

Application for the Seventh Annual Constitutional Law Scholars Forum

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Title: *The Virtuous Executive*

Abstract

Recent scholarship around Article II has focused on the *duties* of the president, in particular the duty to “take Care that the Laws be faithfully executed.” Some have argued that it incorporates principles of fiduciary obligation. Others have argued for a presidential duty of deliberation. Still others have explored the scope of permissible enforcement discretion. And beyond the legally binding text of the Constitution, scholars have articulated the vital role of non-legal norms in operationalizing the Take Care Clause and the rest of Article II.

These efforts are all vital, but they are also incomplete to the extent that they focus on the presidency in the abstract—as an office with clearly defined powers and responsibilities, irrespective of the individual occupying the office. To fully understand the relationship between these “two bodies” requires examining how the president’s character—the president’s virtues and vices—influences the powers of the office. In this paper I argue that certain character traits, what I call the *executive virtues*, play an essential role in the proper functioning of Article II and the broader separation of powers and that this has concrete implications for constitutional law, including how Congress and the courts can and should check executive power.

Part I describes what executive virtues are and explains their importance, both in terms of capturing the original understanding of Article II and as a consequence of the ever-increasing power and discretion of the president. Part II offers a preliminary list of the main executive virtues, virtues like loyalty, honesty, justice, and judgment. Part III describes how the requirement of executive virtue can be operationalized in constitutional law, whether in the courts, Congress, the executive branch itself, or the public. Part IV considers several objections as to the workability of a character-based approach to Article II.

Key Words

Article II, executive power, Take Care Clause, fiduciary

Bio

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