of those books was Vattel’s Law of Nations. Washington checked the book out in 1789, shortly after the Constitutional Convention, probably because of the heavy influence the definitions in Vattel’s Law of Nations played on the writing of the U.S. Constitution.

Benjamin Franklin owned three copies of the Law of Nations - two for the convention, and one for his personal use. He received those copies from the editor, Dumas, in 1775. Vattel’s Law of Nations Section 212 indicates that to be a Natural Born Citizen both parents must be citizens at the time of the birth of the child. As with the Fourteenth Amendment, there was a fear of divided allegiance.

Vattel’s Law of Nations required also that the child be born on American Soil, but if you read further down the section addresses other possibilities. The Immigration and

Naturalization Act of 1790 confirmed the definition not requiring the child to be born on American soil, but still requiring that both parents be American citizens at the time of the child's birth. The section in the Naturalization Act of 1790 I am referring to specifically reads: *“And the children of citizens of the United States that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.”*

Note that the fifth word, *citizens*, is in the plural, which means it requires both parents to be citizens at the time of the birth of the child in order for the child to be a “Natural Born Citizen.”

Article II also establishes that in order to be eligible for the presidency the candidate must be at least the age of 35. This requirement, reasoned the founders, would ensure that the immaturities of youth had passed away. Along with a relatively mature age, the Constitution indicates that the president must also have been a resident of the United States for the last fourteen years. This, once again, was a guard against divided loyalties.

The Vice President must also meet all eligibility requirements. In the 18th century the Vice President was the second place winner in the election, and therefore had to be eligible because he was originally running for President. Now, the Vice President is elected as a part of the presidential ticket. However, to ensure it was clear that the Vice President also had to be eligible for the presidency, especially since he was next in line for the presidency should the Office of President be vacated, the 12th Amendment ends with a sentence that demands the Vice President is eligible for the presidency.

In Case of Death

Article II, Section 1, Clause 6 was changed by the Twelfth Amendment. This clause established the rules in case of the death of the President while in office. The clause gave the Office of the President to the Vice President in the case of death. The ambiguity of the clause, however, created confusion. In the case of President Benjamin Harrison who died after only 30 days in office, it created a constitutional crisis. The officials of that time did not know what to do. When old Tippecanoe died, he was succeeded by his Vice-President John Tyler, but since no President had died in office before, no one was quite sure how Presidential succession worked. The Constitution stipulated that the Vice-President should become the new President, but it was not clear if the Vice-President should be considered a "real" President, or if he only “acted” as President. The Tyler administration made it clear that Vice-Presidents who became President after the death of the elected President should be treated as legitimate Presidents.

The Twelfth Amendment later addressed the problem with more specified rules. Later, succession was resolved once and for all with the ratification of the 25th Amendment in 1967.

Compensation

Article II, Section 1, Clause 7 allows for the President to be compensated for his service as President of the United States. This salary is not to be increased or diminished while the President serves. The President, according to this clause, is also not allowed to receive any other governmental salary from the federal government during his term as President. In George Washington's First Inaugural Address, he announced that he would accept no salary as President.

Oath or Affirmation

In the final Clause of Article II, Section 1, the Oath or Affirmation for the Office of President was established.

The reason for the clause indicating Oath "or" Affirmation was because an Oath is to God, and an Affirmation is not. The founders understood that not all Americans believe in God, therefore an option needed to be available for non-believers. Affirmation was also included as an option because there were some Christians that believed swearing to God to be a sin. Offering the opportunity to "affirm" gave these Christians an opportunity to take the affirmation of office without compromising their religious beliefs.

Note that the President is expected, according to the text of the oath or affirmation, to preserve, protect, and defend the Constitution of the United States.

You will also note that placing one's hand on a Bible is not in this Article. The placement of a hand on a Bible while reciting the Oath or Affirmation was something that George Washington chose to do, and it has been a tradition ever since.

Terms:

Democracy: A form of government in which all citizens have an equal say in the decisions that affect their lives. Such a system includes equal participation in the proposal, development and passage of legislation into law.

Electoral College: A body of electors chosen by the voters in each state to elect the President and Vice President of the U.S.

Executive Branch: The branch of government responsible for executing, or carrying out, the laws. An executive in government can be a president, or a governor.

Leveling: Moving money from one group of people to another by raising and lower taxes accordingly in an effort to achieve economic equity in society.

Republic: Form of government that uses the rule of law through a government system led by representatives and officials voted in by a democratic process. The United States enjoys a Constitutional Republic.

Questions for Discussion:

1. Why didn't the Founding Fathers make the President a king?
2. How does the Electoral College ensure fairness for the minority States?
3. What is the difference between a democracy and a republic?
4. Why did the Founding Fathers divide the voting power?
5. How is "citizen," and "natural born citizen," different?
6. Why were the Founding Fathers concerned about divided loyalty?
7. How does the eligibility requirements ensure that the President, especially as Commander in Chief, holds full allegiance for the United States?
8. How was the way the Vice President was chosen in the 18th century different from how the Vice President is chosen today?

Resources:

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