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Breaching Allegiance:

Tracking the Historical Tradition of Legal Disqualification

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ABSTRACT

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This thesis evaluates how the Roberts Court's rulings in *Trump v. Anderson* (2024) and *Trump v. United States* (2024) misrepresents the historical tradition of legal disqualification. Dating back to the 17th century, this thesis tracks the historical origins of legal disqualification within United States jurisprudence, arguing that legal disqualification provisions have been understood by political actors as integral legal mechanisms for maintaining the peace and stability of the republic. Since the Court does not consider this historical tradition within their judicial analysis, the foundations of American government—resting on republican principles, democracy, and constitutionality are effectively threatened. Legal disqualification clauses were created to have the Union's best interest at heart, but this thesis asserts that the current Supreme Court of the United States—the Roberts Court—does not. This thesis grapples with this nuance, asserting that legal disqualification, and the Constitutional principle that enshrines it–Section 3 of the Fourteenth Amendment–are rendered effectively useless for judicial review. This thesis analyzes the questions: (1) What historical tradition did a Court–whose authority and integrity lies in evaluating history and tradition–neglect when it came to deciding the fate

of the Executive?; (2) How does the Court misrepresent the powers of the Executive in a way that was incongruent to how previous historical actors understood the Executive's position?; (3) What are the lasting effects of neglecting disqualification provisions?; and (4) What does this mean for American Democracy as a whole? In doing so, this thesis asserts that by rejecting disqualification provisions, one rejects the principles of American democracy, restoring power to monarch-like figures, and directly rejecting how the Framers of the United States understood a republican government that is by the people, for the people.

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Introduction:

***A republic, if you can keep it"* - Benjamin Franklin**[1]

A republic, in its most simplest definition, is a government for the people.[2] But, what happens when the government is restructured to only serve one individual: the President of the United States of America?

On January 6, 2021, the United States Capitol building was attacked by a crowd of 2,000 individuals who attempted to stop the certification of the 2020 Presidential Election Results, in which incumbent President Donald Trump lost to Former-Vice President Joe Biden. In doing so, the mob not only attacked the Capitol, but American democracy itself. January 6th embodied the essential characteristics of an insurrection. It was a rebellion of citizens against its government, a government that was established to be democratic, republican, and constitutional. Despite these individuals exemplifying behavior that is innately incongruous with American patriotism, they are forever pardoned from prosecution for their insurgent actions.[3] While some may blame the 47th President—Donald Trump—for issuing wide-spread amnesty for the January 6th insurgents, the real institution to blame is the Supreme Court of the United States of America.

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[1] National Park Service. "The Constitutional Convention: September 17, 1787." *U.S. National Park Service*, last modified September 17, 2021. https://www.nps.gov/articles/000/constitutionalconvention-september17.htm.

[2] Bouvier, John. *Bouvier's Law Dictionary*. 1856. Accessed March 12, 2025. https://www.1215.org/lawnotes/bouvier/bouvier_i.htm.

[3] Dixon, Matt, Henry J. Gomez, and Garrett Haake. "Trump's Last-Minute Decision to Go Big on Jan. 6 Pardons Took Many Allies by Surprise." *NBC News*, January 22, 2025.

In 2024, the Supreme Court of the United States issued two landmark cases: *Trump v. Anderson* (2024) and *Trump v. United States* (2024). While these two cases do not pose severe danger to American democracy individually, when combined, they institute the exact thing the Framers of the United States Constitution cautioned against: a monarchy.

Section 3 of the Fourteenth Amendment states,

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Known as the disqualification clause, the origins of the provision have a long-standing history within the United States–dating back to the 17th century. However, the Court's ruling in *Trump v. Anderson* blatantly misrepresents this history, erasing prior historical precedent to appease President Trump, despite his responsibility in mobilizing his supporters to attack the United States Capitol on January 6th. This thesis highlights the history the Court failed to address, particularly the historical tradition surrounding legal disqualification. Legal disqualification, for the purpose of this thesis, a legal status imposed on an individual, barring them from undertaking certain actions, rights, or responsibilities due to their prior actions–particularly related to one's loyalty to the state. In doing so, this thesis highlights the power legal disqualification possesses in protecting the state from individuals who do not consider its best interest, and how, due to the Court's negligence, the stability of the United States is forever threatened. To provide a comprehensive understanding of legal disqualification throughout varying historical periods, this thesis is broken down into historical periods: (1) *The Ideological Origins of Legal Disqualification*

(2) *The Introduction of Formal Federal Legal Disqualification Provisions with United States Jurisprudence* and (3) *The Concrete Erasure of Legal Disqualification's Power.* Each component, put in conversation with each other, serves as a building block to analyze the Court's explicit negligence in misrepresenting legal disqualification and its ideological origins.

Throughout the history of the United States, the provision that outlined disqualification hasn't been under continuous contention. The historiographical debates regarding the disqualification clause–Section 3 of the Fourteenth Amendment–have only recently been undertaken, as the Constitutional provision has only been part of United States history for 155 years. Regarding the Court's rulings in *Trump v. Anderson* and *Trump v. United States*, legal scholars often agree that the Court is misusing history and tradition to execute an ulterior and prejudiced decision.

In "Disloyalty and Disqualification: Reconstruction Section 3 of the Fourteenth Amendment," published in the William and Mary Law Review—Myles Lynch—an Assistant Solicitor General of Florida, asserts that the historical tradition of the disqualification clause has evolved to enshrine its power within the judiciary, not the legislative.[4] The assertion that in order for a President to be legally disqualified Congress must legislate on the processes is entirely incongruent with the historical understanding of the provision, as asserted Lynch. This assertation is further corroborated by prominent Stanford legal historian Johnaton Gienapp in his article "Written Constitutionalism, Past and Present." In this article, Gienapp argues that the Constitution, since time of its ratification, has always been a document a contentious document between historical actors.

[4] Myles S. Lynch, *Disloyalty & Disqualification: Reconstructing Section 3 of the Fourteenth Amendment*, 30 Wm. & Mary Bill Rts. J. 153 (2021), https://scholarship.law.wm.edu/wmborj/vol30/iss1/5

Ultimately, Gienapp's central argument is that the original intent of the Constitution can never be truly understood by anyone, including the Supreme Court of the United States, as each constitutional principle was and is heavily debated and contested; therefore, there is no one original meaning of the United States Constitution: "Revolutionary Americans recognized that their constitutions were written, but their *concept* of constitutional writtenness was worlds apart from how written constitutionalism is so often understood today….they did not assume that writing constitutional principles down….erected sharp textual boundaries between what was in and what was outside of a constitution."[5]

Putting Lynch and Gienapp in conversation with each other, paints a clear picture of the Court's true intentions in *Trump v. Anderson:* the Court is attempting to change the prior historical tradition of legal disqualification by asserting the false idea of original intent. The very existence of the United States of America was in response to a tyrannical leader, yet in the 20th century, the Court has created a parallel issue to the same one the Founders were faced with in 1776. Similar to Gienapp, Christine Kexel Chabot, legal scholar at the Marquette University Law School, discusses that the "originalist" interpretation of Article 2 of the Constitution, adopted by the Court, in *Trump v. United States*, "posed an outright ban on Congress's power to restrict presidential removal…[the decision] that did not address recent historical scholarship casting doubt on this claim."[6] In this way, Chabot undermines the idea that Constitutional principles only hold a singular interpretation.

[5] Gienapp, Jonathan. "Written Constitutionalism, Past and Present." *Law and History Review* 39, no. 2 (2021): 321–60. https://doi.org/10.1017/S0738248020000528.
[6] Chabot, Christine Kexel, Rejecting the Unitary Executive (September 21, 2024). Available at SSRN: https://ssrn.com/abstract=4968775 or http://dx.doi.org/10.2139/ssrn.4968775

Unlike Gienapp, Lynch, and Chabot, this research is unique in that it not only tracks formal legal disqualification provisions, but also legal disqualification's ideological origins in various revolutionary and colonial legislation—proving that the history the Court could have relied upon for its ruling in *Trump v. Anderson* and *Trump v. The United States* is far more expansive than what has been previously considered. This thesis addresses the ideological origins of Section 3 of the Fourteenth Amendment and how such origins tell legal historians about how historical actors understood the importance of legislating such provisions.

To evaluate the historical tradition of legal disqualification, this thesis analyzes various primary and archival sources, including letters, legislatures, charters, and various other legal and historical documents.

Section I, which encompasses Chapter 1 and Chapter 2 of the thesis and is entitled *The Ideological Origins of Legal Disqualification*, analyzes various colonial laws after the initial establishment of British colonies on the Eastern Coast of the United States. Specifically, these relate to legislation entitled to conspiring against a jurisdiction. This is the same charge Donald Trump was indicted for due to his involvement during the January 6, 2021, insurrection on the United States Capital. The section then shifts to discuss individual Colonial Legislatures, which were established in response to the tyrannical leadership of the British Crown. Many of these constitutions limit the authority of the Executive, particularly in pardoning an individual for actions that breach allegiance to the jurisdiction. This becomes particularly relevant when addressing the historical tradition of legal disqualification in *Trump v. United States.* Additionally, this section touches on first-hand accounts of individuals who had political disabilities imposed after being considered

unfit to hold certain positions within government based on his or her actions. Chapter 2, also in Section I, largely deals with the foundational texts of the United States government: The Articles of Confederation, Constitution, and the associated accounts surrounding these foundational documents.

Section 2, entitled *The Introduction of Formal Federal Legal Disqualification Provisions with United States Jurisprudence*, provides a historical account of the events leading up to the South's secession in the mid-19th century. This section also illustrates individuals' beliefs surrounding the importance of legal disqualification, particularly with regards to an Executive who is largely tasked at regulating the enforcement of laws. This section largely lays foundation for the substantive historical tradition the Court undermined in their rulings in *Anderson* and *Trump.*

Section 3, *The Concrete Erasure of Legal Disqualification's Power,* primarily focuses on the Supreme Court cases at the heart of the thesis: *Trump v. Anderson* and *Trump v. Untied States.* Further, the section discusses the House investigation produced by Congress regarding January 6, 2021, insurrection. Additionally, this section illustrates how the Court's ruling laid the legal framework for Donald Trump's Executive Order, which granted a Presidential Pardon to all insurgents involved in the insurrection. Ultimately, these sources were selected to evaluate the historical tradition of legal disqualification because they pose the unique quality of highlighting how historical actors saw the importance of legislating such provision. These sources serve as ways to critically assess the current Court's reasoning, particularly the methods in which the Court misrepresents the intentions and arguments of historical actors.

Overall, the main objective of this thesis is to analyze: (1) What historical tradition did a Court–whose authority and integrity is based in evaluating history and tradition–neglect when it came to deciding the fate of the Executive?; (2) How does the Court misrepresent the powers of the Executive in a way that was incongruent to how previous historical actors understood the Executive's position?; (3) What are the lasting effects of neglecting disqualification provisions?; and (4) What does this mean for American Democracy as a whole?

This thesis argues that legal disqualification has a longstanding historical tradition within the United States, even prior to the ratification of the Fourteenth Amendment. Historical actors have for centuries understood that legal disqualification provisions serve a crucial role within jurisprudence: to secure peace and stability within both the government and society, which adheres to constitutional principles of democratic values. The Supreme Court, by rejecting this longstanding historical tradition in *Trump v. Anderson* and *Trump v. United States* jeopardizes the future peace and stability of the nation, resting an unprecedented level of power within the Executive, and directly rejecting the foundational principles upon which the United States was built on. By rejecting the ability to legally disqualify not only any political actor, but the President themselves due to their breach of allegiance to the United States, the Court strips its own powers of judicial review, relinquishing such to the hands of the Executive. Effectively, by relinquishing their authority, the Court turns the Executive into a monarchy.

This thesis is chronological, broken down into five chapters. Chapter 1, entitled "The Entry of Legal Origins in United States Jurisprudence" touches on how foundations of the modern concept of legal disqualification can be noted in colonial legislation and

ramifications of disloyalty against the state. “Legal Disqualification and Disabilities Under a New Government,” Chapter 2, discusses how the ideas surrounding the foundations of legal disqualification shifted when newly-freed former colonies were forced to grapple with establishing a government that is powerful but limited. Chapter 3, “Wartime and Presidential Reconstruction: Varying Attempts of Reunification,” evaluates the procedural establishment of legal disqualification in response to Confederate secession, which is further elaborated on in Chapter 4, “Radical Reconstruction and Redemption: The Ambitions of the Fourteenth Amendment,” which discuss the ratification of Section 3 of the Fourteenth Amendment, its powerful nature, and its pitfalls in execution. Finally, the thesis ends with “The Modern Threat: Insurrections or Executives,” Chapter 5, which analyzes the January 6, 2021, insurrection in detail, and the detailed dereliction of duty carried out by the Court in *Trump v. Anderson* and *Trump v. United States.* Ultimately, this thesis speaks to a broader understanding of legal disqualifications, not only limited to its constitutionality, but its importance, intentions, and execution throughout the history of the United States.

Section 1

The Ideological Origins of Legal Disqualification: Antebellum America

Section I, *The Ideological Origins of Legal Disqualification: Antebellum America*, will encompass two chapters. The first, "The Entry of Legal Disqualification's Origins in United States Jurisprudence," will discuss how the foundations of disqualification provisions first entered legal regulations during Colonial America, with many colonies providing some form of punishment for individuals that betrayed their allegiance to colonial governments. Further, this chapter will focus on the shift in how disqualification, and subsequently political disabilities, were understood during Revolutionary America–particularly against Loyalists—with many having their property seized as a result betrayal to revolutionary governments. By assessing the ideas of legal disqualification from the legal systems that served as examples for the foundational texts of the republic, one can effectively trace the concrete ideas of Section 3 of the Fourteenth Amendment to its origins.

Chapter 2, "Legal Disqualification and Disabilities Under a New Government," shifts to discuss the earliest forms of disqualification provisions within the foundational documents of the Union rather than just the colony. By doing this, one can understand how the Framers understood state protection and allegiance under a federalist framework–an idea that increases in importance when discussing an originalist's interpretation of such documents. This chapter initially focuses on a provision within Article V of the Articles of Confederation and how it can be idegologically similar to Section 3 of the Fourteenth

Amendment. The chapter then shifts to discuss the United States Constitution and the debates surrounding its ratification. Lastly, this chapter highlights the Disqualification Act, which was passed in the aftermath of Shay's Rebellion.

There is intention behind coupling these two chapters in the same installment. By doing so, this section argues that despite the shift from colonial governments to a new republic, concerns regarding the strength of government institutions and the magnitude that disloyalty can bring to the overall integrity of the state remained. Specifically, when there is a larger threat to the integrity of the state—which was prevalent due to how recently the government was established—political disabilities because of legal disqualification are much more prolific. Section I touches on how legal disqualification, and the political disabilities that followed, were understood to be firm in both importance and execution due to the threats that disloyalty posed to the integrity of a newly established government. Understanding this background is integral to understanding the intellectual origins of legal disqualification, which come to be formally rooted in the United States Constitution. In doing so, one can understand the long-standing historical footing of legal disqualification with United States jurisprudence.

Chapter 1

The Entry of Legal Disqualification's Origins in United States Jurisprudence

This chapter discusses political disabilities imposed by disloyalty during the colonial and revolutionary period. This chapter analyzes the severity of such disabilities, with many colonial rules imposing the political disability of death as a result of betraying allegiance to the colony.

This chapter is broken into three subtopics: (1) Disloyalty and Political Disabilities Under Colonial America, (2) Disloyalty During Revolutionary Times, (3) Political Disabilities during Revolutionary America. The subchapter Disloyalty and Political Disabilities Under Colonial America discusses how British colonial-settlers first understood insurrections and legal disqualification, and how the severity of the imposed political disabilities directly reflects how political actors believed that allegiance to the colony was imperative to maintain its integrity. Discussing this period helps bolster the argument that ideological elements of Section 3 of the Fourteenth Amendment date back to the establishment of colonies within the Americas. Further, starting at the founding of American colonies forces historians to evaluate whether the disqualification clause in Section 3 of the Fourteenth Amendment can truly be considered radical, or if it is better considered a reduction of protective measures within colonial legislation.

The second subchapter, entitled Disloyalty During Revolutionary Times, discusses how the ideas surrounding legal disqualification shifted in the aftermath of the Declaration of Independence, when colonies began establishing distinct constitutions that addressed allegiance to the rebellion and punished allegiance to the Crown. This subsection also analyzes how the legal framework that imposed political disabilities Loyalists, its crucial purpose to maintain the integrity of the revolution by ensuring that those who opposed the cause did not become a political threat.

Finally, the subchapter entitled "Political Disabilities During Revolutionary America" discusses the consequences one experienced for disloyalty against revolutionary governments. By comparing the imposition of political disabilities in varying time periods, one can understand that throughout American history, political disabilities became not only more selective in who they apply, but less strict in application.

From the founding of British-colonial America to the Revolutionary times, there was a firm and concrete set of legal principles that established not only what individuals could be disqualified for, but subsequently what political disabilities arose from being politically disqualified. During these periods, this legal framework was applicable to all citizens and poltiical subjects, not just those within positions of authority. The arguments of these chapters work in tandem with one another to help affirm that due to the recentness of the state's establishment, political actors believed that there was a larger threat to the republic's integrity, thus forcing the legislation of harsh punishments for individuals who betray their allegiance to the government.

Disloyalty and Political Disabilities in Colonial America

In the early 17th century, British settlers began establishing settler-colonies along modern-day New England. While some of these settlements were royally chartered by the British Crown, many of these settlements were established due to joint-stock corporations or because of religious disputes between Catholics, Protestants, Puritan, and Quakers.[7] Each colony crafted distinct regulations, codes, and legislation that reflected its unqiue origins.

Despite differences in establishment almost all colonial regulations held provisions that punished disloyalty to the government, many of which can be seen as early ideological premises of what would become Section 3 of the Fourteenth Amendment. Many political disabilities were imposed due to betrayal to colonial governments. Despite differences in socio-political and religious beliefs, disqualification provisions have been a consistent piece of Anglo-American jurisprudence serving as protection for the integrity of state authority. Further, the severity of the political disabilities imposed during this era can be directly correlated to the importance of maintaining control over government institutions and state procedures, as the punishment of death–the severest state-sanctioned punishment one can endure–was often the political disability one faced for disloyalty.

[7] Newell, Margaret Ellen. *Brethren by Nature: New England Indians, Colonists, and the Origins of American Slavery.* Ithaca: Cornell University Press, 2015. https://muse.jhu.edu/book/57597.

Religious Colonies, Chartered Colonies, and Royal Colonies - The New Haven Colony. The Plymouth Colony, and the Massachusetts Bay Colony

The New Haven Colony was a Puritan settlement in modern-day Connecticut. The colony was established in 1638 by two Englishmen: Theodphilus Eaton and Reverend John Davenport.[8] Despite not being royally chartered, the colony rose to prominence within just two years of its establishment as a common stop for mercantile men.[9]

As a result of the rapid growth, Eaton—the colony's governor—established the Laws of the New Haven Colony in 1656, influenced by both the laws of other colonies and British common law. Established as a religious colony, the Laws of the New Haven Colony were largely established to regulated religious actions.[10] However, the Laws speific regulations that can be noted as an ideological premise to formal legal disqualification provisions:

> If any person shall conspire, and attempt any invasion, insurrection, or publick Rebellion against this Jurisdiction, or shall endeavour to surprize, or seize any Plantation, or Town, any Fortification, Platform, or any great Guns, provided for the defence of the Jurisdiction, or any Plantation therein; or shall treacherously and perfidiously attempt the alteration and subversion of the frame of policy, or fundamentall Government laid, and setled for this Jurisdiction, he or they shall be put to death.[11]

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[8] Yale-New Haven Teachers Institute. "The New Haven Colony's Blue Laws." *Yale-New Haven Teachers Institute Curriculum Units*, 2003. Accessed November 30, 2024. https://teachersinstitute.yale.edu/curriculum/units/2003/2/03.02.04/3#:~:text=New%20Haven%20Colony%20was%20established,Bay%20Colony%20some%20years%20earlier.

[9] *Id.*

[10] See Fundamental Agreement, or Original Constitution of the Colony of New Haven, June 4, 1639. "After solemn invocation of the name of GOD, in prayer for the presence and help of his spirit and grace, in those weighty businesses, they were reminded of the business whereabout they met, (viz.) for the establishment of such civil order as might be most pleasing unto GOD, and for the choosing the fittest men for the foundation work of a church to be gathered.

[11] "Article III, Section 3, Clauses 1 and 2," in *The Founders' Constitution*, Volume 4, Article 3, Document 11, accessed December 1, 2024, https://press-pubs.uchicago.edu/founders/documents/a3_3_1-2s3.html.

While it is important to note that Section 3 of the Fourteenth Amendment arises out of a different need, one cannot discredit that as early as the colonial period, political actors understood that to maintain the integrity and importance of state authority, there must be punishment for those that violate the interest of the state by engaging in insurrections, rebellions, or invasions. Such provisions were established to ensure a colony's peace and political stability. In comparison to the current disqualification clause, the poltiical disabilities imposed by colonial legislation on those who breached their allegaicen were much stricter than any other period within United States jurisprudence. Based on the provision, if an individual engages in a violating act–invasion, insurrection, or public rebellion–they sustained the political disability of death at the hands of the state. Further, it is important to note that the Laws of the Colony of New Haven did not limit who such provisions could apply to, unlike Section 3 of the Fourteenth Amendment. The provision states that anyone can face punishment irrespective of oaths, political authority, or status–widening authority scope of the provision as a whole. One can look at the laws of New Haven as an ideological foundation the United States Constitution's disqualification clause, as the theme of punishment for violating the peace of a territory with political territory is also noted in the language of Section 3 of the Fourteenth Amendment.

However, the colony of New Haven was not the only religious colony with similar disqualification provisions for individuals engaging in rebellions. The colony of New Plymouth, founded as a religious separatist colony to practice Calvinism without interference from the British Church of England, had a similar provision against

insurrections and rebellions.[12] The provision, entitled "Conspiring against this Jurisdiction," within the Laws of the Colony states,

> That whosoever shall Conspire and Attempt any Invasion, In- surrection, or Publick Rebellion against this Jurisdiction, or the Surprizal of any Town, Plantation, Fortification or Amunition, therein provided for the safety thereof, or shall Treacherously and Perfidiously Attempt and Endeavour the Alteration and Subversion of the Fundamental Frame and Constitutions of this Government; every such Person shall be put to Death.[13]

Similar to the Laws of New Haven Colony, the Laws of New Plymouth regulates that if one breaches their allegiance against the colonial government, then one is disqualified of certain social contract rights punished by the political disability of death. Further, it is important to note that the Laws of New Plymouth distinguish between "Going Against the Jurisdiction" and "Treason." In Chapter II.III of the Laws, entitled Capital Punishment, states, "Treason against the Person of our Soveraign Lord the King, the State and Common-wealth of England, shall be punished by Death."[14] While both crimes face the same political disability, political actors felt it important to distinguish these two actions as different, highlighting their varying jurisprudential origins. The difference in highlighting such provisions help historians to understand that there is a distinct legal history that Section 3 of the Fourteenth Amendment stems from, as colonial legislation is deeply concerned with protecting the state from political threat by eliminating the presence of individuals who rebel against it. Published in the Harvard Law Review, William Hurst's article "Treason in the United States? Treason Down to the Constitution" touches on how colonial governments handled instances of treason versus those of insurrection. In this

[12] William Brigham, ed., *The Compact with the Charter and Laws of the Colony of New Plymouth: Together with the Charter of the Council at Plymouth, and an Appendix* (Boston: Dutton and Wentworth, 1836)
[13] *Id.*
[14] *Id.*

article, he writes, "Almost all the cases which had sufficient color and interest to cause the preservation of some record were cases of domestic insurrection."[15] Through such analysis, Hurst affirms that colonial governments took threats against the integrity of the government by insurrections or rebellion as a serious manner, as it was one of the few times an expansive record was taken of a legal proceeding.

While Section 3 of Fourteenth Amendment lacks severity in both who it applies to and the political disabilities it imposes, it is evident that the Constitutional provision has concrete ideological footing in colonial legislation. Legal provisions, like the ones included in the New Haven colony laws and the New Plymouth Colony laws, help to establish that there was agreement between almost all colonial legislatures that to protect the integrity of the state, there must be provisions that punish disloyalty as a result of rebellion, insurrection, or invasion.

Legislation, like the ones included in the Laws of the Colony of New Haven and New Plymouth, helps historians understand that Section 3 of the Fourteenth Amendment is not unique within the overall structure of American jurisprudence but rather a byproduct of 200 years of jurisprudential development. Colonial legislatures distinctly understood that to maintain political control within a jurisdiction, there must be a legal system that bars individuals from disrupting the government's authority, which can be further noted the legislation of the Massachusetts Bay Colony.

Unlike the Plymouth Colony and the New Haven Colony, the Massachusetts Bay Colony was initially granted by King Charles I in 1629.[16] Before its incorporation into

[15] Hurst, Willard. "Treason in the United States? I. Treason down to the Constitution." *Harvard Law Review* 58, no. 2 (1944): 226–72. https://doi.org/10.2307/1335359.

[16] Hutchinson, Thomas. *The history of the Colony of Massachusetts-Bay*. Vol. 3. M. Richardson, 1828.

Plymouth by William and Mary's royal charter of 1691, the Massachusetts Bay Colony had its own unique set of legal codes, which outlined the state's role and citizens' rights.

The set of legal codes in the Massachusetts Bay Colony–*the Colony Laws*–are quite similar in nature to both the colony of New Haven and the colony of Plymouth. Section 12 of the "Acts Respecting Capital Crimes" states,

> If any man conspire and attempt any invasion, insurrection or public rebellion against our commonwealth or shall endeavour to surprise any town or towns, fort or conspiracy, Forts therein or shall treacherously and perfidiously attempt Rebellion, the alteration and subversion of our frame of polity or government fundamentally, he shall be put to death.[17]

Similar to the laws of the colony of Plymouth, the crime of treason and the crime for insurrection were two distinction laws, with Section 20 of the "Acts Respecting Capital Crimes" stating,

> It being the duty as well as the practice of all good subjects to provide for the safely and security of the person, crown and dignity of their sovereign princes, this court being sensible of their duty and obligation to our sove- reign lord the king.[18]

The distinction between treason and insurrection remains important when analyzing colonial laws, as it reveals that the Framers of colonial legislation were deeply concerned with the stability and peace of their colony—irrespective of whether an act constituted as treasonous. In colonial America, the stability of the colony was always subjected to contentiousness which further threatened state authority. As a result, the protection of state integrity was commonly at the forefront of legislation–an idea that will continue to dwindle throughout United States jurisprudence following the Revolutionary

[17] The Charters and General Laws of the Colony and Province of Massachusetts Bay. Boston: T. B. Wait and Co., 1814.
[18] *Id.*

War. Violations of stability and peace were so incongruent with the values of society that, in colonial America, one must be punished by death to maintain the protection of the state.

While the verbiage of the Constitution's disqualification provision differs to that of colonial legislation, the central idea of the provision remains similar: that an individual who incites an insurrection against the head political authority must be punished. Further, both colonial legislation and the Constitution's disqualification clause were implemented for the same reason: to preserve the established political order and maintain peace within the legal jurisdiction. However, Section 3 of the Fourteenth Amendment provides that for such punishment to occur under the United States Constitution, one must have taken an oath to protect and uphold Constitutional values

Legal Disqualification During the Revolutionary War

In the mid-18th century, British colonies in the United States gained rapid resentment for the British Crown, due to subjection of taxation without direct parliamentary representation, attempts to regulate slavery, and ongoing disputes regarding the authority of the crown.[19] After issuing the Declaration of Independence–which formally announced secession from the British Crown–colonial governments began establishing State Constitutions, many of which served as the basis for the Constitution and the Bill of Rights. The legal doctrine embedded in many of these State Constitutions can be seen as a foundational principle in what would become Section 3 of the Fourteenth Amendment. These provisions were mainly targeted Loyalists—individuals who remained loyal to the

[19] U.S. Department of State, Office of the Historian, "Declaration of Independence, 1776," *Milestones in the History of U.S. Foreign Relations*, accessed March 8, 2025, https://history.state.gov/milestones/1776-1783/declaration.

British Crown throughout the Revolutionary War. During Revolutionary America, allegiance to the state was required by any individual–citizen, non-citizen, temporary visitor, or permanent resident who enjoyed the state's protection.[20] This subchapter analyzes the legal provisions that targeted Loyalists, particularly in the Constitution of Virginia, Pennsylvania, and New York. Further, this chapter highlights the differences in how Revolutionary governments understood insurrections versus treasons, with the former only applying to domestic intervention within state confines, and the later more commonly referring to conspiracy with the enemies of governments. While such ideas are different in modern-day jurisprudence due to inconsistent application, many revolutionary constitutions distinguished the ideas of insurrection to be the domestic uprising of enslaved individuals, whilst loyalists were seen as conspirators with the Crown. Nevertheless, such provisions were integral to maintain the political authority of states, particularly through the imminent threat to state authority posed by the Revolutionary War. During the Revolutionary era, the ideas of legal disqualification shifted slightly, with the emphais of maintaining peace within a territory weighing less than rejecting a tyrannical government system, as seen by the Revolutionary War.

Through tracking the ideological origins of the Constitution's legal disqualification clause, one can credit Revolutionary jurisprudence for enshrining the rights of legal disqualification’s exeution within certain government positions. Specifically, during Revolutionary America, many state constitutions had established that an Executive was not able to use pardons on those who have breached their allegiance to the state, like Loyalists. Maintaining the protection of the state was so integral to beliefs of political actors that even

[20] *Pennsylvania Archives*, ed. Samuel Hazard et al. (Philadelphia and Harrisburg, i852-), ist Ser., VII, 6

the highest political authority had limited control in regulating the political disabilities one might experience for disloyalty to the state. Overall, legal disqualification in the United States shifted into jurisprudence that more closely resembles modern-day, as state officials began to consider how legal disqualification could co-exist with a strong Executive.

Constitution of Virginia (1776)

The Framers of Virigina's Constitution–George Mason and James Madison–included a list of grievances based on King George III's actions within the colony–classifying his actions as tyrannical and negative.[21] Amongst these grievances, the Framers asserted that King George III was,

> Inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation: By prompting our negroes to rise in arms against us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law[22]

In Virginia's Constitution, the term insurrection takes an interesting role. The Framers have a similar understanding to the Framers of colonial legislation: that insurrections disrupt the peace and political order of the state. However, instead of asserting that the Framers themselves were engaging in a form of an insurrection or rebellion by rebelling against British rule, they rather argued that the British crown was a threat to the political order of Virginia as a result of promoting rebellion against the state by encouraging enslaved individuals to rise against colonial.[23] In evaluating the changing ideas behind what constitutes legal disqualification and insurrections, it becomes clear that

[21] Virginia. *The Constitution of Virginia (1776)*. *Encyclopedia Virginia*. Accessed February 1, 2025. https://encyclopediavirginia.org/primary-documents/the-constitution-of-virginia-1776/.
[22] *Id.*
[23] *Id.*

there is a specific reason constitutional framers and legislatures established disqualification provisions to fight against rebellion and insurrection: rebellion is the greatest threat to political stability.

Virigina's Constitution also provides insight into what constitutional Framers believed were unpardonable offences. In addition to the mention of insurrections, Virginia's Constitution set distinct limits for the scope of executive authority:

> But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct: in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.[24]

This provision becomes particularly relevant when discussing Virigina's "Act Declaring What Shall Be Treason." While the act defines treason like how it is constitutionally understood, Section 3 of the act uniquely limited the authority of Virginia's executive, stating,

> That the governour, or in case of his death, inability, or necessary absence, the counsellor who acts as president, shall in no wise have or exercise a right of granting pardon to any person or persons convicted in manner aforesaid [treason], but may suspend the execution until the meeting of the general assembly, who shall determine whether such person or persons are proper objects of mercy or not, and order accordingly.[25]

While not written in the common understanding of a legal disqualification provision, one could argue that such a limitation on executive authority tells current historians two distinct things. First, the Framers of the United States Constitution believed that committing an act of disloyalty against the state was so irredeemable that it must be classified as an unpardonable offense. And secondly, although not written in the structure

[24] *Id.*
[25] The Founders' Constitution. "Article 3, Section 3, Clause 1, Document 11." University of Chicago Press. Accessed December 2, 2024. https://press-pubs.uchicago.edu/founders/documents/a3_3_1-2s11.html.

of blatant legal disqualification provision, the act follows a historical tradition of jurisprudential understanding that rebelling against the state is such an egregious offense that widespread executive authority cannot resolve it. The provision bars individuals who have been disloyal to the state and convicted of such disloyalty by a jury of their peers from being remitted from punishment. Further, the provision upheld that an Executive cannot regulate the political disabilities on experiences as a result of legal disqualification, effectively establishing a hierarchical structure between the peace of the nation and the role of the Executive.

Constitution of Pennsylvania (1776)

Similar to Virginia's Constitution, Pennsylvania's Constitution was written by prominent historical figures–Benjamin Franklin, Robert Whitehill, Thomas Matlack, James Cannon, George Bryan, and Thomas Young–many of whom served as delegates to the 1787 Constitutional Convention.[26] Like Virigina's Constitution, the Constitution of Pennsylvania similarly discussed the role of the executive, particularly when granting pardons for those who have committed treason:

> They [the President] shall sit as judges, to hear and determine on impeachments, taking to their assistance for advice only, the justices of the supreme court. And shall have power to grant pardons and remit fines, in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder, shall have power to grant reprieves, but not to pardon.[27]

Like Virginia's Constitution, Pennsylvania's Constitution further outlined that the Executive is unable to pardon an individual that has been disloyal and threatened the

[26] Cumberland County, Pennsylvania. *Chapter 4: History.* Accessed December 2, 2024. https://www.cumberlandcountypa.gov/DocumentCenter/View/7971/Ch4_History?bidId=.
[27] The Avalon Project, *Documents of the American Revolution: Pennsylvania Constitution of 1776*, Yale Law School, accessed December 2, 2024, https://avalon.law.yale.edu/18th_century/pa08.asp.

integrity of the state. This further codifies that disloyalty was such an egregious behavior to Constitutional Framers, that one must face punishment for their actions irrespective of the position of the Executive. Such Constitutional Provisions propound that during times of political disarray–evident by the circumstance of the Revolutionary War–there is a heightened ability for the state to be overthrown. Through such legislation, it is evident that Congressional Framers understood this threat and limited the role of Executive authority in response to such potential. By tracing how Executive authority was understood during Revolutionary times, one can compare what fragments of legal precedent the Framers of the Fourteenth Amendment utilized when establishing Section 3. The principle of maintaining peace within the Union remain the same between both Revolutionary and Post-Bellum jurisprudence; however, like colonial times, Constitutional Framers during Revolutionary America were much stricter in how provisions regarding rebellion, treason, sedition, and insurrection should be applied. Later chapters will explore why the Framers of the Fourteenth Amendment were unable to pass stricter legislation, and how this led to the reduction of the state authority when enforcing disqualification provision in the 21st century.

Constitution of New York (1777)

Like Virginia and Pennsylvania, New York's Constitution had a similar provision regarding Executive authority when pardoning individuals who committed treason:

> At his discretion, to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting;

> and they shall either pardon or direct the execution of the criminal, or grant a further reprieve[28]

This provision in New York's Constitution helps to corroborate the understanding that Constitutional framers opposed the highest political authority, the Executive, having pardoning power over rebellious actions and disloyalty. They vehemently opposed the tyrannical leadership of the British Crown and, as such, felt that it was essential to have strict provision to ensure order and peace within the state, while balancing the powers of the government. ensuring that no one ideology can unfairly dominate the political landscape by going against the loyalty and intrinsic principles of the United States. Some legal scholars and historians have posed similar arguments with regards to disloyalty and state authority. Bradley Chapin, a prominent legal scholar of treason, argued that during colonial times, "it came to be held that anyone…who enjoyed protection of the government owed allegiance."[29]

The Constitution of New York, like the Constitution of Virginia, discusses how the British crown promoted insurrections within New York:

> He [King George] has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.[30]

Ultimately, this inclusion further complicates how the Framers of the United States Constitution understood the meaning of insurrections, particularly regarding groups that faced immense discrimination due to colonial settlements in North America, like enslaved

[28] New York Constitution of 1777, in *The Avalon Project: Documents in Law, History, and Diplomacy*, Yale Law School, accessed December 2, 2024, https://avalon.law.yale.edu/18th_century/ny01.asp.
[29] Bradley Chapin, "Colonial and Revolutionary Origins of the American Law of Treason," *The William and Mary Quarterly* 17, no. 1 (January 1960): 3–21, https://www.jstor.org/stable/1943476.
[30] *Id.*

individuals and indigenous groups. The authors of the Constitution–John Jay, Robert R. Livingston, and Gouverneur Morris–are all considered to be Framers of the United States, as the New York Constitution helped establish the foundation for the Constitution of the United States.[31] This complicates historians' understanding of the term "insurrection," as it fails to address the socio-political deprivation indigenous groups felt as a result of settler-colonies along the Atlantic Coast. Consequently, this highlights how insurrections threatened pre-existing power structures, like between the government and citizens and between the enslaved individuals and masters.

Disloyalty and Political Disabilities During the Revolutionary War

Establishing a legal framework is the initial step of ensuring that individuals are barred civil liberties by breaching allegiance to the state. The second step is executing such a legal framework when an individual commits a disloyal act against state authority. This subchapter will explore two tangible examples of the state limiting an individual's citizenship rights due to disloyal action. The first will discuss how States imposed a political disability on loyalists—the seizure of land—which thereby limited the citizenship rights of white men to own land. The second will discuss the trial of Benedict Arnold–largely considered America's first traitor–and how such political disabilities by Arnold directly result from legislation, legal precedents, and civil codes being executed as per their function.

[31] "The Story of the Constitution," *New York State Courts*, accessed December 2, 2024, https://history.nycourts.gov/about_period/20-stories-constitution/#:~:text=There%20a%20Committee%20led%20by,Ulster%20County%20Bench%20and%20Bar!.

Confiscation of Land

Published in the Journal of Mid-Atlantic Studies, Marcus Gallo's article "Proper ty Rights, Citizenship, Corruption, and Inequality: Confiscating Loyalists Estates During the American Revolution," discusses how State Constitutions and legislations gave way to the rapid confiscation of loyalists' property–highlighting tangible political disabilities loyalists experienced as a result of their unwillingness to denounce the Crown's power. Gallo writes,

> The Pennsylvania legislature was quick to pass laws to condemn loyalists for treason. These laws soon gave way to acts of confiscation. In 1776 the Pennsylvania state constitutional convention passed an ordinance allowing property confiscations for treason. However, because the convention had no legislative authority, no loyalists forfeited property under this ordinance. In February 1777 the Pennsylvania legislature passed a law allowing confiscation of moveable property as punishment for treason.[32]

As a result of Pennsylvania's strict legal framework, the state was able to seize the property of loyalists incredibly rapidly–often without due process.[33] Regarding this, Gallo states,

> In response, a branch of the Pennsylvania Assembly, the Council of Safety, began authorizing confiscations and sales of loyalist property (including real estate) without trial in February 1778, almost three years before Maryland. The state sold about a dozen properties in this manner, mostly in the patriot-controlled backcountry…The state also confiscated the property of 118 other loyalists who refused to report for trial, thus intertwining confiscation with treason.[34]

States, like New York, often kept lists of whom judgments were given under the Confiscation Act. Often, such lists would include the name of the individual, their

[32] Gallo, Marcus. "Property Rights, Citizenship, Corruption, and Inequality: Confiscating Loyalist Estates during the American Revolution." *Pennsylvania History: A Journal of Mid-Atlantic Studies* 86, no. 4 (2019): 474–510. https://doi.org/10.5325/pennhistory.86.4.0474.
[33] *Id.*
[34] *Id.*

occupation, location of residence, and the judgment sought by the state.[35] While there are evident differences in the political disabilities one faced as a result of the Fourteenth Amendment's disqualification clause, such action by state governments during Revolutionary America show that the legal framework established by states, for individuals who breached their allegiance to state authority, was in fact executed with the expected sanctions of political disabilities. Further, such swift acquisition of land by colonial governments prove that colonial governments understood, there must be direct and concrete action the state takes to protect itself against a potential coup, during times of political instability. Such ideas surrounding legal disqualification as a mechanism of protection will continue to gain importance throughout the evolution of United States jurisprudence.

Benedict Arnold's Treason

Benedict Arnold's treatment by political actors can be noted as another tangible example of an individual experiencing political disabilities as a result of their disloyalty to the state. Although initially a strong military commander during the American Revolution, Arnold committed the treasonous act of sharing war secrets with Major John Andre, an intelligence officer of the British military. Andre expressed that if Arnold turned over West Point–a prominent strong-hold for the Revolutionary militia, Arnold would be awarded in a large-sum of money. [36] Eventually, Arnold's plans were foiled and Arnold escaped on

[35] Manuscripts and Archives Division, The New York Public Library. "List of loyalists against whom judgments were given under the Confiscation Act" New York Public Library Digital Collections. Accessed January 23, 2025. https://digitalcollections.nypl.org/items/92a14bb0-0e2f-0134-a08b-00505686a51c

[36] Office of the Director of National Intelligence. "Benedict Arnold." *The Evolution of Espionage: British Espionage during the Revolutionary War*. Accessed January 23, 2025. https://www.intel.gov/evolution-of-espionage/revolutionary-war/british-espionage/benedict-arnold#:~:text=His%20legacy%20today%20is%20quite,defection%20to%20the%20British%20side.

HMS Vulture, a British naval ship. As a result of his communication with the Crown, Arnold was given a position within the British military.[37]

The idea of tracking Revolutionary response to Arnold's treasonous behavior teaches historians the jurisprudential understanding punishment for disloyalty as a result of legal disqualification is not new. In 1979, Charles Royster, a historian at Louisiana State University, argued that,

> To the historian, Arnold remains as useful an instrument for the study of public virtue after his treason as in his years of glory. By first examining the strength that Americans sought from virtue and then the weakness that endangered their cause during the war, we will see the origins of their concern about betrayal of Revolutionary virtue.[38]

Royster articulates that during Revolutionary America, Arnold's treason "threatened American independence and liberty."[39] During Revolutionary America, historical actors understood that disloyalty must be punished as it threatened the integrity of the state and its power. While Arnold was able to escape to London, Revolutionary Generals—like George Washington—underwent extensive efforts to capture Arnold. Furthermore, Arnold's co-conspirator, John Andre, was hanged for his disloyalty to the Revolution.[40]

Disqualifying punishments were significantly harsher and broadly applied during Revolutionary America than after the ratification of disqualification clause of the Fourteenth Amendment; however, historical actors understood that threatening the integrity of that state, came with tangible consequences. Despite lacking the legal structure

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[37] *Id.*
[38] Royster, Charles. "'The Nature of Treason': Revolutionary Virtue and American Reactions to Benedict Arnold." *The William and Mary Quarterly* 36, no. 2 (1979): 164–93. https://doi.org/10.2307/1922263.
[39] *Id.*
[40] *Id.*

established with the United States Constitutional Republic, political actors understood three distinct things: (1) Disloyalty was a threat to the integrity of the state, (2) As a result, there must be legal framework established to establish what actions betray allegiance, and how such actions must be punished, and (3) such legislation, codes, Constitutional clauses, and regulations must be executed in order to protect the integrity of the state. Since the current Robert's Court emphasized tracking the history and tradition of legal doctrine or precedent, it is imperative individuals understand how political actors during and prior to the Civil War understood disloyalty to the state, and how disqualification for disloyalty is a consistent pillar of United States jurisprudence, dating back to the 17th century.

Chapter 2

Legal Disqualification and Disabilities Under a New Government

Chapter 2, entitled "Legal Disqualification and Disabilities Under a New Government" will analyze how legal disqualification and its subsequent political disabilities changed as a result of the newly established government structure–a republic of states held together by the confines of federal authority. This chapter will be broken down into three main sub-chapters: (1) The Articles of Confederation, (2) The Constitution and Federal Legislation, Codes, and Regulations, (3) and Massachusetts Disqualification Act. In addressed how the foundational documents of the Union account for disloyal action, whether implicitly or explicitly, helps historians understand that Constitutional Framers were deeply concerned with maintaining the integrity of state authority, and as a result, provided an extensive framework for both legal disqualification due to a breach of allegiance and punishment for such disloyal action through political disabilities, like limitation of citizenship rights.

The first subchapter–The Article of Confederation–will discuss how the first foundational document of the new republic housed the first implicit legal disqualification provision that explicitly pertained to political actors. By analyzing this clause, historians can see a clear and express legal doctrine that Section 3 of the Fourteenth Amendment evolved from. Further, as the first foundational document of the republic after the Revolutionary War, the Articles of Confederation can be credited as one of the best

examples for historians to analyze what Constitutional Framers were most concerned with regarding allegiance, loyalty, and republicanism. Such examples are important to reference when discussing the Court's interpretation in *Trump v. Anderson* regarding *the* history and tradition of legal disqualification.

The second subchapter focuses on the most important legal document of the United States–the Constitution. This subchapter will analyze debates that arose out of the Constitutional Convention–the convention of delegates who ratified the Constitution–regarding insurrectionists, state authority, and punishment for disloyalty. Analyzing such conversations is a crucial piece of addressing the Robert's Court originalists judicial interpretation philosophy as it provides a nuanced multi-focal perspective regarding the varying viewpoints of Constitutional Framers. Furthermore, the convention highlights distinct arguments regarding how to handle individuals who breach their allegiance to the authority of the state through rebellion, including through limitations of certain rights enshrined by retaining citizenship. This chapter focuses heavily on the debates surrounding the ratification of the Constitution, as well as supporting documents, like the *Federalist Papers* written by Alexander Hamilton, James Madison, and John Jay. Furthermore, this subsection will discuss Shay's Rebellion, and the legislation that followed such rebellion–like Massachusetts Disqualification Act.

Paired with Chapter 1, Chapter 2 aims to address and analyze how Constitutional Framers not only established distinct legal frameworks for individuals who held positions of authority, but also heavily debated how action such individuals and subsequently breach allegiance to the state should be held accountable. By reviewing the arguments made by Constitutional Framers themselves, historians can compare the validity of the Court's

claims in *Trump v. Anderson* and *Trump v. United States* regarding the historical tradition of legal disqualification within United States jurisprudence. As a result of how recently the Union was founded, Constitutional Framers were keenly aware of how fragile the state's integrity was; therefore, there was a much stricter emphasis to enact legal disqualification provision and impose political disabilities on disloyal individuals.

Articles of Confederation

After the Battle of Yorktown in 1781, British officials surrendered to the colonial American army.[41] However, during the Revolutionary war, colonial governments recognized the need for a unified Union to effectively target British soldiers. The Articles of Confederation, which formed a republic of states in 1777, are generally considered the precursor to the United States Constitution. Despite its overall failure to meet the evolving needs of the nation, the Articles of Confederation largely laid the foundations of what would be the United States Constitution. The Articles of Confederation are an early example of American jurisprudence that includes a legal disqualification, which pertains to individuals in public office. It read:

> Members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.[42]

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[41] "Yorktown Battlefield – Winning America's Independence," *National Park Service*, accessed December 2, 2024, https://www.nps.gov/york/index.htm#:~:text=Yorktown%20Battlefield%20%2D%20Winning%20America's%20Independence,the%20war%20and%20ensuring%20independence.&text=A%20free%20Yorktown%20Battlefield%20Tour,in%20the%20village%20of%20Yorktown.&text=If%20you%20are%20planning%20a%20visit%2C%20please%20review%20these%20safety%20items.

[42] "Articles of Confederation (1777)," *National Archives*, accessed December 2, 2024, https://www.archives.gov/milestone-documents/articles-of-confederation.

While this provision is not similar in verbiage to Section 3 of the Fourteenth Amendment, it does advise that there are certain things that, if committed by a Congressional member, bars that individual from continuing public duties and representing citizens.

Following the logical interpretation of this provision, if a member of Congress–under the Articles of Confederation–commits treason, felony—or *notably* breach of peace—then they are barred from engaging in their civic duty of being a representative and can be arrested. For the purpose of this paper, the term of "breach of peace" is notable as it inherently implies an intentional disruption of political order. As established by this chapter thus far, many legal precedents discussing insurrections, rebellions, treason, and pardoning were established to maintain balance between government branches and ensure that there is peace within former colonies and the current Union.

As a result, "disrupting the peace" can be directly conflated to engaging in an insurrection or rebellion. Peace, as defined by Bouvier's Law Dictionary, refers to, "The tranquillity enjoyed by a political society, internally, by the good order which reigns among its members."[43]Although not similar in verbiage, this provision in the Articles of Confederation is comparable to principles outlined in Section 3 of the Fourteenth Amendment, highlighting jurisprudential evolution of legal disqualification, specifically, pertaining to public officials.

[43] "Bouvier's Law Dictionary, 1856 Edition," *1215.org*, accessed March 8, 2025, https://www.1215.org/lawnotes/bouvier/bouvier_p.htm.

Constitutional Convention and Ratification

This sub-chapter will discuss the debates surrounding the ratification of the Constitution, particularly regarding insurrectionists, insurgents, rebellions, and revolutionaries. The initial portion of this subchapter will focus on the specific Constitutional clauses that were ratified in 1788. To successfully ratify the Constitution, each state must have agreed to every clause with the document.[44] In an attempt to ensure smooth ratification, Constitutional Framers held a Constitutional Convention, in which each state sent delegates to discuss and debate the interests of their respective state, while simultaneously debating the merits of the document as a whole. This sub-chapter will focus on the debates held by the delegates regarding the ratification of clauses relating to insurrections and domestic rebellion.[45] Lastly, this sub-chapter will discuss prominent papers and writings surrounding the discourse of ratification, particularly the Federalist Papers and the Anti-Federalist Papers.

There is only one mentioned of insurrection in Article I, Section 8 of the United States Constitution, Article I, which outlines the powers of Congress, states, "Congress shall have the power….To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."[46] While seeming like an necessary authority held for and by the most powerful branch of government, the clause and the debates surrounding its ratification–specifically whether such a clause was over or under inclusive–was extensive.

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[44] National Constitution Center, *The Constitutional Convention of 1787: A Revolution in Government*, accessed January 30, 2025, https://constitutioncenter.org/the-constitution/white-papers/the-constitutional-convention-of-1787-a-revolution-in-government.
[45] *Id.*
[46] U.S. Constitution, Art. 1, Sec. 8.

Delegates were concerned with the role of the Executive in taking part in and inciting insurrections, highlighting how concerns regarding Executive authority and integrity to the state had been at the forefront of historical debates as early as the 18th century. Specifically, Edmund Jennings Randolph, Virginia's delegate at the Constitutional Convention and later Governor of Virginia, states,

> The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business.[47]

Delegate Randolph's concerns regarding Executive authority to mobilize insurrections stem from the distinct emergence of democratic principles in response to the tyrannical leadership under King George. The push for impeachments, particularly regarding Executive mobilization of insurrections, can be seen as a direct rejection of an individual having totalitarian control over the government. Such concerns from Constitutional Framers can be seen as contentions. Further, these concerns are in opposition to the Court's originalist judicial interpretation, and subsequent implied historical tradition of legal disqualification. Delegate Randloph's concerns reading checks on the Executive forces historians to recognize how the Court attempts to define, or rather re-define, the roles and duties of the Executive. Further, Constitutional Framers were keenly aware that insurrections posed a major threat to the foundation of the newly established Union. John Dickinson, the Constitutional Delegate from Delaware, argues, "war or insurrection agst a member of the Union must be so agst the whole body; but the

[47] *The Records of the Federal Convention of 1787,* ed. Max Farrand (New Haven: Yale University Press, 1911). Vol. 2.

Constitution should be made clear on this point."[48] Coupled with Delegate Randolph's idea of Executive authority, it is evident that the Constitutional Framers had concerns that if a powerful authoritative figure rose to power within the United States, and had the ability to engage in domestic rebellion, there was a threat to the Union and its fundamental principles of democratic republicanism.

Insurrections, and their threat to the integrity of the Union, remained a topic of conversation within American society immediately following the Constitutional Convention. In the interim between the drafting and ratification of the Constitution, James Madison, John Jay, and Alexander Hamilton published a series of 85 essays titled *The Federalist Papers,* in which they argue for the document's ratification while attempting to explain the need for a functioning federal government.[49] The papers, written between October 1787 and August 1788, were published predominantly in New York newspapers.[50] Throughout these essays, Alexander Hamilton–New York's delegate at the Constitutional Convention–addresses how insurrections pose threats to the state's ability to maintain peace, property, and order. Three *Federalist* essays help elucidate the origins of Section 3 of the Fourteenth Amendment and how Constitutional Framers understood the threat insurrections posed against the foundation of the Union. The first, Federalist 9, entitled "The Union as a Safeguard Against Domestic Faction and Insurrection," written by Hamilton, is a valuable document when evaluating how Constitutional Framers understood the threat of insurrections posed to the state's ability to maintain strong political and governmental organization. In "Federalist 9," Hamilton writes, "A FIRM Union will be of

[48] *Id.*
[49] Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, Library of Congress, accessed January 30, 2025, https://guides.loc.gov/federalist-papers/full-text.
[50] *Id.*

the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection."[51] By stating this as the first sentence of his essay, Hamilton poses an interesting reinforcing idea within American legal framework–that a strong government reduces the threat of domestic insurrections, and subsequently, that a lack of domestic insurrections reinforce the strength of the government as a whole. As a result of such assertion, it is evident that Hamilton believed insurrections posed a significant threat to the integrity of the state, and the integrity of the state was at risk when insurrections were able to occur.

Further, in "Federalist 28," entitled "The Same Subject Continued: The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered," Hamilton argues,

> An insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had not communicated itself to oppose the insurgents; and if the general government should be found in practice conducive to the prosperity and felicity of the people, it were irrational to believe that they would be disinclined to its support. If, on the contrary, the insurrection should pervade a whole State, or a principal part of it, the employment of a different kind of force might become unavoidable.[52]

Not only does this reinforce the notion that Hamilton believed insurrections posed a threat to the government but also establishes that Hamilton deemed insurrections as unacceptable irrespective of the circumstances that caused them. Throughout *The Federalist Papers,* Hamilton argues that a democratic republic is the most suitable form of government as it maintains federal authority while simultaneously allowing representation

[51] Alexander Hamilton, *Federalist No. 9*, in *The Federalist Papers*, The Avalon Project, Yale Law School, accessed January 30, 2025, https://avalon.law.yale.edu/18th_century/fed09.asp.
[52] Alexander Hamilton, *Federalist No. 28*, in *The Federalist Papers*, The Avalon Project, Yale Law School, accessed January 30, 2025, https://avalon.law.yale.edu/18th_century/fed28.asp.

for those subjected to the confines of the state. In Hamilton's view, insurrections were unacceptable as they go against the structure, function, and methodology of the government.

Finally, in "Federalist 29," entitled "Concerning the Militia from the Daily Advertiser," Hamilton addresses the role of the militia in suppressing insurrections within the state, arguing,

> In times of insurrection, or invasion, it would be natural and proper that the militia of a neighboring State should be marched into another, to resist a common enemy, or to guard the republic against the violence of faction or sedition.[53]

Hamilton's idea of a functioning democratic republic relied upon a faction–like a political party–being unable to gain control of the government–and subsequently the state–through domestic rebellions or insurrections. "Federalist 29" asserts that a functioning government can hold space for political factions; however, those factions must not prohibit the functions of the government as a whole. To understand why Hamilton writes so strongly about insurrections in the *Federalist Papers,* one must understand the historical events that were taking place prior and during the ratification period. In 1786 and 1787, Daniel Shay–a member of the Revolutionary Army–instigated an insurrection in the Massachusetts countryside due to the lack of monetary compensation from his service in the Revolutionary War.[54] The rebellion–referred to by historians as Shays Rebellion–grew in popularity amongst Massachusetts veterans. The government, however, was unable to suppress the insurrection as the Articles of Confederation did not allow states to have

[53] Alexander Hamilton, *Federalist No. 29*, in *The Federalist Papers*, The Avalon Project, Yale Law School, accessed January 30, 2025, https://avalon.law.yale.edu/18th_century/fed29.asp.
[54] Mount Vernon. "Shays' Rebellion." *George Washington's Mount Vernon*. Accessed February 1, 2025. https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/shays-rebellion.

standing militias, highlighting a core weakness of the Articles.[55] To suppress the insurrection, James Bowdoin–the Governor of Massachusetts–had to unite 4400 private citizens to restore peace within the state.[56] After suppressing the insurrection, Massachusetts legislators passed the "Disqualification Act," which is the most similar historical analog to the disqualification clause in Section 3 of the Fourteenth Amendment. The act mandated that insurgents must take an oath of allegiance to the state–which becomes further relevant in Chapter 3 when discussing Jonhson's Amnesty Proclamation during Presidential Reconstruction.[57] The act also enforced that insurgents were barred from holding certain positions within the state, like holding positions in juries and public office:

> That to whomsoever of the offenders aforesaid, the Governour shall think fit, by virtue of any act or resolve of the General Court, to promise a pardon and indemnity, for the offences aforesaid, it shall be under the following restrictions, conditions and disqualifications, *that is to say*, That they shall keep the peace for the term of three years, from the time of passing this act, and that during that term of time, they shall not serve as Jurors, be eligible to any Town-Office, or any other Office under the Government of this Commonwealth, and shall be disqualified from holding or exercising the employments of School-Masters, Innkeepers or Retailers of spirituous liquors, or either of them, or giving their votes for the same term of time, for any officer, civil or military, within this Commonwealth, unless such persons, or any of them, shall after the first day of *May*, seventeen hundred and eighty-eight, exhibit plenary evidence of their having returned to their allegiance, and kept the peace, and that they possess an unequivocal attachment to the Government.[58]

Evaluating Massachusetts' "Disqualification Act" of 1787 and the historical context that led to the Act's interpretation is not only integral to understanding Hamilton's

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[55] *Id.*
[56] DeArmey, M.H. (2023). Constitutional Topics in the Jefferson/Madison Correspondence, Common Fears and Worries in the Correspondence and the *Federalist* Papers. In: The Constitution of the United States Revised and Updated. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-40426-9_7
[57] Springfield Technical Community College. "An Act Describing the Disqualification of Certain Persons (February 16, 1787)." *Shays' Rebellion and the Making of a Nation*. Accessed February 1, 2025. https://shaysrebellion.stcc.edu/shaysapp/artifact_trans.do?shortName=act_disqualification16feb87&page=.
[58] *Id.*

perspective in the *Federalist Papers* but also serves as a clear foundational step in the jurisprudential lineage of Section 3 of the Fourteenth Amendment. Revolutionary governments understood that disqualification had two distinct purposes: (1) maintaining the integrity of the state, as those who rebelled against the state were barred from having authoritative control of state actions by holding office, and (2) the act served as a disciplinary punishment for insurgents, by imposing explicit political disabilities.

Tracking how Constitutional Framers understood insurrections, and the threat they pose to the integrity of the government, is particularly important when understanding the Roberts Court's judicial interpretation in *Trump v. Anderson*. The Court's attempt at originalism, which relies on how Constitutional Framers understood the fundamental principles expressed in the Constitution, is seemingly lacking in historical context from the Revolutionary period. This is further elaborated on by Micheal Dearmey, a philosophy professor at the University of Southern Mississippi, who writes, "In our time, the January 6, 2021, insurrection was an armed assault against the United States federal government to prevent ratification of fair election results. It is certain that this would not have been viewed as "little" or beneficial by the Founders."[59]

[59] DeArmey, M.H. (2023). Constitutional Topics in the Jefferson/Madison Correspondence, Common Fears and Worries in the Correspondence and the *Federalist* Papers. In: The Constitution of the United States Revised and Updated. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-40426-9_7

Section 2

The Introduction of Formal Federal Legal Disqualification Provisions with United States Jurisprudence: The Civil War and Reconstruction

Section II, entitled *The Introduction of Formal Federal Legal Disqualification Provisions within United States Jurisprudence*, discusses the Civil War–which is often considered by historians as the largest insurrection in the history of the United States.[60] Installment II will encompass two chapters (1) "Wartime and Presidential Reconstruction: Varying Attempts of Reunification" (Chapter 3) and (2) "Radical Reconstruction and Redemption: The Ambitions of the Fourteenth Amendment" (Chapter 4). Both chapters discuss the various ways political actors attempted to legislate, litigate, codify, and confine the Civil War. Coupled with one another, these subchapters will serve as the evidentiary basis to assert that due to the scale and unprecedented nature of the Civil War, legal disqualification and political disabilities were flexibly imposed on insurgents, even with clear engagement Confederate rebellion.

Chapter 3, "Wartime and Presidential Reconstruction: Varying Attempts at Reunification," will discuss the timeframe from 1861 to 1867. The focus on a shorter timeframe in comparison to the previous chapters is a direct reflection of how legal theory and jurisprudence surrounding insurrections, executive authority, political disabilities, and

[60] Perrone, Giuliana. Lecture 15: *Slavery and Antebellum Politics,* November 21, 2024.

disqualification changed throughout the course of the Civil War. Chapter 3 will initially introduce the historical context during the Civil War. Further, the chapter will delve into the presidencies of Abraham Lincoln and Andrew Johnson, and their varying approaches in attempting to reunify the Union, while simultaneously reducing the power of insurgents within the government of the United States. During Wartime and Presidential Reconstruction, many Radical Republicans believed that imposing strict political disabilities and legal disqualification on insurgents was essential to ensuring the protection of the republic.

Chapter 4, "Radical Reconstruction and Redemption: The Ambitions of the Fourteenth Amendment" discusses the ratification of the Fourteenth Amendment, and the ratification of the disqualification clause as a result. Further, the chapter will focus on Congressional Debates surrounding Section 3 of the Fourteenth Amendment's ratification as a method of understanding the various intentions by its Framers. The chapter addresses subsequent Confederate responses to the disqualification clause–largely from archival research conducted at the National Archives in Washington D.C. This chapter asserts that those in positions of authority often dictated how insurgents were treated under the law, and further, Executives that prioritized personal gain rather than the interest of the Union were–under Radical Reconstruction–incongruent to the stability of the state. However, the chapter also discusses the consequences of large-scale Confederate pardons, leading to the restoration of citizenship rights for many high-ranking insurgents within the Union, despite the ratification of the disqualification clause.

The intention behind coupling these two chapters together is twofold. First, the condensation of the historical period allows the information to be contextually understood

in conversation with one another. Second, both chapters are integral to understanding the complete argument of the Section: during the time of the Civil War and Reconstruction, the application of legal disqualification and political disabilities were often linked to the individual personnel in positions of authority, leading to tangible consequences in the stability of the Union's government and function.

Chapter 3

Wartime and Presidential Reconstruction: Varying Attempts of Reunification

Chapter 3 will follow the presidencies of Abraham Lincoln and Andrew Johnson, and the political actions taken to reconcile the legal circumstances of the Civil. Initially, the chapter will outline the historical context leading up to, during, and following the Civil War. To understand how the disqualification clause of the Fourteenth Amendment was drafted and ratified, it is important to understand the historical context which the clause stemmed from. The aim of this chapter is to outline this historical context, to understand the specific reasons why Congressional Framers felt it important to ratify a provision. like the disqualification clause, following the aftermath of the Civil War.

Slavery remained a contentious topic since the ratification of the Constitution; however, in the mid-19th century the rift between the North and South regarding slavery's place in the Union reached its peak. This chapter focuses on the specific circumstances that caused that rift, like Bleeding Kansas, Bleeding Sumner, the Kansas-Nebraska Act, and finally, the election of Abraham Lincoln. By addressing these specific circumstances, one can see how the Constitutional Framers of the Fourteenth Amendment understood actions in response to political grievances by Southerners as incongruous to a democratic republic, which include an institutional framework of problem solving.

The chapter also discusses the contentions between Lincoln and Radical Republicans regarding how previous Union office holders, that were affiliated with the

Confederacy, should be politically classified. This chapter discusses Lincoln's 10% plan, in comparison to Radical Republicans' proposal of the Wade Davis Bill. While both attempt to legally disqualify Confederate officials who previously held office within the Union, they differ in strictness and justifications. This chapter also explores why political officials were more lenient with legal disqualification of Confederates during Wartime Reconstruction.

Finally, this chapter discusses changes in how the Union approached Confederate citizenship following the assassination of Abraham Lincoln. Following Lincoln's assassination, Andrew Johnson assumed the presidency and changed the pathway for both Confederate amnesty and citizenship restoration. This chapter will focus on the explicit ways President Johnson altered the flexibility of legal disqualification, and the difficulties imposed on Radical Republicans to legislate punishments for disloyal citizens

This chapter argues that during Wartime and Presidential Reconstruction, the principles surrounding legal disqualification began growing in flexibility, with political actors shifting emphasizing the unification of the Union rather than punishing individuals who violated their oath to the Union. This chapter also argues that this flexibility is largely dictated by the beliefs of those in positions of authority–as noted by the varying measures related to legal disqualification enacted by President Lincoln and President Johnson.

Precursor Events to the Civil War

The Civil War stemmed out of a longstanding debate surrounding slavery, and its place in the Union. Prior to the ratification of the Constitution in 1788, Constitutional Framers raised concerns about how slavery could exist in a country founded on principles

of liberty and equality of all men. Thomas Jefferson, a large contributor to the Bill of Rights, writes in a deleted passage of the Declaration of Independence that, "[King George] has waged a cruel war against human nature itself…captivating & carrying them into slavery in another hemisphere or to incur miserable death in their transportation."[61] Slavery was understood to be a sinful and miserable practice by Constitutional Framers. Despite this understanding, the Southern Aristocrats believed slavery was integral to the economy and practice of Southern life.[62] Southern aristocrats and plantation owners, who amassed fortunes through plantation societies, felt it integral to maintain the institution in the United States due to the economic prosperity.[63] For the purposes of chapter, it is important to understand the two ways the Constitution referred to slavery: (1) The Three-Fifths Clause and (2) the Slave Trade Clause. The first principle, located in Article I, Section 2 of the United States Constitution states that for every five individuals enslaved, three would be considered towards the population of the state–despite enslaved people being classified as property, not people.[64] The purpose of this classification was to bolster the population of slave-states to inflate the political power of Southern states in the House of Representatives.[65] The second principle, located in Article I, Section 9, Clause 1 of the Constitution, regulates that Congress could not outlaw the slave trade until twenty years after the Constitution's ratification, in 1808.[66] In 1808, Congress passed the "Act Prohibiting the Importation of Slaves," which outlawed the legal importation of enslaved

[61] The Deleted Passage of the Declaration of Independence." *BlackPast*, March 15, 2007. https://www.blackpast.org/african-american-history/declaration-independence-and-debate-over-slavery/.
[62] National Park Service, *Slavery: Cause of the Civil War*, accessed February 11, 2025, https://www.nps.gov/liho/learn/historyculture/slavery-cause-civil-war.htm.
[63] *Id.*
[64] U.S. Constitution, art. I, sec. 2, cl. 3.
[65] Thirteen/WNET, *Primary Documents in American History: Slave Code of South Carolina (1740)*, accessed February 11, 2025, https://www.thirteen.org/wnet/slavery/experience/legal/docs2.html.
[66] U.S. Constitution, art. I, sec. 9, cl. 1.

individuals through the Trans-Atlantic Slave Trade.[67] As a result, Southerners had to maintain their political advantage through ensuring the continuation of slavery within their states. In practice, this meant the population of enslaved individuals within the United States had to grow domestically by forcing enslaved women to birth the new generation of enslaved individuals.[68]

While Southern society relied heavily on the institution of slavery to maintain political control and economic growth, emancipatory and abolitionist sentiment grew throughout Northern states in the early to mid-19th century. Many Northern States, like Philadelphia, began adopting gradual emancipation processes that eventually sought to end the practice of slavery within the state.[69] With the Second Great Awakening, religious influences in predominantly Northern Black societies through were an influential component for growing abolitionist sentiment. The Second Great Awakening instilled newfound ideas with American society that Black Americans were eligible for religious salvation, and that for the second coming of Christ to be fulfilled, society must rid itself from the sin of slavery.[70]

The contention between Northern and Southern states regarding slavery's place in the United States manifested through political debates, violent rebellions, and Congressional compromises. Throughout the early to mid-19th Century, Congress issued a series of Gag Rules, which barred the discussion of slavery in Congressional debates due

[67] National Archives, *The Slave Trade Clause: Teaching Six Big Ideas in the Constitution*, accessed February 11, 2025, https://www.archives.gov/education/lessons/slave-trade.html.
[68] Morgan, Jennifer L. "Partus sequitur ventrem: law, race, and reproduction in colonial slavery." *Small Axe: A Caribbean Journal of Criticism* 22, no. 1 (2018): 1-17.
[69] George Washington's Mount Vernon, *Gradual Abolition Act of 1780*, accessed February 11, 2025, https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/gradual-abolition-act-of-1780.
[70] National Park Service, *The Antislavery Connection*, accessed February 11, 2025, https://www.nps.gov/wori/learn/historyculture/antislavery-connection.htm.

to rising abolitionist concerns.[71] However, with the Union's westward expansion, Congress was tasked with deciding whether a new state would be admitted as a slave state or free state, notable by the Missouri Compromise of 1820, which admitted Maine as a free state and Missouri as a slave state.[72] The purpose of admitting states in pairs became common practice to ensure equality in Congressional representation of slave and free states. However, in 1854, the Kansas-Nebraska Act repealed the Missouri Compromise, allowing Kansas to be admitted on the basis of popular sovereignty.[73] What followed is argued, by some historians, as a precursor to the Civil War as pro-slavery and anti-slavery advocates funneled into the territory and violently fought to ensure the protection of their respective ideologies.[74] Similar conflicts were paralleled in Congressional chambers, as well. In 1856, Charles Sumner–a Radical Republican Senator from Massachusetts and an anti-slavery advocate addressed the Senate with a speech relaying because the Kansas-Nebraska Act was a failure on part of Congress, singling out two Democratic Senators. In response, Senator Brooks from South Carolina beat Senator Sumner unconscious with a cane in Senate Chambers, highlighting the polarization amongst political officials regarding the institution of slavery in the Union.[75]

While there are many more instances of slavery's purpose in the Union increasing polarization amongst Northerns and Southerners–like the Court's ruling *Dred Scott v.*

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[71] U.S. Capitol Visitor Center, *The Gag Rule*, accessed February 11, 2025, https://www.visitthecapitol.gov/sites/default/files/documents/lesson-plan/gag-rule.pdf.
[72] National Archives, *Missouri Compromise (1820)*, accessed February 11, 2025, https://www.archives.gov/milestone-documents/missouri-compromise.
[73] National Archives, *Kansas-Nebraska Act (1854)*, accessed February 11, 2025, https://www.archives.gov/milestone-documents/kansas-nebraska-act.
[74] Perrone, Giuliana. Lecture 15: *Slavery and Antebellum Politics,* November 21, 2024.
[75] U.S. Senate, *The Caning of Senator Charles Sumner*, accessed February 11, 2025, https://www.senate.gov/artandhistory/history/minute/The_Caning_of_Senator_Charles_Sumner.htm.

Sanford (1857), Harper's Ferry (1859), and the Fugitive Slave Act (1850)--the Presidential Election of 1860 can be seen as the culminating event leading to an irreversible outcome: the Civil War.[76] In 1860, President Abraham Lincoln was elected as the 16th President of the United States.[77] Despite the fact that Lincoln was not included on Southern presidential ballots, due to running on an anti-slavery platform, Lincoln won both the popular and electoral vote, with the 1860 election being the second highest voter-turnout election in the history of the United States.[78] However, the election of Lincoln was the deciding factor to secede for many Southern States, with South Carolina seceding from the Union just shy of a month after Lincoln's election.[79] By June of 1861, ten additional out the thirty-three states succeeded from the Union, in the following order: Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, North Carolina, and Tennessee.[80] With the succession of these states, the federal government faced an unprecedented conundrum: What threat would re-admittance to the Union pose for the integrity of the nation as a whole and the republican principles that the nation was founded on?

Wartime Reconstruction: Contention Surrounding Confederate Loyalty

In April of 1861, the conflict of the Civil War officially began, with Confederate forces firing upon Fort Sumter, a historic Union Naval base located in Charleston's Harbor,

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[76] Perrone, Giuliana. Lecture 15: *Slavery and Antebellum Politics,* November 21, 2024.
[77] Kentucky Legislature, *1860 Presidential Election*, accessed February 11, 2025, https://apps.legislature.ky.gov/LegislativeMoments/moments08RS/35_web_leg_moments.htm.
[78] The American Presidency Project, "Voter Turnout in Presidential Elections," University of California, Santa Barbara, accessed February 11, 2025, https://www.presidency.ucsb.edu/statistics/data/voter-turnout-in-presidential-elections.
[79] National Park Service, *South Carolina Secession*, accessed February 11, 2025, https://www.nps.gov/articles/000/south-carolina-secession.htm.
[80] Library of Congress, *1861: Time Line of the Civil War*, accessed February 11, 2025, https://www.loc.gov/collections/civil-war-glass-negatives/articles-and-essays/time-line-of-the-civil-war/1861/.

South Carolina.[81] The battle for Fort Sumter marked the beginning of the largest, most contentious ideological argument within the history of the United States. To understand the various ways both President Lincoln and Congress acted in relation to Confederate citizenship and disqualification, it is important to understand the individual interest political actors had for the results of the Civil War.

In an August 22, 1862, letter addressed to Horace Greeley, a House representative from New York, Abraham Lincoln stated that even higher priority that emancipation was the preservation of the Union: "I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored the nearer the Union will be 'the Union as it was'…my paramount object in this struggle is to save the Union and is not either to save or to destroy slavery. If I could save the Union without freeing any slave I would do it." [82] Lincoln is often credited for being a proponent for the rights of enslaved individuals through the Emancipation Proclamation of 1863, which held many purposes including shifting the focus of the war on an international and domestic scale to be about emancipation.[83] Further, historians also assert that the purpose of the Emancipation Proclamation was not to manumit enslaved individuals, but rather, to allow previously enslaved men to enlist in and thereby bolster Union forces.[84]

Lincoln's understanding and intention behind the Civil War–to preserve the integrity of the Union–can be noted in the lenient ways he understood legal

[81] U.S. Senate, "Civil War Begins," *United States Senate*, accessed February 11, 2025, https://www.senate.gov/artandhistory/history/minute/Civil_War_Begins.htm.
[82] Lincoln, Abraham. *To Edwin M. Stanton, Monday, August 08, 1864.* The Abraham Lincoln Papers at the Library of Congress. Accessed February 12, 2025. https://www.loc.gov/resource/mal.4233400/?st=text.
[83] American Civil War Museum. "Myths & Misunderstandings: Emancipation Proclamation." *American Civil War Museum Blog*, March 27, 2017. https://acwm.org/blog/myths-misunderstandings-emancipation-proclamation/.
[84] *Id.*

disqualification. On December 6, 1863, President Lincoln announced the "Proclamation of Amnesty and Reconstruction," commonly referred to as the 10% plan.[85] The proclamation allocated that if 10% of citizens in the Confederacy took an oath to "support, protect, and defend the Constitution of the United States" then that state could be readmitted to the Union.[86] However, the proclamation barred specific groups of individuals from having their citizenship rights reinstated:

> The persons excepted from the benefits of the foregoing provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called Confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called Confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States congress to aid the rebellion; all who resigned commissions in the army or navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.[87]

While Lincoln's Amnesty and Reconstruction proclamation held certain restrictions for high-ranking Confederate officials, the plan itself was incredibly lenient towards southern civilians, even if they had served the Confederacy. Lincoln, by only allowing the loyalty threshold to be 10% for readmittance, believed that a reconstructed Union government would be successful, despite such a low threshold. However, Lincoln failed to consider the prevalence of ongoing Southern ideology resistance to Union policy– which could allow the possibility of similar political conflict between the North and South.

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[85] Abraham Lincoln, "Proclamation of Amnesty and Reconstruction," December 8, 1863, *Freedmen & Southern Society Project*, University of Maryland, accessed February 12, 2025, https://www.freedmen.umd.edu/procamn.htm.
[86] *Id.*
[87] *Id.*

As aforementioned by Lincoln's 1862 letter, such leniency can be attributed towards preserving the Union, and subsequently eliminating the existence of the Confederacy.

Despite Lincoln's intention to preserve the Union, Radical Republicans were vehemently opposed to such levels of leniency. Henry Winter Davis, House Representative from Maryland, opposed Lincoln's Ten-Percent plan due to its flexibility towards Confederates. In 1864, Davis addressed the House regarding his disapproval of Lincoln's Amnesty Proclamation, stating,

> That proposes no guardianship of the United States over the reorganization of the governments, no law to prescribe who shall vote, no civil functionaries to see that the law is faithfully executed, no supervising authority to control and judge of the election. But if in any manner by the toleration of martial law, lately proclaimed the fundamental law, under the dictation of any military authority, or under the prescription of a provost marshal, something in the form of a government shall be presented, represented to rest on the votes of one tenth of the population, the President will recognize that, provided it does not contravene the proclamation of freedom and the laws of Congress; and to secure that an oath is exacted. There is no guaranty of law to watch over the organization of that government. It may be recognized by the military power, and not recognized by the civil power, so that it would have a doubtful existence, half civil and half military, neither a temporary government by law of Congress nor a State government, something as unknown to the Constitution as the rebel government that refuses to recognize it. The only prescription is that it shall not contravene the provisions of the proclamation. Sir, if that proclamation be valid, then we are relieved from all trouble on that score. But if that proclamation be not valid, then the oath to support it is without legal sanction, for the President can ask no man to bind himself by an oath to support an unfounded proclamation or an unconstitutional law even for a moment, still less after it shall have been declared void by the Supreme Court of the United States.[88]

Davis was wary of the feasibility of the 10% plan in establishing reconstructed Union governments, citing that the former-Confederates might refuse to recognize the new governmental system. Such examinations of the feasibility of the plan can be noted as concern amongst Congressmen in establishing truly loyal governments within the rebel

[88] James G. Blaine, *Twenty Years of Congress: From Lincoln to Garfield*, vol. 2 (Norwich, CT: Henry Bill Publishing Company, 1886.

territories, which was also a concern amongst Congressmen Zachariah Chandler, a Michigan Senator, Thaddeus Stevens, a House representative from Pennsylvania, and Charles Sumner.[89] The group introduced the Wade-Davis Bill, which was passed by both the House of Representatives and the Senate. The bill was much stronger than Lincoln's ten-percent plan, requiring that 50% loyalty threshold of Confederates who swore loyalty to the Union:

> The provisional governor shall direct the marshal of the United States, as speedily as may be, to name a sufficient number of deputies, and to enroll all white male citizens of the United States, resident in the state in their respective counties, and to request each one to take the oath to support the constitution of the United States, and in his enrollment to designate those who take and those who refuse to take that oath, which rolls shall be forthwith returned to the provisional governor; and if the persons taking that oath shall amount to a majority of the persons enrolled in the state, he shall, by proclamation, invite the loyal people of the state to elect delegates to a convention charged to declare the will of the people of the state relative to the reestablishment of a state government subject to, and in conformity with, the constitution of the United States.[90]

Unlike Lincoln, Radical Republicans understood that disloyal Confederates posed risk to the Union's ability in implementing preliminary Reconstruction policy. As a result, the proposers of the bill mandated that over half of Confederates prescribe their loyalty to the state. However, similar to Lincoln, the Wade-Davis bill also held a legal disqualification provision: "No person who has held or exercised any office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, state or confederate, under the usurping power, shall vote for or be a member of the legislature, or governor."[91] Despite being passed by both the House of Representatives and

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[89] "The Wade-Davis Bill**,**" *Mr. Lincoln and Freedom*, accessed February 14, 2025, https://www.mrlincolnandfreedom.org/civil-war/reconstruction/wade-davis-bill/index.html#:~:text=The%20Wade,rank%20above%20a%20colonelcy%2C%20to.
[90] **"**Wade-Davis Bill (1864)." *National Archives*. Accessed February 14, 2025. https://www.archives.gov/milestone-documents/wade-davis-bill#transcript.
[91] *Id.*

the Senate, Lincoln pocket vetoed the Wade Davis-Bill.[92] In a Proclamation on July 8, 1964, Lincoln addressed his reasons for vetoing the bill, stating:

> Now, therefore, I, ABRAHAM LINCOLN . . . do proclaim . . . that, while I am (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared by a formal approval of this bill, to be inflexibly committed to any single plan of restoration; and, while I am also unprepared to declare that the free state constitutions and governments already adopted and installed in Arkansas and Louisiana shall be set aside and held for naught, thereby repelling and discouraging the loyal citizens who have set up the same as to further effort, or to declare a constitutional competency in Congress to abolish slavery in states, but am at the same time sincerely hoping and expecting that a constitutional amendment abolishing slavery throughout the nation may be adopted, nevertheless I am truly satisfied with the system for restoration contained in the bill as one very proper plan for the loyal people of any State choosing to adopt it, and that I am, and at all times shall be, prepared to give Executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suppressed in any such State, and the people thereof shall have sufficiently returned to their obedience to the Constitution and the laws of the United States, in which cases military governors will be appointed, with directions to proceed according to the bill.[93]

Lincoln's Proclamation and the pocket-veto of the Wade-Davis bill tells historians the importance of the values of individual office holders. Despite both the House of Representatives and the Senate passing the Wade-Davis Bill, due to Lincoln's concerns that the bill was too strict in punishment to "loyal Confederates" the bill was never enacted. While Radical Republicans had a differing plan for reunifying the Union, with Congress visualizing reunification with consequences for, this does not remain as an explicit concern held by Lincoln evident through the 10% plan. Wartime Reconstruction helps historians

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[92] "The Wade-Davis Bill," *U.S. Senate: Art & History*, accessed February 14, 2025, https://www.senate.gov/artandhistory/history/common/generic/Wade-DavisBill.htm#:~:text=President%20Lincoln%2C%20who%20had%20earlier,Congress%20had%20not%20yet%20reached.

[93] Abraham Lincoln, Proclamation 115—Concerning a Bill "To Guarantee to Certain States, Whose Governments Have Been Usurped or Overthrown, a Republican Form of Government," and Concerning Reconstruction Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/202406

understand how the goals of individual political actors can overpower the democratic processes that the Union was founded upon.

Nevertheless, both provisions held disqualification clauses, barring high-ranking Confederates from holding office and limiting citizenship rights. Despite differing in the percentage of citizens needed to reestablish a state government, both Lincoln and Radical Republicans felt it imperative to bar high ranking Confederates from holding positions of governmental power. The idea that the state must disqualify high ranking officials that lead rebellion against its foundational principles, was–even during disputes surrounding how Reconstruction–an uncontentious viewpoint, by both Lincoln and Radical Republicans. The ideas surrounding legal disqualification have been a consistent conversation throughout American history, even during times of political instability and crisis. The next sub-chapter, which touches Wartime Reconstruction, further outlines the importance of personnel, regarding proposing varying policies to address Confederate readmittance. Analyzing the variance between President Jonhson's and Congress' political approach to Confederate readmittance, and subsequently legal disqualification for high-ranking Confederates helps historians understand how personnel impacts policy.

Presidential Reconstruction: The Importance of Personnel

On April 14, 1865, Abraham Lincoln was assassinated by John Wilkes Booth, a Confederate sympathizer.[94] The next day, Andrew Johnson–Lincoln's Former Vice President–was inaugurated as the 17th President of the United States. The conflict of the Civil War formally ended on April 9, 1865, with Robert E. Lee–head of the Confederacy's

[94] Laughlin, Clara E. *John Wilkes Booth: The Story of His Life and Death*. New York: Fleming H. Revell Company, 1907. https://archive.org/details/johnwilkesbooths00clar_0.

military–surrendering to Union forces at Appomattox Court House.[95] The following month, on May 29, 1865, President Johnson released the "Proclamation of Amnesty and Pardon for the Confederate States" in which he granted presidential amnesty for individuals who,

> Directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property, except as to slaves and except in cases where legal proceedings, under the laws of the United States providing for the confiscation of property of persons engaged in rebellion, have been instituted; but upon the condition, nevertheless, that every such person shall lake and subscribe the following oath.[96]

However, the proclamation barred amnesty for fourteen different classifications, with a large majority including Confederates who had previously held an oath to protect and uphold the Constitution and betrayed their allegiance to join the Confederacy. In response to this, Confederates barred from amnesty–the majority of whom due to holding over $20,000 in taxable property–wrote personally to Johnson begging for amnesty. Many historians argue that, "Lincoln's leniency toward the latter [high-ranking Confederates] provided a clear precedent for the amnesty proclamation promulgated by his successor, Andrew Johnson."[97] Confederates under these fourteen categories utilized this leniency, personally writing to Johnson regarding their legal disqualification, asking for presidential amnesty for the restoration of their citizenship rights. While many of these records contained standardized Amnesty Oaths by those who had been barred due to the fourteen

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[95] "Civil War Facts." *American Battlefield Trust*. Accessed February 14, 2025. https://www.battlefields.org/learn/articles/civil-war-facts#:~:text=The%20war%20ended%20in%20Spring,%2C%20on%20May%2013%2C%201865.

[96] Johnson, Andrew. *Amnesty Proclamation, May 29, 1865.* Tennessee State Library & Archives. Accessed February 14, 2025. https://sharetngov.tnsosfiles.com/tsla/exhibits/aale/pdfs2/1865%20Johnson's%20Amnesty%20Proclamation.pdf.

[97] McCaslin, Richard B. "Reconstructing a Frontier Oligarchy: Andrew Johnson's Amnesty Proclamation and Arkansas." *The Arkansas Historical Quarterly* 49, no. 4 (1990): 313–29. https://doi.org/10.2307/40038173.

classifications, some included personalized letters to President Johnson, asking for presidential pardons. For instance, in a letter to President Johnson from an ex-Confederate soldier, named James Adams, he writes,

> I, James Adams, a citizen of Loudoun County, in the State of Virginia, respectfully state that I was in the Loudoun Battery in the rebel service. took the oath of allegiance then as required by the military authorities, in order that I might take advantage of the Amnesty Proclamation of President Lincoln…Then, on the 30th day of May 1865, I took, at the same place, the oath in compliance with President Johnson's Proclamation. I differ in no form from the above-mentioned oath and hold it in substance. The latter oath was taken before Lt. H.W. Fetter, 15th U.S. Infantry, Provost Marshal.[98]

Adams, and other former Confederates, clearly understood that being a part of the rebellion barred him from not only holding office but being restored to full citizenship rights under Johnson's Proclamation. However, Johnon's 1865 Proclamation was not the only Proclamation the President issued regarding Amnesty and Pardons. Johnson issued two additional Proclamations–one in September of 1867 and the other in December of 1868. Both broadened the scope of presidential amnesty under Reconstruction, with the former allowing general amnesty to Confederates, other than: (1) High-Ranking Confederate Officers, (2) Confederates who mistreated Union prisoners of war, and (3) all individuals who engaged in the assassination of Abraham Lincoln.[99] However, the later proclamation, entitled "Granting Full Pardon and Amnesty to All Persons Engaged in the Late Rebellion," commonly referred to as the Christmas Amnesty granted a presidential pardon to every individual who engaged in the Confederacy:

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[98] Library of Virginia, Archives and Manuscripts Room Manuscripts (31057 Miscellaneous reels 3927-3942), accessed January 15, 2025.

[99] Andrew Johnson, "Proclamation Restoring All Rights to the Rebellion," September 7, 1867, *Miller Center*, University of Virginia, accessed February 14, 2025, https://millercenter.org/the-presidency/presidential-speeches/september-7-1867-proclamation-restoring-all-rights-rebellion.

> I, Andrew Johnson, President of the United States, by virtue of the power and authority in me vested by the Constitution, and in the name of the sovereign people of the United States, do hereby proclaim and declare unconditionally, and without reservation, to all and to every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason against the United States, or of adhering to their enemies during the late civil war, with restoration of all rights, privileges, and immunities under the Constitution and the laws which have been made in pursuance thereof.[100]

Unlike the Wade-Davis Bill, Lincoln's Amnesty Proclamation, and Johnson's prior proclamations, the Christmas proclamation restored full citizenship rights to all Confederates, including high-ranking individuals like Robert E. Lee and Jefferson Davis. In this way, Johnson went against the historical tradition of punishing those who have engaged in insurrection, as evident by colonial disqualification provisions and the Disqualification Act after the Shays Rebellion.

Congressional Republicans understood this. During this time, the Fourteenth Amendment had been passed, and Johnson just lost the Election of 1868, thereby allowing Johnson to push executive measure with no ramifications to his Executive authority– highlighting how important individual personnel in not only approving of policy widely accepted by Congress, but also in pushing executive measure affect the civic processes of the nation.[101]

Throughout Wartime and Presidential Reconstruction, leniency towards former Confederates grew in popularity among moderate Republicans and Northern Democrats, like Lincoln and Johnson. While Lincoln propounded for a pragmatic approach to Reconstruction, with the establishment of reconstruction Union governments in territories

[100] Andrew Johnson, "Proclamation 153—Granting Amnesty to Participants in the Rebellion," May 29, 1865, *Library of Congress*, accessed February 14, 2025, https://www.loc.gov/resource/rbpe.23602600/?st=pdf&pdfPage=1.
[101] "The Election of 1868," American Battlefield Trust, accessed February 14, 2025, https://www.battlefields.org/learn/articles/election-1868.

of rebellion, Johnson pushed for the eradication of Reconstruction efforts entirely.[102] In this way, Johnson encouraged a return to the Antebellum status quo, which was vehemently opposed to by Radical Republicans. However, such leniency was not met with resistance by Radical Republicans, as evident by the Wade-Davis Bill and the impeachment of Johnson (touched upon further in Chapter 4). Despite these various forms of political resistance by Radical Republicans, the actions conducted by Lincoln and Johnson regarding the leniency of legal disqualification through various Amnesty Proclamations showcases the importance of individual personnel for maintaining the democratic principles of the United States was founded on. Johnson ongoing resistance to strict Reconstruction policy from Radical Republicans–as seen by his pardons and veto of the Freedmen's Bureau–pushed Radical Republicans to respond with more significant approaches, like amending the Constitution to ensure the rights of Black Americans were enshrined within the foundational document of the United States.[103]

[102] McKitrick, Eric L. *Andrew Johnson and reconstruction*. Oxford University Press, 1988.
[103] U.S. Senate. "Impeachment of Andrew Johnson." *United States Senate*, accessed March 9, 2025. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-johnson.htm.

Chapter 4

Radical Reconstruction and Redemption: The Ambitions of the Fourteenth Amendment

Chapter 4 will discuss the two subsequent eras for Reconstruction following Wartime Reconstruction: Radical Reconstruction and Redemption. This chapter argues that in response to the leniency displayed by President Johnson, Radical Republicans in Congress felt it imperative to implement a legal disqualification provision within the most central document of United States jurisprudence, evident by the proposal of Section 3 of the Fourteenth Amendment. In doing so, the Framers of the Constitutional Amendment aimed to address two things: (1) the prevalence of Confederate sentiments that remained prevalent in the South, and therefore, posed a threat to reunion efforts, and (2) imposing consequences for insurgents who previously had taken an official oath to protect and defend the Constitution of the United State and subsequently broke their allegiance. The chapter assess the substantive and concrete ramifications of not executing legal disqualification provisions to former-Confederates, as evident with the threat of former-Confederate re-admittance into positions of political authority to reinstate the status quo. Putting the arguments surrounding Radical Reconstruction and Redemption in conversation with one another, this chapter highlights the strength of disqualification's ability to protect the state from those who threaten its interest and, subsequently, the

weakness that emerged within the state when the provision is not applied in its capacity against public officials, as evident by the increase of Jim Crow policies within the South.

This chapter discusses the debates surrounding the ratification of Section 3 of the Fourteenth Amendment, commonly referred to as the disqualification provision. In discussing the various debates amongst Constitutional Framers surrounding the clause, historians can analyze the historical inconsistencies within the majority's ruling in *Trump v. Anderson*. Further, these debates highlight how Congressional actors understood the limits of presidential authority in deciding which individuals were capable of amnesty and the restoration of citizenship rights. This subsection utilizes primacy source materials from the Congressional Globe, in an attempt to analyze posed by the Constitutional Framers when discussing ratification.

The chapter also addresses ex-Confederate responses to the ratification of Section 3 of the Fourteenth Amendment, with many writing to Congress explaining the circumstances of their actions and begging for clemency to continue their occupation. Evaluating these letters helps historians to understand that ex-Confederates understood that Section 3 of the Fourteenth Amendment was, in fact, a self-executing provision, as contested in *Trump v. Anderson*. Evaluating Confederate response to the provision also helps historians to understand how strong Section 3 of the Fourteenth Amendment truly was when applied correctly and intentionally by Congress.

Lastly, this chapter discusses the political shift within Congress due to many ex-Confederates regaining positions of political leniency within Congress, as evident in the case of Alexander H, Stephens—who was the Vice President of the Confederacy. In evaluating this, historians can understand the tangible consequences of deviating from a

strict application of legal disqualification and how such consequences largely contributed to an increase in oppressive policies, with effects still being felt today.

Debates Surrounding the Ratification of Section 3 of the Fourteenth Amendment

Section 3 of the Fourteenth Amendment is the most integral constitutional provision of this thesis. As aforementioned, Section 3 states,

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.[104]

The origins of the amendment were proposed by John Bingham, a House Representative, Radical Republican, and instrumental Constitutional Framer of the Fourteenth Amendment of the United States Constitution. On January 25, 1866, Bingham proposed the foundations of Section 3 in a speech to the House of Representatives, stating,

> And are gentlemen…to sit here and deliberate for one moment whether it is necessary to place such limitation upon these States if they are to be restored, and especially if they are to be restored on the basis claimed by gentlemen on that side of the House who opposed this amendment–restored with the governing power in every one of the eleven rebel States in the hands of the very men who but yesterday waged war against the life of the Republic?[105]

Laying the seeds of what were to become Section 3 of the Fourteenth Amendment, Bingham addresses the threat of having former-Confederates in positions of political authority, arguing that the military defeat of Confederates does not conflate to concordant agreement regarding the social, civil, and political rights of formerly enslaved individuals. In this way, Bingham warns that widespread reinstatement of former Confederates within

[104] U.S. Const. amend. XIV, § 3.
[105] Congressional Globe, *39th Congress,* 1st Session 429 (1868).

both state and federal governments threatens the future of the Union and undermines the reasons for war at the onset.

Radical Republicans vehemently opposed Johnson's leniency towards ex-Confederates. In response to Johnson's ongoing reluctance to comply with Congress' Reconstruction policy, the House of Representatives passed a Resolution of Impeachment against Johnson on February 24, 1868, by a vote of 126 to 47. While introducing the resolution, Thaddeus Stevens, a House Representative from Pennsylvania and the drafter of the resolution stated,

> The President had persevered in his lawless course through a long series of unjustifiable acts. When the so-called confederate States of America were conquered and had laid down their arms and surrendered their territory to the victorious Union the government and final disposition of the conquered country belonged to Congress alone, according to every principle of the law of nations. Neither the Executive nor the judiciary had any right to interfere with it except so far as was necessary to control it by military rule until the sovereign power of the nation had provided for its civil administration. No power but Congress had any right to say whether ever or when they should be admitted to the Union as States and entitled to the privileges of the Constitution of the United States. And yet Andrew Johnson, with unblushing hardihood, undertook to rule them by his own power alone; to lead them into full communion with the Union; direct them what governments to erect and what constitutions to adopt, and to send representatives and Senators to Congress according to his instructions.[106]

Among the list of grievances Radical Republicans had against Johnson was the fact that he attempted to send representatives and Senators to Congress, individuals that were involved within the Confederacy, despite Congress passing the Fourteenth Amendment two years prior, in 1866.[107] Understanding the Congressional debates surrounding Section 3 of the Fourteenth Amendment is integral for two reasons. First, it allows legal historians to evaluate how Congress envisioned the provision to protect the integrity of the state.

[106] Congressional Globe, *40th Congress, Session 2 1400* (1868).
[107] National Archives. "14th Amendment to the U.S. Constitution: Civil Rights (1868)." *National Archives.* Accessed February 20, 2025. https://www.archives.gov/milestone-documents/14th-amendment.

Second, understanding these historical debates are integral to address how the Roberts Court misrepresents the arguments of the Framers.

In understanding how expansive Constitutional Framers intended Section 3 to be, it is important to review the various attempts to amend the proposed section, as a result, historians can evaluate if Constitutional Framers felt it pertinent to specify if the provision applied solely to the contextual specific time-frame immediately preceding the Civil War, or if the provision was intended to remain an integral part of jurisprudence throughout the course of United States history. A proposed amendment to a draft version Section 3 read,

> That no person shall be a Senator or Representative in Congress, or elector of the President and Vice President, or hold any office civil or military, under the United States, or under any State, who having previously taken oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two third of each House, remove such disabilities,[108]

Senator Reverdy Johnson of Maryland, stated that he, "move to amend the amendment by striking out…the words 'having previously taken' and inserting 'at any time within the then years preceding the 1st of January, 1861, had taken.'"[109] However, out of the 42 members present, 32 voted against the proposed amendment to the amendment, highlighting that Congress' intended for the provision to not only apply within the Post-Bellum context, but rather as a continuous provision throughout the history of the United States.[110]

Furthermore, Congressional members also debated whether the President has the authority to issue amnesty for individuals who would be otherwise disqualified from

[108] Congressional Globe, *39th Congress* 2897 (1868).
[109] Congressional Globe, *39th Congress* 2900 (1868).
[110] *Id.*

holding office under Section 3 of the Fourteenth Amendment.[111] Similarly, however, this proposed amendment to the amendment was rejected, as well.[112] This rejection by Congress highlights two distinct things: (1) the limitation of Executive authority with regards to issuing wide-spread pardons follows a general idea that stems from such limitations from the colonial period, and (2) the response to Johnson's "Christmas Amnesty" widespread amnesty for former-Confederates.

In discussing the validity and implementation of Section 3, Senator Waitman Willey, a Republican from the newly admitted state of West Virginia, spoke about how implementing such an amendment was integral in maintaining the authority of the state overall,

> Would there be any justice or any prosperity in allowing men to be again introduced into the Government who have, under such circumstances as these, shown themselves to be so faithless to their trust? That is the question; and looking to the future peace and security of this country, I ask whether it be just or right to allow men who have thus proven themselves faithless to be again intrusted with the political power of the State. I think not; and upon that ground I think this exclusion is wise, is just, is charitable, and is Chrsitian, and that we should be faithless to our trust if we allowed the interest of the country and its future peace and welfare to be again disturbed by men who have shown themselves thus faithless in the past. And, sir, it does seem to me that there is a degree of presumption in men who have hardly yet washed their hands of the blood of our fellow-citizens that they have shed in their insane efforts to destroy this Government, coming here and clamoring at the door of Congress again for the very political power which they have hitherto used for destruction of this Government.[113]

Willey argues that by seceding, individuals in the Confederacy proved their disloyalty to the Union and, subsequently are unable to be trusted as fit representatives for the nation or be trusted to maintain the foundations of a democratic system. The Senator also asserts that the provision is intended to protect the future integrity of the state by

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[111] *Id.*
[112] *Id.*
[113] Congressional Globe, *39th Congress* 2918 (1868)

having representatives that are loyal to a constitutional democracy, showcasing how the provision was intended to be a part of a more expansive historical application to ensure lasting peace and stability within the United States.

Another prominent debate that occurred within Congress prior to the ratification of Section 3 of the Fourteenth Amendment was whether receiving a presidential pardon or amnesty entirely restored one's citizenship rights, and subsequently, allowed them to hold office under Section 3. James Doolittle, a Republican senator from Wisconsin, proposed to insert the line, "excepting those who have duly received pardons and amnesty under the Constitution and laws."[114] However, such provision was rejected, with 32 out of 42 senators voting nay, highlighting how one could still be barred from holding office despite being pardoned for their rebellious actions. As per the Framers' understanding, pardons only restore the right of citizenship but does not remove the legal disabilities imposed by Section 3 of the Fourteenth Amendment. In layman's terms, Section 3 does not remove citizenship rights, but rather, it imposes a restriction on insurgents. There is an innate difference between denying voting rights and denying the ability to be on a voting ballot, and that is what Section 3 delineates. By winning the military battle of the Civil War, the Union government had the authority to control what such restrictions constituted and how they are to be imposed.

Furthermore, constitutional scholars, including the Roberts Court, have debated whether Section 3 of the Fourteenth Amendment requires Congressional execution to be enforceable. Many individuals who believe that the provision requires Congressional execution site Section 5 of the Fourteenth Amendment for this rationale. Section 5 states,

[114] Congressional Globe, *39th Congress* 2921 (1868)

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."[115] However, Constitutional Framers understood that by ratifying Section 3, state legislatures agreed that the disqualification clause bars an individual from holding office if they had previously engaged in an insurrection. For instance, Lyman Trumbull, a Senator from Illinois, when discussing the passage of the Enforcement Acts, which attempted to regulate the execution of the disqualification clause, stated that,

> This section disqualifies nobody. It is the fourteenth amendment that prevents a person from holding office. It declares certain classes from holding office. It declares certain classes of persons ineligible to office, being those who have once taken an oath to support the Constitution of the United States, afterward went into rebellion against the United States.[116]

It is evident that during and immediately following the ratification of the Constitution, political actors understood that Section 3 was self-executing. This is further asserted by Myles Lynch in his article, "Disloyalty & Disqualification: Reconstructing Section 3 of the Fourteenth Amendment" he asserts that, "the Fourteenth Amendment has been reconceptualized as primarily being judicial, rather than congressionally, enforceable. It would be inherently inconsistent to interpret [Section 3 of the Fourteenth Amendment] as requiring enacting legislation."[117]

The self-executing nature of the disqualification clause is not the only debate concerning legal historians. The Robert's Court ruling in *Trump v. Anderson*, further convoluted who Section 3 of the Fourteenth Amendment could be executed upon. The Roberts Court does not address who Section 3 applies to; however, it is evident that

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[115] U.S. Const. amend. XIV, § 5.

[116] Congressional Globe, *41th Congress 626* (1868).

[117] Myles S. Lynch, *Disloyalty & Disqualification: Reconstructing Section 3 of the Fourteenth Amendment*, 30 Wm. & Mary Bill Rts. J. 153 (2021), https://scholarship.law.wm.edu/wmborj/vol30/iss1/5

Framers understood the provision to apply to the President or Vice President.[118] Indeed, the Framers of the Amendment explicitly specified that the role of the Executive is included in civil office:

> Mr. Johnson: I do not see but that any one of these gentlemen may be elected President or Vice President of the United States, and why did you omit to exclude them [in the proposed amendment]? I do not understand them to be excluded from the privilege of holding the highest office in the gift of the nation.
>
> Mr. Morrill: Let me call the Senator' attention to the words "or hold any office, civil or military, under the United States."[119]

The authors of the Fourteenth Amendment intended the disqualifying provision to apply to both the President and Vice President. Analyzing the debates surrounding the ratification of Section 3 helps legal historians understand that Constitutional Framers intended Section 3 to not only encompass all political officers, but also remain a provision that, by being enshrined in the Constitution, is a legal mechanism to protect the integrity and stability of the United States from individuals who rebel against foundational constitutional provisions. Further, if the current Roberts Court intends to conduct an originalist interpretation of Section 3 of the Fourteenth Amendment, they must contend with all debates and discernments surrounding it. To follow the history and tradition of a legal provision, one must ensure that the entirety of the history and tradition is accounted for.

Confederate Response to the Ratification of Section 3 of the Fourteenth Amendment

Ratification of the Fourteenth Amendment was a requirement imposed on rebellion states to be considered for readmission into the Union.[120] By 1870, the Fourteenth

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[118] *Trump v. Anderson*, 144 S. Ct. 662, 601 U.S. 100 (2024).
[119] Congressional Globe, *39th Congress* 2899 (1868)
[120] U.S. Senate. "Civil War Admission/Readmission." U.S. Senate, n.d. Accessed February 22, 2025. https://www.senate.gov/artandhistory/history/common/generic/Civil_War_AdmissionReadmission.htm.

Amendment was enforceable against any individual campaigning for federal office within the United States, which subsequently enshrined the applicability of the disqualification clause against ex-Confederates.[121] In response to the ratification of the Fourteenth Amendment, many former confederates in positions of political and civil authority wrote to both the Senate's Select Committee on the Removal of Political Disabilities and the Committee on the Judiciary to petition for relief from the political disabilities imposed by the disqualification clause.[122]

Former Confederates understood that Section 3 of the Fourteenth Amendment was the legal provision that imposed political and disabilities and is not the result of Congressional legislation. Furthermore, the petitions highlighted in this chapter will illustrate how former Confederates, or those petitioning on behalf of Former-Confederates, attempted to persuade Congress of their newfound loyalty, despite being active participants in the rebellion. By understanding how former-Confederates understood the Fourteenth Amendment, historians can evaluate the strength of the disqualification clause when executed at its full capacity against insurgents.

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[121] U.S. Congress. "Ratification of the Fourteenth Amendment." Constitution Annotated. Accessed February 22, 2025.https://constitution.congress.gov/browse/essay/intro-3-4/ALDE_00000388/%5B'ord',%20'amendment'%5D#:~:text=The%20several%20state%20legislatures%20ratified%20the%20Fourteenth%20Amendment%20on%20the,Amendment%20February%207%2C%201867.

[122] National Archives, *Presidential Pardons and Congressional Amnesty to Former Confederate Citizens, 1865–1877*, rev. November 2014, p. 2

John F. Arnold, Mississippi

John F. Arnold, a lawyer, state legislature, and Circuit Judge from Tishomingo County, Mississippi appealed to Congress in a petition from the early 1870s.[123] In the petition, Arnold writes,

> To the Honorable Senate and House of Representatives of the United States of America:
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> Your petitioner, John F. Arnold, a citizen of the County of Tishomingo and State of Mississippi, would most respectfully represent unto your Honorable Body, that in consequence of the adoption of the 14th Amendment of the Constitution of the United States, I am disfranchised and deprived of my civil and political rights as a citizen of the Federal Government in consequence of my participation in the late war, and I would respectfully submit for your consideration my Political Status.
>
> To wit: In politics, I was a States' Rights Democrat prior to the war. In 1847, I was elected a member of the Legislature of the State of Mississippi and served as such for a period of two years, and I was afterwards elected to and held the office of Judge of Probate of Tishomingo County for a term of five years. I have held no civil or political office since the year 1860.
>
> I was in favor of the separation of the State of Mississippi from the Federal Government in the year 1861 and went into the Confederate Service as a private in the year 1863 and was immediately promoted to the office of Quartermaster with the rank of Captain, and was afterwards promoted to the rank of Major and remained in said service until the year 1865, at which time I was duly paroled and came home and resumed the practice of law and have in good faith acquiesced in and supported all the laws passed by the Congress of the United States, and recognized Congress as the legitimate lawmaking power of the Government.
>
> I have uniformly advocated the reestablishing of our federal relations according to the Reconstruction Laws passed by Congress, and was opposed to the adoption and ratification of the Constitution of the State of Mississippi passed by the Convention in 1868, because I conceived it was too proscriptive in its provisions. The disfranchising clauses were stricken out by the President of the United States, and I then became an advocate of its adoption and ratification.
>
> In the last canvass, I was a friend and supporter of that wing of the Republican Party of the State of Mississippi headed by the noble and gallant James L. Alcorn, and endorsed the platform of principles upon which he was elected Governor.

[123] Find a Grave, "John Fredrick Arnold," *Find a Grave*, accessed February 22, 2025, https://www.findagrave.com/memorial/18542633/john-fredrick-arnold.

> I therefore respectfully request that your Honorable Body take the necessary and proper steps to remove any civil and political disabilities imposed as aforesaid and restore me to my original constitutional rights in the Government, all of which is respectfully submitted.
>
> John F. Arnold[124]

In writing this letter, Arnold highlights many interesting factors regarding not only his personal view of the legal disqualification for Confederates, but also his beliefs regarding the war itself. Explaining that his apprehensiveness to the ratification of Mississippi's Constitution was due to the limitations it imposed on former Confederates—which directly showcases the validity of the Framers' concerns that former Confederates would want to regain political strength within the government. Military defeat does not constitute a defeat of ideological differences; therefore, Framers of the Fourteenth Amendment attempted to ensure individuals who evidently violated their constitutional allegiance were not allowed positions of political authority in an already unstable government.

Furthermore, to bolster his appearance of loyalty to the Union, Arnold attempts to align himself with various Republican officials, like Governor Alcorn, in hopes that such alignment would bear weight by Congress for the reinstatement of his position. It is worth nothing, however, that Arnold possesses little to no remorse for his actions in the rebellion, even stating the various ways he vehemently opposed to Republican ideas to maintain political stability. Such lack of remorse can be noted as one of the many concerns of Radical Republicans regarding former Confederate readmittance, as noted in the previously.

[124] John F. Arnold, "Petition for Removal of Political Disabilities," 1870, Records of the U.S. Senate, Record Group 46, National Archives, Washington, D.C.

There was wide-spread variation in the pleas former-Confederates produced to Congress. While some, like Arnold's, were written by individuals who were politically disenfranchised as a result of the disqualification clause, others were written on behalf of former-Confederates. For instance, James C. Tappan's petition to the Select Committee on the Removal of Political Disabilities produced by various civil officer holders who believed that Tappan was deserving of the reinstatement of his political and civil rights. His petition reads,

> To the Senate and House of Representatives, Washington, D.C.:
>
> Your petitioners earnestly recommended to your honorable body the speedy removal of the political disabilities of our highly-esteemed citizen, General James C. Tappan. In his patriotism and integrity we have the highest confidence. His course, since the surrender, had been mild and conciliatory; his example and labors on behalf of the law and order have been all that we could ask; of him the loyal people are most proud. We cordially recommend him to your confidence and esteem.[125]

To adequately understand the gravity of requesting such reinstatement of political and civil rights, it is important one understand Tappan's role within the Confederacy. Prior to the Civil War, Tappan served as Circuit Court Judge and Arkansas State Legislature, both positions which require an oath to uphold the Constitution of the United States.[126] After Arkansas seceded from the Union, Tappan joined the Confederate army and rose to the rank of Brigadier General in 1862.[127] Throughout the war, Tappan participated in eight major battles against Union forces, including the Battle of Jenkins' Ferry, which was the last significant Confederate operation West of the Mississippi River.[128] Tappan's Arkansas

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[125] "Petition of Citizens of Arkansas Praying the Removal of Political Disabilities of James C. Tappan," June 15, 1870, Records of the U.S. Senate, Record Group 46, Roll 1, National Archives, Washington, D.C.
[126] Encyclopedia of Arkansas. "James Camp Tappan (1825–1906)." Central Arkansas Library System. Accessed February 27, 2025. https://encyclopediaofarkansas.net/entries/james-camp-tappan-1192/.
[127] *Id.*
[128] Justice, Ernest D. "James Camp Tappan: His Life and Deeds." *Phillips County Historical Quarterly* 3 (June 1965): 5–18.

estate, which is marked as a historical site referred to as the "Tappan-Pillow House," included slave quarters, highlighting the Tappan's beliefs regarding slavery and its position within the United States. As a result, Tappan's petition for the removal of political disabilities imposed by the Fourteenth Amendment raises interesting questions regarding his loyalty to the Union. Tappan not only individually fought against the Union but led a brigade of thousands of Confederates. The verbiage used by the petitioners, many of whom were judges, sheriffs, assessors, and other civil offices, is an intentional choice to persuade Congress to consider removing Tappan's political disabilities. Classifying Tappan as "patriotic," when his actions in the Civil War proved anything but was an intentional choice by the petitioners to prove Tappan's "newfound" loyalty. Despite, Tappan's blatant portrayals of disloyalty due to his actions in the Civil War, the former brigade leader was eventually reinstated of his full citizenship rights due to the Amnesty Act of 1872.

The Start of Leniency

In 1872, Congress passed the Amnesty Act, just six years after the passages of the disqualification clause. The Act read,

> Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), that all political disabilities imposed by the third section of the fourteenth article of amendments of the Constitution of the United States are hereby removed from all persons whomsoever, except Senators and Representatives of the thirty-sixth and thirty-seventh Congresses, officers in the judicial, military and naval service of the United States, heads of departments, and foreign ministers of the United States.[129]

Congressional members, like Senator Lot M. Morrill, a Moderate Republican from Maine, asserted that such legislation that granted general amnesty to former Confederates was not only a requirement, but also was, based on Lincoln's Amnesty Proclamations, a

[129] Congressional Globe, *42th Congress, Session 2* Ch. 193, 194 (1872)

measure by Congress that was consistent with the historical tradition of legal disqualification.[130] Morrill states,

> Prosecuting the war upon this ground [legal disqualification], necessarily, at the surrender, these twelve million people, formerly citizens, were subjects in a state of total and civil political disability without the right of protection from the Government of the United States. Besides that, as I have already said, the operation of this principle and this conclusion of the war, disastrous to them, prosperous to us, had left these States in a perfect state of disorganization. How were they to be relieved by that condition of affairs? …The first step therefore was amnesty.[131]

By arguing that general amnesty was a necessary condition for positive Reconstruction efforts, Morrill entirely misrepresents how Constitutional Framers understood Section 3 of the Fourteenth Amendment to be invoked. While it is untrue that every individual who resided in the South during the Civil War was not a Confederate, nor aided the Confederacy, the act granted amnesty to 150,000 former Confederates who would have thereby been disqualified under the principles of the disqualification clause.[132] It was those individuals that the Framers of Section 3 intended to be as office holders and representatives for the formerly seceded states. Furthermore, Morrill conflates the popularity of Lincoln's Amnesty Proclamations amongst Congress, arguing that the precedent set forth by Lincoln should be adhered to. However, Radical Republicans, as aforementioned, opposed the leniency asserted by Lincoln and Johnson, evident in their response in passing Section 3 of the Fourteenth Amendment. Nevertheless, such sentiment for general amnesty was not only popular amongst Congress, but also President Ulysses S. Grant. In the Draft of this 1872 State of the Union Address, Grant explained his position on amnesty,

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[130] Appendix to the Congressional Globe, *42nd Congress, 2nd Session* 1 *(1872).*
[131] *Id.*
[132] Ancestry.com, "Amnesty Act of 1872," *Historical Insights: War & Military - Civil War*, accessed February 28, 2025, https://www.ancestry.com/historical-insights/war-military/civil-war/amnesty-act.

> I do not see the advantage or propriety of excluding men from office merely because they were of standing and character sufficient, before the rebellion, to be elected to positions requiring them to take oaths the support the constitution, and admitting to eligibility those entertainment precisely the same views but of less standing in their communities. It may be said that the former violated an obligation oath, while the latter did not. The latter had it not in their power do so-or who doubts but they would. If thare any great criminals, distinguished above all others for the part they took in opposition to the government then they might be excluded from such an Amnesty.[133]

Like his predecessor, Grant entirely misinterprets the historical tradition behind Section 3 of Fourteenth Amendment, and argues, rather, that the clause increased polarization between the Union and the former-Confederacy. However, as depicted through colonial and revolutionary disqualification provisions, Section 3 of the Fourteenth Amendment imposed a substantive reduction in political disabilities in comparison to earlier times. However, some Senators, like Democrat Allen Thurman from Ohio, interpreted the Amnesty Act of 1872 to mean, "This bill is just as certain as if it said 'political disabilities shall be removed from everybody except Jefferson Davis and Alexander H. Stevens.'"[134] Notably, however, Alexander Stephens–the former Vice President of the Confederacy–was elected to serve in the 43rd and 47th Congress, and eventually became Governor of Georgia as the disabilities imposed by the Amnesty Act did not apply to him.[135] Prior to the Civil War, Stephens only held representation at the state level in Georgia; therefore, he was granted the entire benefits of the Amnesty Act, which removed all political and legal disabilities.

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[133] Simon, John Y., "The Papers of Ulysses S. Grant, Volume 22: June 1, 1871-January 31, 1872" (1998). Volumes. 7. Page 280. https://scholarsjunction.msstate.edu/usg-volumes/7

[134] Congressional Globe, *42nd Congress, Session 2* 3737 (1872).

[135] Gerard N. Magliocca, "Amnesty and Section Three of the Fourteenth Amendment," *Constitutional Commentary* 36, no. 1 (2021), https://constitutionalcommentary.lib.umn.edu/article/amnesty-and-section-three-of-the-fourteenth-amendment/.

As outlined in Chapter 3 and the beginning of Chapter 4, granting Alexander Stevens total amnesty directly violated the Framers' intentions when they passed Section 3. Secession was ruled as unconstitutional by the Supreme Court in *Texas v. White* (1869), with the Majority Opinion stating that, "it became the duty of the United States to provide for the restoration of such a [constitutional relations] with the Union."[136] The legislatures with Congress, the highest governing body within the United States, inherently believed that to reinstate constitutional relations with the formerly seceded states, it must come at the cost of ensuring no individual that supported the rebellion rose to positions of political and legal authority within the United States. However, leniency in an effort to appease those who rebelled against the Constitution became more of a concern in later parts of Reconstruction than protecting the Constitution itself.

While secession itself was deemed unconstitutional, the institution which secession intended to preserve–slavery–evolved to continue oppressing Black American subscribing to the legal technicities of the Fourteenth Amendment on paper. While appearing transformed, the persisting oppressive beliefs of former-Confederates not only remained but were bolstered by their ability to return to office, preserving the legacies of slavery despite seemingly transforming legal designation to include citizenship rights to Black American. The theory of preservation through transformation, first proposed by Yale legal scholar Reva Siegel, can be seen as a method for evaluating racial status law during the Reconstruction.[137] The 9th Chief Justice of the Supreme Court, Edward Douglass White was a lieutenant Confederate soldier, who was later able to be elected to the United States

[136] *Texas v. White*, 74 U.S. at 736.
[137] Reva B. Siegel, "Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action," *Stanford Law Review* 49, no. 5 (1997): 1111–1128.

Senate.[138] White was able to hold such a position due the Amnesty Act of 1872, which therein removed any political disabilities imposed on Edward by Section 3 of the Fourteenth Amendment.[139] White was part of the majority within the Court that ruled in Plessy *v. Ferguson,* the Supreme Court Case which upheld the legality of "separate but equal," and subsequently segregation in public spaces–the innate oppression the Framers of Section 3 sought to eliminate.[140]

[138] Richards, Larry J. (May 19, 2014). "Chief Justice Edward White Jr". *Larry Richards*. Retrieved November 25, 2024.
[139] Supreme Court of the United States, "Members of the Supreme Court," *Supreme Court of the United States*, accessed April 15, 2010, *Internet Archive*, https://web.archive.org/web/20100415034624/https://www.supremecourt.gov/about/members_text.aspx.
[140] Kent, Andrew (2016). "The Rebel Soldier Who Became Chief Justice of the United States: The Civil War and its Legacy for Edward Douglass White of Louisiana". *American Journal of Legal History*. **56** (2): 209–264. doi:10.1093/ajlh/njw003.

Section 3

The Concrete Erasure of Legal Disqualification's Power: Post-Bellum

Section III entitled *The Concrete Erasure of Legal Disqualification's Power,* which encompasses Chapter 5 discusses insurrection and legal disqualification within 21st century United States jurisprudence. Tracking the history and tradition of legal disqualification is particularly important when discussing the January 6, 2021, insurrection on the United States Capitol building. The consequences of the insurrection and the subsequent debates which arose as a result are pivotal in understanding how the application of legal disqualification varied from when Section 3 of the Fourteenth Amendment. This section addresses such variations, largely discussing the Court's interpretation of Section 3 in *Trump v. Anderson* (2024), which served as the basis for the Court's ruling in *Trump v. United States* (2024).

This section poses the argument that the Court's historical interpretation in *Trump v. Anderson* is largely incongruent with the Framers' intentions behind Section 3 of the Fourteenth Amendment, and is innately a violation of the Court's primarily judicial method of interpretation–originalism. Furthermore, by comparing the lenient interpretation of Section 3 of the Fourteenth Amendment towards the end of Reconstruction, and its subsequent consequences, this section argues that the current Robert's Court is actively

reproducing such conditions–further threatening the civil liberties of many Americans. Chapter 5, entitled "January 6th: The Return of Insurrection," is the decisive link that connects all the preceding arguments. The chapter illustrates the importance of previous debates and discussions surrounding legal disqualification in the current historical context, and ultimately, asserts that an inability to apply legal disqualification is synonymous with threats to American democracy as a whole.

Chapter 5

The Modern Threat: Insurrection or the Executive?

The Roberts Court's ruling in *Trump v. Anderson* and *Trump v. United* is inaccurate depiction of post-bellum jurisprudence established by Radical Republicans. Rather, the Roberts Court's intention for conflating such historical understandings is largely due to ulterior political motives, directly violating their constitutional duty as members of the Supreme Court of the United States.

The first section discusses an account of the January 6, 2021, insurrection of the United States Capitol, undertaken by supporters of the incumbent 2020 Presidential candidate, Donald J. Trump. Taking place on the day the Congress was intending to certify the 2020 Presidential Election results, the January 6th insurrection was one of the largest threats to American democracy throughout the course of United States history.[141] The play-by-play account of the insurrection is included to help for historians to understand the capacity that various civil and political actors were involved in the insurrection, including the current President of the United States as of 2025, Donald Trump.

The second section discusses the Court's interpretation of Trump *v. Anderson* and the various historical inconsistencies in the majority opinion's determination. This

[141] Lawyers' Committee for Civil Rights Under Law. "January 6th Was an Attack on Democracy Itself." *Lawyers' Committee for Civil Rights Under Law*, January 6, 2022. https://www.lawyerscommittee.org/january-6th-was-an-attack-on-democracy-itself/.

subsection distinguishes between the validity of the Court's holding versus the historical evidence used to back such claims. Largely calling back to previous chapters, this chapter discusses the varying ways the Court rejected the judicial interpretation of Section 3's Framers. The Court's misinterpretation of Section 3 is imperative to understanding changing thought regarding accountability and legal disqualification, which is further exacerbated in the Court's ruling in *Trump v. United States.*

The third section articulates the basis for the Court's argument in *Trump v. United States*, and how the Court's disingenuous misinterpretation of Section 3 in *Trump v. Anderson* led to such ruling. The ruling poses threats to American democratic principles and would not have been possible without both the actions of the Executive and the Judiciary. This chapter argues that such a ruling directly violates how Constitutional Framers understood the power of Executive authority, particularly coming out of the Revolutionary time period.

Finally, this chapter illustrates the ramifications of these rulings together, as outlined by the political pardons issued by President Trump during the first day of his second term: January 22, 2025. Such interpretations of leniency can be seen as a direct parallel of leniency during the Reconstruction era, which ultimately allowed for the resurgence of racist legislation that threatened the civil liberties of Black Americans.

This chapter will pull various elements from previous chapters to outline the historical inconsistencies in the Court's interpretation of *Trump v. Anderson* and *Trump v. United States* and the consequences such rulings pose for American democracy, which can largely compare with the Redemption era of Reconstruction.

Insurrection on the Capitol - January 6, 2021

On January 6, 2021, the United States Capitol Building was violently attacked, resulting in five casualties and injury of 138 police officers.

According to the United States Code, Congress is required to be in session on January 6th following an election year to verify the results of the election, thereby allowing for a peaceful transition of power.[142] Congress was doing just that on January 6, 2021: verifying the 2020 Presidential Election results, certifying Democrat Joe Biden as the winner of the General Election against the incumbent, Donald Trump.[143]

On January 6th, President Trump was set to give a speech at the Ellipse in Washington D.C.[144] During his speech, Trump denounced the election results, telling his supporters that if they don't "fight like hell" they were "not going to have a country anymore."[145] Trump's speech concluded at 1:10pm.[146] Just minutes later, thousands of Trump supporters gathered around the Capitol to protest the election results, with over 2,000 eventually gaining access to the interior of the Capitol by force just ten minutes later.[147] During the attack on the building, a woman, who attempted to forcibly enter the Chambers of the House of Representatives while in session, was shot and killed by Capitol

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[142] 3 U.S. Code § 15

[143] U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.

[144] *Id.*

[145] "A Timeline of the Government's Response on Jan. 6, 2021." American Oversight, January 5, 2023. https://www.americanoversight.org/timeline-jan6.

[146] U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.

[147] ***Id.***

police.[148] The Capitol remained under attack for 187 minutes.[149] Rioters began dispersing after the President urged supporters to leave the building, at 4:17pm.[150] The 2021 attack on the Capitol was the first time in the history of the United States when a Confederate flag entered the premises of the building.[151]

Despite taking roughly three hours to denounce the attack, President Trump was made aware of the rebellious nature just fifteen minutes after his speech at the Ellipse had ended.[152] During the attack, the President was urged by White House Counsel, Congressmen, reporters, and incoming President, Joe Biden to denounce the riot.[153] During his deposition, White House Counsel, Pat Cipollone testified,

> The first time I remember going downstairs was when people had breached the Capitol. . . But I went down with [Deputy White House Counsel] Pat [Philbin], and I remember we were both very upset about what was happening. And we both wanted, you know, action to be taken related to that. But we went down to the Oval Office, we went through the Oval office, and we went to the back where the President was. . . . I think he was already in the dining room. . . I can't talk about conversations [with the President]. I think I was pretty clear there needed to be an immediate and forceful response, statement, public statement, that people need to leave the Capitol now.[154]

Furthermore, Cipollone testified that the walk between the White House dining room—where Donald Trump was stationed during the attack—was less than a minute walk away from the Press Briefing Room, thereby allowing Trump to swiftly and easily access

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148 ***Id.***

149 ***Id.***

150 *Id.*

151 "Confederate Battle Flag in the Capitol: A 'Jarring' First in U.S. History - the New York Times." 2021. Web.archive.org. January 9, 2021.

152 U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.

153 *Id.*

154 Select Committee to Investigate the January 6th Attack on the United States Capitol, Transcribed Interview of Pasquale Anthony "Pat" Cipollone, (July 8, 2022), pp.149-50.

the public if he so wanted to during the attack.[155] Among the people urging Trump to denounce the attack was his own son, Donald Trump Jr., who texted White House Chief of Staff Mark Meadows, "He's got to condem [sic] this shit. Asap. The capitol [sic] police tweet is not enough."[156] Many Secret Service members feared for their own lives, with some text family members saying their last goodbyes in case they were killed in the attack.[157] Trump specifically took issue with Mike Pence, the Vice President and President of the Senate, for refusing to investigate alleged accounts of election fraud.[158]Trump tweeted during the attack, "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a correct set of facts, not the fraudulent or inaccurate ones they were asked to previously certify. USA demands the truth."[159] The House Report on the Investigation of January 6th suggests that this tweet further mobilized the insurgents, resulting in violent push backs against DC Metro Police.[160] This 2:24 pm was so concerning that members of Trump's staff, like National Security Adviser Matthew Pottinger resigned as a result.[161] Cassidy

[155] U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.
[156] Documents on file with the Select Committee to Investigate the January 6th Attack on the United States Capitol (Mark Meadows Production), MM014925.
[157] U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.
[158] U.S. Department of Justice, *Indictment, United States v. Donald J. Trump*, No. 23-cr-257 (D.D.C. August 1, 2023), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf.
[159] Donald J. Trump (@realDonaldTrump), Twitter, Jan. 6, 2021 2:24 p.m. ET, available at https://media-cdn.factba.se/realdonaldtrump- twitter/1346900434540240897.jpg (archived).
[160] U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.
[161] *Id.*

Hutchinson, a former White House aid assistant to Mark Meadows, stated during her testimony to the House Counsel,

> I remember Pat saying something to the effect of, "Mark, we need to do something more. They're literally calling for the Vice President to be f'ing hung." And Mark had responded something to the effect of, "You heard him, Pat. He thinks Mike deserves it. He doesn't think they're doing anything wrong." To which Pat said something, "[t]his is f'ing crazy, we need to be doing something more," briefly stepped into Mark's office, and when Mark had said something—when Mark had said something to the effect of, "He doesn't think they're doing anything wrong," knowing what I had heard briefly in the dining room coupled with Pat discussing the hanging Mike Pence chants in the lobby of our office and then Mark's response, I understood "they're" to be the rioters in the Capitol that were chanting for the Vice President to be hung.[162]

Following the increase in violence from the insurgents, Eric Herschmann, a Senior Advisor to President Trump, spoke with Trump's daughter, Ivanka, attempting to persuade her to speak to her father about denouncing the insurgents' actions.[163] As a result of Ivanka's intervention, Trump issued a series of tweets encouraging the insurgents to respect Capitol police; however, he did not outright condemn the attack.[164] It was not until 4:17pm when President Trump condemned the attack in a video broadcast, stating, "I know your pain. I know you're hurt. We had an election that was stolen from us. It was a landslide election, and everyone knows it, especially the other side, but you have to go home now. We have to have peace."[165] President Trump's last tweet of the day was, "These are the things and events that happen when a sacred election landslide victory is so

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[162] Select Committee to Investigate the January 6th Attack on the United States Capitol, Hearing on the January 6th Investigation, 117th Cong., 2d sess., (June 28, 2022), at 1:31:25 – 1:32:22, available at https://youtu.be/HeQNV-aQ_jU?t=5359; Select Committee to Investigate the January 6th Attack on the United States Capitol, Continued Interview of Cassidy Hutchinson, (June 20, 2022), pp. 27-28.
[163] U.S. House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, 117th Cong., 2nd sess., December 22, 2022, https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/html-submitted/index.html.
[164] *Id.*
[165] *Id.*

unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever."[166]

Trump v. Anderson **(2024)**

The House's Final Report states, "the central cause of January 6th was one man, former President Donald Trump, whom many others followed. None of the events of January 6th would have happened without him."[167] With this belief, private citizens in Colorado filed against both Donald Trump and Colorado Secretary of State, Jenna Griswold. The petitioners alleged that January 6th constituted an insurrection, and the former-President's actions in such barred him from holding office in accordance with Section 3 of the Fourteenth Amendment.[168] At the district court level, the Court found that while Donald Trump had engaged in an insurrection, Section 3 was ambiguous as to whether it can be applied to Executives. Therefore, the Court ruled that the Former President could remain on the presidential ballot.[169] The case was appealed to Colorado's Supreme Court, which ruled that (1) Donald Trump's actions on January 6th constituted as engaging in an insurrection, (2) He is thereby disqualified under Section 3 of the Fourteenth Amendment, and (3) the Colorado Secretary of State must remove Donald Trump from the Presidential ballot for the 2024 Election.[170] Under the terms of the opinion, Colorado's Supreme Court ruling was automatically added to the Supreme Court of the United States'

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[166] *Id.*
[167] *Id.*
[168] Anderson v. Griswold, 2023 Colo. Dist. LEXIS 369 (District Court of Colorado, Denver County October 20, 2023, Decided).
https://advance.lexis.com/api/document?collection=cases&id=urn%3acontentItem%3a69TP-TP41-F1P7-B3FB-00000-00&context=1519360&identityprofileid=V9WFRC51376.
[169] *Anderson v. Griswold, No. 2023CV32577 (Colo. Dist. Ct. Nov. 17, 2023).*
[170] *Anderson v. Griswold*, 543 P. 3d 283 - Colo: Supreme Court 2023

docket to grant certiorari, which calls the case to be heard by the Court.[171] The Supreme Court of the United States issued its opinion on the case on March 4, 2024.

The Court's holding in *Trump v. Anderson*, at its core, is reasonable. The Court held that individual states cannot disqualify a presidential candidate under Section 3.[172] This portion of the ruling was unanimous, or per curiam, which means held as constitutional by all nine justices of the Court. While the Court's holding is reasonable, the historical principles which the majority Court used to justify the additional components of the ruling are far from. The Court was tasked with the question: Whether it is constitutional for a state to disqualify a federal officer?[173] However, the majority–Chief Justice John Roberts, Clarence Thomas, Samuel Alito, Brett Kavanaugh, and Neil Gorsuch–go further than what is required of them, addressing the circumstances under which Section 3 would be constitutionally enforceable–the majority deliberately misrepresenting the history of the provision, according to Justices Elena Kagan, Ketanji Brown Jackson, and Sonia Sotomayor this was to , "insulate all allege[d] insurrectionists from future challenges to their holding federal office."[174]

The current Court's majority commonly relies on originalism as its judicial philosophy. Originalism, as a judicial interpretation, is a type of judicial philosophy that interprets the Constitution as it was understood during the time of its ratification.[175] The majority of this Court prescribes this method of judicial interpretation for appliable

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[171] *Trump v. Anderson*, 144 S. Ct. 662, 601 U.S. 100 (2024).
[172] *Id.*
[173] *Id.*
[174] *Id at 19.*
[175] Jonathan Gienapp. "Why is the Supreme Court Obsessed with Originalism?" *Yale University Press*, October 21, 2024. https://yalebooks.yale.edu/2024/10/21/why-is-the-supreme-court-obsessed-with-originalism/.

cases.[176] Johnathon Gienapp, a prominent legal scholar at Stanford University, largely critiques this method of interpretation, arguing that during the time of drafting and ratification, the Constitution had always been a document of contention, and by interpreting the Constitution in an originalist approach, the Court disregarded such long standing debates, thereby proving there was no single original intent.[177] However, originalism is not the only method of judicial interpretation the Court relies upon. The Court commonly applies what has come to be known as history and tradition. Evaluating a constitutional provision, statute, or law through history and tradition requires a justice to analyze its historical precedent and application, determining if there is a foregoing tradition that is applicable to the case at hand.[178] History and tradition serves to address the pitfalls of originalism, trying to apply a historical precedent when there is little agreement to the interpretation of a Constitutional provision.[179] Such historical interpretation was used to decide the contentious case *Dobbs v. Jackson Women's Health Organization* (2024), which outlawed abortion at the federal level, under the basis that the practice of abortion was not a part of the United States history or tradition.[180]

In Part II of the Court's opinion, they assert that the provision was "designed to help ensure the enduring Union by percent former Confederates from returning to power in the aftermath of the Civil War."[181] The Court is incorrect in asserting that Section 3 is solely applicable for the historical context of the Civil War or Reconstruction era. As

[176] *Id.*
[177] Gienapp, Jonathan. "Written Constitutionalism, Past and Present." *Law and History Review* 39, no. 2 (2021): 321–60. https://doi.org/10.1017/S0738248020000528.
[178] Cary Franklin. "History and Tradition's Equality Problem." *The Yale Law Journal Forum* 133 (2024): 946-986. https://www.yalelawjournal.org/forum/history-and-traditions-equality-problem.
[179] *Id.*
[180] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. (2022).
[181] *Id at 4.*

established in Chapter 3, the Framers were largely concerned about the future health and prosperity of the Union, evidenced by Congress rejecting Senator Johnson's amendment to the provision which disqualified only those who have taken oaths prior to January 1, 1861.[182] Furthermore, Senator Willey stated in his address to Congress that Section 3 is predicated on ensuring, "the future peace and security of the Country."[183] In this way, the majority misrepresents the Framers' intentions in ratifying the provision. In their dissent, Sotomayor, Kagan, and Jackson more accurately describe the Framers' intentions, based on the verbiage and debates surrounding the provision: "They wanted to ensure that those who had participated in that insurrection, and in possible future insurrections, could not return to prominent roles."[184] As Chapter 3 described, the framers were deeply concerned about future insurrections–not just the rebellion they lived through. By judicially interpreting Section 3 as having a broad scope of power, the Democrat-appointee Justices accurately interpret the Framers' understanding of the disqualification clause–pushing not only against the majority's attempt to limit the provision's scope but also expands upon how the majority distorts the history tradition in which their judicial credibility is based on.

Furthermore, the majority of the Court asserts that Section 3 is only enforceable through Congressional Legislation, citing Section 5, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article" for its reasoning.[185] However, as previously established, at the time of Section 3 of the Fourteenth Amendment's ratification, Confederates themselves understood that they were disqualified from holding office in accordance with Section 3 of the Fourteenth–notably only citing the

[182] Congressional Globe, *39th Congress* 2900 (1868).
[183] Congressional Globe, *39th Congress* 2918 (1868).
[184] *Trump v. Anderson*, 144 S. Ct. 662, 601 U.S. 100 (2024) 20.
[185] U.S. Const. amend. XIV, § 5.

disqualification clause for imposing their political disabilities.[186] In Arnold's letter, he writes, "That in consequence of the adoption of the 14th Amendment of the Constitution of the United States, I am disfranchised and deprived of my civil and political rights as a citizen of the Federal Government."[187] In his letter, Arnold affirms that it is Section 3, not a Congressional Act, which imposes political disabilities, due to his involvement in the war. In their opinion, the majority assert that Confederates were disqualified as a result of Congressional execution of Section 3, through the Enforcement Acts of 1870.[188] However, in doing so, the Court rejects hundreds of Petitions for the Removal of Political Disabilities which cite Section 3 of the Fourteenth Amendment for imposing political disabilities, not the Enforcement Acts of 1870, which provision related to Section 3 was repealed in 1948.[189] The Court's argument never acknowledges these petitions. It was not the Enforcement Act of 1870 that barred insurgents from holding office, it was the Fourteenth Amendment itself. Indeed, in the hundreds of Petitions for the Removal of Political disabilities, nearly all point to Section 3 of the Fourteenth Amendment as being the component that imposed political disabilities on former-Confederates. In this way, the majority fails at adequately addressing the history and tradition of the provision.

Not only does the majority misrepresent the history and tradition regarding Congressional Execution of Section, but the Court also fails in its originalist interpretation. The Court asserts that prominent Radical Republican Lyman Trumball believed that Section 3 required Congressional Execution for enforceability. They write, "Trumbull

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[186] See Chapter 4, Page 75.
[187] John F. Arnold, "Petition for Removal of Political Disabilities," 1870, Records of the U.S. Senate, Record Group 46, National Archives, Washington, D.C.
[188] *Trump v. Anderson*, 144 S. Ct. 662, 601 U.S. 100 (2024) 10.
[189] Myles S. Lynch, *Disloyalty & Disqualification: Reconstructing Section 3 of the Fourteenth Amendment*, 30 Wm. & Mary Bill Rts. J. 153 (2021), https://scholarship.law.wm.edu/wmborj/vol30/iss1/5

noted, '[Section 3] provide[d] no means for enforcing' the disqualification, necessitating a 'bill to give effect to the fundamental law embraced in the Constitution.'"[190] However, the historical record disproves this account. Trumbull, when discussing the passage of legislation that regulated legal disqualification stated instead,

> This section disqualifies nobody. It is the fourteenth amendment that prevents a person from holding office. It declares certain classes from holding office. It declares certain classes of persons ineligible to office, being those who have once taken an oath to support the Constitution of the United States, afterward went into rebellion against the United States.[191]

History makes clear that at the time of ratification, the Framers of the Fourteenth Amendment understood that it was Section 3 that imposed legal and political disqualifications on individuals. Therefore, on the basis of both of their prominent judicial philosophies, the Court fails.

Lastly, while the Court specifically does not address this issue, it is important to note that the Framers of Section 3 understood civil office to include both the office of the President and Vice President.

> Mr. Johnson: I do not see but that any one of these gentlemen may be elected President or Vice President of the United States, and why did you omit to exclude them [in the proposed amendment]? I do not understand them to be excluded from the privilege of holding the highest office in the gift of the nation.
> Mr. Morrill: Let me call the Senator' attention to the words "or hold any office, civil or military, under the United States."[192]

By understanding how Radical Republicans understood the verbiage of the provision legal scholars can discern that the Framers of the Fourteenth Amendment intended for the provision to hold accountable the actions of the President and Vice

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[190] *Trump v. Anderson*, 144 S. Ct. 662, 601 U.S. 100 (2024) 5.
[191] Congressional Globe, *41th Congress 626* (1868)
[192] Congressional Globe, *39th Congress* 2899 (1868)

President–a discussion that serves as further relevant when discussing *Trump v. United States* (2024). The Framers ensured that nobody was higher than the laws of the Constitution, and legal disqualification could be applied to every federal office that required an oath to protect the Constitution.

The Court's misrepresentation of both the history and tradition of Section 3 and the originalist meaning poses an interesting question to legal historians: What is the rationale behind the Court by ruling in a way that is incongruent with its judicial philosophy? William Blaude and Micheal Paulsen, Professors at the University of Chicago School of Law and the University of Minnesota, School of Law, respectively, answer this question by stating: "The 'message Americans should take home' from *Trump v. Anderson* is that when it wants to, the Supreme Court will find a way to avoid performing its constitutional duties. It will dodge and weave. It will play politics. It will sweep the Constitution under the rug."[193] Notably, out of the Justices that decided *Trump v. Anderson*, a third consist of Trump appointees. Members of the Court, as argued by Blaude and Paulsen, "shr[u]nk from a faithful and impartial application of the Constitution, paying too much respect to particular persons and particular pressures," which can be further noted in the Court's holding in *Trump v. United States*, which requires the jurisprudence established by *Trump v. Anderson* held standing as it provided legitimacy for President Trump to remain as a presidential candidate during the 2024 Presidential election. [194]

[193] Baude, William, and Michael Stokes Paulsen. "Sweeping Section Three Under the Rug: A Comment on Trump v. Anderson." *Harvard Law Review* 138, no. 3 (January 2025): 676–716.
[194] *Id.*

Trump v. United States (2024)

Just five months after the Court's ruling in *Anderson*, the Court released its opinion on *Trump v. United States*. The case was brought against—at the time--Former President Donald Trump and was filed with the District of Columbia District Court on August 1, 2023. The Grand Jury indicted Donald Trump on four counts: (1) Conspiracy to Defraud the United States, (2) Conspiracy to Obstruct an Official Proceeding, (3) Obstruction of and Attempt to Obstruct an Official Proceeding, and (4) Conspiracy Against Rights.[195] The indictment specifically alleges that leading up to January 6th, the former-President attempted to dissuade Former-Vice President Pence from certifying election results, rather encouraging the Vice-President to alter election results in his favor. The indictment points to the Former-President's actions on January 6th, particularly his calls to supporters to mobilize at the Capitol to inhibit the certification of election results. The indictment points to various tweets issued by the Former President, where he called on Vice President Pence to reject "fraudulent votes" and encouraged his supporters to mobilize at his speech the following day.[196] The indictment further alleges that on the morning of January 6th, President Trump called Vice President Pence multiple types, further attempting to persuade him to reject "fraudulent votes" and disable the certification of the 2020 Presidential Election results.[197] Additionally, the indictment alleges that the Former President refused to disavow the insurrection., the same alleged in the House incident reporting.[198] The indictment specifically states that, "On the evening of January 6, the Defendant and Co-

[195] *United States v. Trump*, No. 23-cr-257 at 1, (D.D.C. Aug. 1, 2023).
[196] *Id.*
[197] *Id.*
[198] *Id.*

Conspirator 1 attempted to exploit the violence and chaos at the Capitol by calling lawmakers to convince them, based on knowing false claims of election fraud, to delta the certification."[199] The Former President's involvement in January 6th was used by a Grand Jury to indict him on Conspiracy to Defraud the United States.[200]

This indictment is in contention in the Court's ruling in *Trump v. United States*. In its most basic form, held that Presidents are immune from any criminal prosecution for all official acts, and "at least presumptive immunity from criminal prosecution for a President's acts within the outer perimeter of this official responsibility."[201] Further, the ruling held that a President is not immune from his unofficial acts, like if the President is simultaneously a "candidate for office or party leader."[202] The Court does not discuss what constitutes an official or unofficial act, rather the Court remands the District Court's to evaluate whether Trump mobilized his supporters as a political candidate or as an agent of the government, the latter of which would grant him all-encompassing criminal immunity for his actions. Furthermore, the Court asserts that conversations between the President and Vice President regarding the validity of the election are barred from criminal prosecution, as the action constitutes an "official act of election proceedings."[203]

Despite remanding the District Court to investigate whether Trump's first instance of conduct on January 6th was official or unofficial, the Court also states that if such investigations pose a threat to the security of the nation, they cannot be undertaken.[204] In this way, the Court establishes a near impossible test to prosecute former office holders for

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[199] *Id.*
[200] *Id.*
[201] *Trump v. United States*, 144 S. Ct. 2312 (2024).
[202] *Id.*
[203] *Id.*
[204] *Id.*

engaging in an insurrection, rebellion, or conspiracy to defraud the nation. As a result, the Court goes against historical tradition older than the nation itself. As established in Chapter 1, colonial legislation often included laws that discussed punishments for individuals "Conspiring Against this Jurisdiction."[205] Yet, through this ruling, the Court puts the President above this precedent–enabling him or her to betray their allegiance to the Constitution–only if their actions are constituted as official acts. It is this concern that is pointed out in Justice Sotomayor's dissent, where she asserts that the majority analysis "rests on a questionable conception of the President as incapable of navigating the difficult decisions his job requires whole staying within the bounds of the law…The Court should have so little faith in this Nation's Presidents."[206]

If a President engages in an insurrection, but such insurgent action is constituted as an official act–he or she can be immune for such actions. However, the Court's ruling falls short when accessing their own judicial interpretations of originalism and history and tradition. As established by Chapter 1, the Framers of the Constitution believed that, "An insurrection, whatever may be its immediate cause, eventually endangers all government."[207] Furthermore, allowing a president to have such immunity directly violated how Framers understood the role of an Executive, particularly after leaving a monarchical system of government with a strong Executive.[208] Therefore, by granting such immunity,

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[205] William Brigham, ed., *The Compact with the Charter and Laws of the Colony of New Plymouth: Together with the Charter of the Council at Plymouth, and an Appendix* (Boston: Dutton and Wentworth, 1836).
[206] *Trump v. United States*, 144 S. Ct. 2312 (2024).
[207] Alexander Hamilton, *Federalist No. 28*, in *The Federalist Papers*, The Avalon Project, Yale Law School, accessed January 30, 2025, https://avalon.law.yale.edu/18th_century/fed28.asp.
[208] Paul L. Friedman, "Threats to Judicial Independence and the Rule of Law," *American Bar Association*, November 6, 2019, https://www.americanbar.org/groups/litigation/about/awards-initiatives/american-judicial-system/threats-to-judicial-independence-and-rule-of-law/.American Bar Association

the Court goes against the Framers' main intention for establishing a new form of government.

By allowing a President to have total immunity for "official acts," the Court directly violates any ability to disqualify a former President his or her part in an insurrection that occurred during his or her tenure. As aforementioned, this directly violates the Framers' understanding of who Section 3 of the Fourteenth Amendment could apply to, as notable by Mr. Morrill's assertion that a civil office constitutes that of the President.[209] In this way, the future peace and security of a nation rests on whether a President chooses to abide by his oath to protect and uphold the Constitution–undermining the ratification of Section 3 of the Fourteenth Amendment entirely. A President's preclusive immunity in engaging in an insurrection puts him or her above the law, thereby undermining how the Framers understood the ramifications of such a constitutional provision.

Election of 2024

On November 5, 2024, Donald Trump was elected as the 47th President of the United States.[210] President Trump inaugurated on January 22, 2025, which would not have been possible without the Court's ruling in *Trump v. Anderson* and *Trump v. United States*.[211] On his first day in office, Trump signed over 50 Executive Orders, including an order "Granting Pardons and Commutation of Sentences for Certain Offenses Relating To the Events At or Near The United States Capitol on January 6, 2021."[212] Trump's actions

[209] Congressional Globe, *39th Congress* 2899 (1868) Also see Chapter 4, Page __.
[210] The White House. *The White House*. Accessed March 7, 2025. https://www.whitehouse.gov/.
[211] *Id.*
[212] Trump, Donald J. "Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021." *The White House*, January 20, 2025. https://www.whitehouse.gov/presidential-actions/2025/01/granting-pardons-and-commutation-of-

granted clemency to over 1,500 insurgents, many of whom were charged with assaulting Capitol officers.[213] Leniency towards insurgents is not unique within the history of the United States; Conversely, former-Confederates were able to prevail in preserving their systems of oppression against Black Americans while adhering to a "transformed" Constitutional structure that was supposed to be guaranteed by the Fourteenth Amendment. Indeed, true transformation can only occur with the execution of a transformational system. The Court's ruling in *Anderson* and *Trump* are part of a greater historical tradition of political actors' noncompliance in executing Constitutional provision to their full potential, similar to Congressional actions following 1871.

sentences-for-certain-offenses-relating-to-the-events-at-or-near-the-united-states-capitol-on-january-6-2021/.

[213] Dixon, Matt, Henry J. Gomez, and Garrett Haake. "Trump's Last-Minute Decision to Go Big on Jan. 6 Pardons Took Many Allies by Surprise." *NBC News*, January 22, 2025. https://www.nbcnews.com/politics/justice-department/trump-set-pardon-defendants-stormed-capitol-jan-6-2021-rcna187735.

Conclusion

"The Execution of the Laws is More Important than the Making of Them." - Thomas Jefferson[214]

Law is nothing unless it is executed and asserted. As seen in the debates surrounding the ratification of Section 3 of the Fourteenth Amendment, the Framers understood this to be true. The Framers of the Fourteenth Amendment intended for Section 3 to be a legal mechanism to enshrine protection, and subsequently, peace within the Union. The Roberts Court's rulings in *Trump v. Anderson* and *Trump v. United States* are contentious with this historical tradition–implementing illogical legal mechanisms that, in practice, serve as a way to limit who and how Section 3 of the Fourteenth Amendment can be executed. The majority's misrepresentation of historical actors in *Anderson* is an exemplary instance of blatant malpractice for their self-imposed judicial interpretation of originalism and history and tradition. In doing so, the Court tears the veil of judicial ideology in general proving that there is no ideological holding in their actions. Rather, the Court acts as an agent of the Executive, bolstering its powers at the expense of its own. Throughout this thesis, it has been established that even during the founding of colonies in the 17th century, legislatures have understood that legal disqualification are requirements to ensure domestic stability.

[214] Thomas Jefferson to Albert Gallatin, June 16, 1789, *The Papers of Thomas Jefferson*, vol. 15, ed. Julian P. Boyd (Princeton: Princeton University Press, 1958), 277, Founders Online.

This has been further elaborated on by the Framers of the Constitution itself. In the *Federalist Papers,* Hamilton stated that "A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection."[215] A firm Union is a Union that adheres and executes its law. The Court's rulings in *Trump v. Anderson* and *Trump v. United States* are anything but firm. They are flippant and flexible, allowing broad interpretations of laws, which consequentially threaten the peace and liberty of the United States. Through these rulings, the Roberts Court assert that even if an individual threatens the most foundational Constitutional principles upon which the United States was built, they are morally capable of holding the highest civil office within the country. The United States was established in response to the ideological contention posed by a powerful monarchy. At the Constitutional Convention, Benjamin Franklin said, "The first man, put at the helm will be a good one. No body knows what sort may come afterwards. The executive will be always increasing here, as elsewhere, till it ends in a monarchy."[216] The Court's ruling in *Trump v. Anderson* and *Trump v. United States* effectively ends the title of Executive in the United States, and institutes a monarchy, which serves to protect the rights and authority of one individual: the President. The Court establishes that the President is the only person above the law.

In *Trump v. United States*, the Court effectively its own power–limiting its ability to judicially review the actions of an Executive. This power was enshrined in the Court through the landmark Supreme Court case *Marbury v. Madison* (1803), which established

[215] Alexander Hamilton, *Federalist No. 9*, in *The Federalist Papers*, The Avalon Project, Yale Law School, accessed January 30, 2025, https://avalon.law.yale.edu/18th_century/fed09.asp.
[216] Benjamin Franklin, *Speech in the Convention on the Subject of Salaries*, September 17, 1787, in *The Founders' Constitution*, ed. Philip B. Kurland and Ralph Lerner (Chicago: University of Chicago Press, 1987), 1:7:2-3, https://press-pubs.uchicago.edu/founders/documents/a1_7_2-3s4.html.

the principles of judicial review. In that delivering the unanimous decision, Chief Justice John Marshall stated,

> But when the legislature proceeds to impose on that officer [the Executive] other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.[217]

Trump v. United States dismantles this landmark decision, asserting that the Executive is not an officer of the law, and rather, that the law bends to the will of the Executive. This is not how the Framers of the Constitution understood the role of the Executive. The United States was built on the principle of a government to serve the people, by the people. To ensure this, the Framers separate the powers of the government into three distinct entities: the Judiciary, the Legislative, and the Executive.

However, the Court's rulings in *Trump v. Anderson* and *Trump v. United States* enshrines the power of the judiciary and the legislative in the hands of the Executive. The Court's assertion in *Anderson*–that Section 3 of the Fourteenth Amendment must be Congressional enforced to be rendered effective–would in practice, be an ineffective method to disqualify an Executive due to his or her insurgent actions. Following the logic in both *Trump v. Anderson* and *Trump v. United States*, if Congress effectively legislated the parameters surrounding Section 3 of the Fourteenth Amendment–applying the provision to the office of the President–the President can still be found not-guilty for engaging in insurrectionist actions, if such actions are found to be a part of his or her preclusive authority. Since Presidential immunity must be broadly applied–according to

[217] *Marbury v. Madison*, 5 US 137 (1803).

the ruling in *Trump v. United States*–the Court thereby makes it both impossible and implausible for an Executive to be disqualified under Section 3.

While the majority's ruling in both *Trump v. United States* and *Trump v. Anderson* feels grim, it is important to recognize that there are members of the Court that are attempting to prescribe to the judicial interpretations of originalism and history and tradition. The minority's dissent in *Trump v. Anderson*, backed by Sonia Sotomayor, Ketanji Brown Jackson, and Elena Kagan are evident examples of the proper application of history and tradition. In their dissents, the Justices point to the actual history of Section 3 of the Fourteenth Amendment, the majority of which is noted in Chapter 4 of this thesis. Furthermore, both Justice Jackson and Justice Sotomayor write dissents in *Trump v. United States.* In Sotomayor's dissent, she discusses the ramifications of bolstering an Executive with such vast amounts of political authority:

> Let the President violate the law, let him exploit the trappings of his office for personal gain, let him use his official power for evil ends. Because if he knew that he may one day face liability for breaking the law, he might not be as bold and fearless as we would like to be. That is the majority's message today. Even if these nightmare scenarios never play out, and I pray they never do, the damage has been done. The relationship between the President and the people he serves has shifted irrevocably. In every use of official power, the President is now king above the law[218]

While these dissents are not the Court's holding in the respective cases, they do hold bearing if the rulings in *Trump v. Anderson* and *Trump v. United States* are ever called into question. They serve as a footing within the historical record to show that the Court was not unanimous in their judicial interpretation of the laws–highlighting how the Court's holding in each case is not a unanimous belief amongst the Justices as a whole. Dissents

[218] *Trump v. United States*, 144 S. Ct. 2312, 97 (2024).

provide power in the potential to overturn, and subsequently, reconcile the threats these cases pose to the republic as a whole.

This thesis has proven that there is a long-standing historical tradition of legal disqualification within the United States, dating back to the 17th century. Within the context of the United States' legal framework, if one rebels against the state–and one's rebellion is unsuccessful–then there are consequences for such actions. Such was understood during Colonial Times, the Revolutionary War, Antebellum America, the Civil War, and all phases of Reconstruction. However, in the 21st century, this ideology has changed. While many scholars engage with the parameters of legal disqualification, only after the disqualification clause enters the Constitution of the United States, it is important to look at the foundational pieces of the principle as a whole. Even prior to the ratification of the Fourteenth Amendment, legal disqualification had a rich and encompassing history within the United States, serving as a legal mechanism to protect the Union from those who do not have its best interest at heart. However, as of 2024, if one holds the highest office in the United States, one is free from punishment, despite threatening the foundations of the republic through insurgent action. This thesis proved that, despite the Roberts Court's assertion, the disqualification clause is a provision that does not require Congressional execution and was intended to be broad in scope, applying to all insurgents who had previously taken an oath to uphold the Constitution of the United States. Time will only tell the ramifications of the Court's actions, but one thing is for certain: the Supreme Court of the United States has effectively issued the powers of a monarch within the hands of the Executive.

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