



JURISPRUDENCE

The Constitution and the Candidates

What would the framers say?

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| John Adams

Our next president's first act will be to solemnly swear to uphold the Constitution. But what does that document say about who that person should be?

Of course, all the top candidates are formally eligible. The Constitution demands only that our next president must have been born a citizen, must be at least 35 years old, and must have resided in the United States for 14 or more years. But if we probe these rules and ask not merely *what* the text says but *why*, interesting differences among the contenders snap into focus.

Favorite Sons: For example, why was the Constitution's age rule necessary? In the framers' world, who could ever have enjoyed enough name recognition to be elected president at the age of, say, 32?

As they drafted and debated the Constitution, the founders knew that the sitting English prime minister was William Pitt, the younger, whose father (William Pitt, the elder) had headed the ministry before the American Revolution. Young Pitt had entered Parliament at age 21 and had become prime minister at age 24. America's Constitution aimed to prevent something similar from happening here. By 35, a favorite son of a famous father would have his own record on which he could be judged. Conversely, meritorious low-born men would have time to rise through the ranks. George Washington was the first electoral college's unanimous choice not only because of his model military service but also because he embodied an anti-dynastic ideal. Washington became father of his country precisely because he was *not* father to any child who might seek to succeed him.

Of the first five men entrusted with the presidency, only one had any (acknowledged) sons. That was John Adams, and his namesake, John Quincy Adams, himself became America's sixth president—but only after proving his own mettle and winning the top slot long after his 35th birthday and a quarter-century after his father's tenure. Q's presidential résumé included an eight-year stint as America's top diplomat under a president (Monroe) wholly unconnected to the elder Adams. With Q and A, we can see the sensible limits of the

framers' anti-dynastic ideology and the nice balance they struck. A permanent disqualification of favorite sons would have gone too far, forever preventing Americans from tapping someone whom they reasonably viewed as the nation's ablest leader, such as a mature Q. Beyond the rule of 35, the Constitution trusted the political process to resist dynastic overreach, and early presidential discourse sharply focused the public's attention on dynastic issues. So have various father-son moments over the centuries.

Natural-Born Citizens: The Constitution's rule that the president be "a natural born citizen" focuses not on *where* a person became a citizen, but *when*. To be eligible, one must be *born* a citizen rather than naturalized at some later date. At the founding, a special constitutional clause provided that even those who had not been citizens at birth could nevertheless become president, if they were citizens circa 1787. Thus, Alexander Hamilton, born in the West Indies, was clearly eligible. All those already in America in 1787 could be trusted; but the framers fretted that an Old World earl or duke might someday sail across the Atlantic with a boatload of gold and bribe his way into the presidency. (Rumor had it that George III's second son, the Bishop of Osnaburgh, would soon head this way.) Thus, the "natural-born" clause's main target of concern was not immigrants generally, but wealthy European aristocrats who might wreak havoc in an America lacking strong campaign finance laws.

Fourteen Years: The Constitution's final requirement—14 years of U.S. residence—also focused on transoceanic travel and made clear that loyal Americans who had spent years (or even decades) abroad were nonetheless welcome to pursue the American presidency. After Washington, four of the nation's next five presidents could point to extended foreign residence—all as key U.S. diplomats. The framers expected that their presidents—who would take oaths to "preserve, protect, and defend" the American system—would need a deep understanding of the dangerous world outside America. Until Lincoln, every elected president save one (Polk) had served as a military general and/or a top diplomat; and all but four (Washington, Madison, Polk, and Taylor) had served in the Senate, which played a special role in treaty making and ambassadorial appointments.

Class, Religion, Race, Sex: Also notable is what the Constitution's eligibility rules do *not* say. Almost every early state constitution imposed property requirements for candidates running for governor, yet the Constitution omitted any comparable barrier for the presidency. In dramatic contrast to most early state constitutions, which required governors to meet various religious tests, the framers omitted any such test for presidents and in another part of the Constitution went even further, banning religious tests for all federal posts.

Later amendments have further opened the door of eligibility. Nothing at the founding required that state election laws give equal treatment to black or female voters or office seekers. The Constitution's 15th and 19th amendments corrected these founding lapses, promising blacks and women the rights to vote and to be voted for as full political equals.

The Current Candidates: Even as the Constitution says that our generation must choose for ourselves, the document and its history prompt us to focus on certain things—such as the dangers of dynasty, the significance of international experience, and the shining ideal of political equality for all groups. How do each of today's top four contenders appear when seen through this constitutional prism?

Mitt Romney seems the most aristocratic. If he's not richer than God, he's apparently richer than the current president and vice president put together, and that's saying something. Nor is he self-made; he began with a base of inherited wealth and inherited political celebrity. His father was not merely a corporate titan, but a political heavyweight who himself ran for president. Mitt's willingness to spend tens of millions from his own coffers to advance his presidential ambitions would have worried the founders. No one in America in 1787 had money on Mitt's scale. Only a few European aristocrats had this kind of spending power, and we have seen what the framers thought of them.

Also, Romney is the only non-senator of the bunch. He is neither a war hero (like McCain, or JFK before him), nor a diplomat (as Hillary Clinton was, *de facto*, as first lady), nor someone (like Obama) who has spent many years living in parts of the world that Americans know least and need to understand much better.

The best constitutional argument for Romney is one that he has never made: To make amends for America's long history of discrimination against Mormons, voters should consider engaging in electoral affirmative action for Latter-Day Saints.

As an admiral's son born in the Panama Canal Zone, **John McCain** is fully eligible. (A citizen from birth, he would have been eligible even had he been born on undeniably foreign soil—say, Brazil.) McCain understands foreign threats firsthand, but his "residence" abroad in a Vietnamese POW camp gives him a more combative view of the world than, say, Obama, who also spent years living abroad. (Think of the difference between the Marine Corps and the Peace Corps.) McCain instinctively understands the need to "preserve, protect, and defend" the homeland; whether he understands how to protect the Constitution is iffier. He's the only top candidate without extensive legal training, and his ballyhooed campaign finance "reform" threatened the core First Amendment freedom of criticizing incumbents at election time.

Dynasties come in different sizes and shapes, and the Clinton dynasty is both like and unlike the dynasties that worried the framers. On the one hand, **Hillary Clinton's** résumé is inextricably intertwined with Bill's. When she boasts far more "experience" than Obama, she doesn't really mean her seniority over him in the Senate. Rather, she means her time as a top political adviser to her husband and unofficial Minister Without Portfolio in his White House. This service makes it hard to say how much she should be made to answer for (or to take credit for) what he did and didn't do.

On the other hand, both Bill and Hillary are largely self-made and not (yet) fabulously wealthy. (Their net worth so far is only tens rather than hundreds of millions.) Their dynasty thus far is intragenerational, not intergenerational. Theirs is a relationship of choice, not blood. At the founding, George Washington in effect adopted Alexander Hamilton as his helpmate. Hamilton was a "favorite son" of sorts—but he was chosen for, not born into, this post. Hillary is like Hamilton in some ways—a gifted lawyer, a brilliant policy analyst, a sharp partisan, and a towering lightning rod.

She is also like Eleanor Roosevelt, who, along with FDR, offered America its first two-for-one presidential package. Eleanor's dramatic redefinition of the role of first lady as a politically significant position is best seen through our constitutional prism. Once the Constitution guaranteed women the vote, new electoral strategies became possible. A male president could appeal to largely male moderates while his first lady could exploit an emerging gender gap and target her own message to largely female liberals. Hillary's candidacy takes the strategy one step further as the ultimate fulfillment of the 19th Amendment guaranteeing women's suffrage.

In turn, **Barack Obama's** candidacy marks the fulfillment of the 15th Amendment guaranteeing black suffrage. Whereas Romney is the most aristocratic candidate, Obama is the least. Not because he is biracial, but because he is self-made. His parents had little wealth, prestige, and power to pass on, and both are now dead. He has chosen his own faith as an adult (Protestant Christianity, as it happens), and he remains far and away the least wealthy of the Big Four. His children are still young. In these and other ways, the historical figure he calls most to mind is not MLK or JFK or RFK—as so many have suggested—but Abraham Lincoln.

Oh, and as some of the framers would have appreciated, he can give a pretty good speech, too.

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