



The Constitution of the United States of America

Lecture 3: Article II: The Executive Branch & Amendments

“The powers delegated by the proposed constitution to the federal government are few and defined.”

James Madison

Review: the Progressive Shift (The 19th Century)

- The rise of universalism (All religions lead to God)
- Darwin's *Origin of Species* (Survival of the fittest)
- Industrialization of America (Poor working conditions, child labor, etc.)
- Urbanization (Movement into cities and the city political machines, tenement housing, etc.)
- Immigration (Different beliefs/cultures. Some assimilated, some did not.)
- Political Corruption (Patronage and the spoils system)
- Education (Progressive education: compulsory, state mandated, state controlled. Replacement of Western Christian Paideia with Progressive “vocational” industrialized education).
- Religion: the division of the church. Fundamentalists focused inward and left education and care for the poor to the Progressives/Government.

Review: the Progressive Shift (The 19th Century)

- Change in the view of the nature of man
 - Complexities of modern life gave rise to problems that cannot be addressed by the founding principles.
 - The founding purpose of government (to protect people's natural born rights) needs to change with the times.
Government is now less of a danger to the governed than at the founding, therefore it can be used as a change-agent or problem solver.
 - Therefore, the checks and balances built into the Constitution are outdated and obstacles to progress.

New Progressive Gospel: “Democracy”

- President Woodrow Wilson—there should be no limits to government. The state determines the rights and liberties of individuals, not nature.
- The only difference between Progressives and Socialists was one of policy. While socialists want to bring about ideals through revolution, progressives sought to do it incrementally.
- Remember Wilson’s quote on the Declaration of Independence being based on Newtonian Law and what is now needed is Darwinian.

The Administrative State

- The term used to describe government agencies, created by Congress or the Executive Branch, tasked with creation, enforcement, and judgment of their own laws/rules/regulations.
- There are over 439 agencies

The Administrative State

- A basic rejection of the Separation of Powers and Limited Government. Base policy and implementation on disinterested, scientific and technical expertise. The antithesis of the constitutional government
- Rationale:
 - From Wilson to FDR—the growth of America outgrew the Constitution. Regular people, elected to office were ill equipped to run the country. We needed a ruling class of experts.
 - “We threw out the Articles of Confederation. We can throw out the Constitution.”
 - Separation of powers leads to gridlock and inefficiency.
 - Administrative State functions in all 3 roles of government (make laws, enforce them, adjudicate themselves and you).

The Administrative State

- There are over 439 agencies
- *Chevron USA v. Natural Resources Defense Council, Inc.* (1984) said that if an agency interpreted a Constitutional statute, the courts should defer to the agency rather than try to interpret law. This was overturned recently (*Loper Bright Enterprises v. Raimondo*), allowing judges to interpret law rather than defer to the agency.

One more note on Congress

- The 17th Amendment (1913)
 - Direct election of senators
- The Filibuster
 - Requires a “cloture” vote (2/3 or 60%) to bring a bill for a vote

Article 2–The Executive Branch

- See outline

The Executive Branch Today

- Cabinet: The Constitution gives the President authority to nominate, and with “advice and consent” (2/3 vote) of the Senate, appoint: ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States.
 - First Cabinet: Treasury (Hamilton), State (Jefferson), War/Defense (Knox), Attorney General (Edmund Randolph).
 - Approval of Senate for Cabinet was intended to prevent President from having closed door meetings with unelected and unaccountable advisors.

The Executive Branch Today (Administrative State)

- Unconstitutional.
 - It's pre-Constitutional—The rulers' will becomes the law.
- It's an oligarchy—self-selecting elite based on education and technical expertise.
 - Policy is made by an elite that stands outside the electoral process.

Next Week

- Articles III–VII
- The Bill of Rights
- The remaining Amendments