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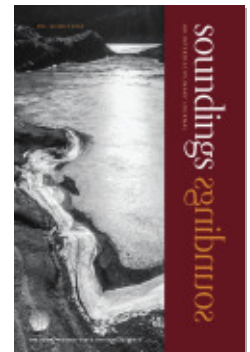
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## Plato and the American President: Thirty-five as the Age of Eligibility

Neil York

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# Plato and the American President

## *Thirty-five as the Age of Eligibility*

NEIL YORK, BRIGHAM YOUNG UNIVERSITY

### **Abstract**

The thirty-five year minimum age requirement for U.S. presidents was set late in the Constitutional Convention. The reasons for that choice must be inferred because so little survives from the contemporary record. The only source attaching significance to thirty-five that the Founders had access to was Plato's *Republic*. The Founders did not want to be governed by Plato's guardians, but they did expect their presidents to possess some of the guardians' attributes. Simply put, however much they looked ahead to the future, they were still anchored to the past. It is difficult to say much more than that because so much of the Founders' intellectual world eludes us—a reminder, as Laurence Tribe put it, that there is more to the Constitution, and to the men who wrote it, than meets the eye.

**Keywords:** U.S. president, thirty-five as age limit, Plato's *Republic*, intellectual influence, historical inference

*No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have Attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.*

— U.S. CONSTITUTION, ARTICLE II, SECTION 1, PARA. 5

This set of qualifications for the president still stands, unamended since the constitutional convention in 1787. Only the stipulation about being a U.S. citizen at the time of adoption no longer applies. Otherwise unchanged does not mean unquestioned, however. Anthony King, a Canadian-born constitutional scholar living in Britain, characterized all three remaining requirements—natural born, fourteen years a resident, and the minimum age of thirty-five—as “gross restrictions” that are “peculiarly American.” They reflect, he contends, a basic tension in our political system, a tension produced by our embracing “antithetical principles.” We express a commitment to “true democracy” where “only the people should rule,” and yet we have also preserved the Founders’ desire that the people be constrained through various governmental devices, beginning with separation of powers and checks and balances, and carrying through with age restrictions on office holders (King 2012, 4–6).

Stipulations about the president being a “natural born” citizen of long residence have prompted the most detailed examination, the age requirement the least, no doubt because the former seems inherently more discriminatory than the latter. While the latter can still be defended as an implicit preference for experience and wisdom not explicitly captured in the age requirement itself, the former, as one critic put it, can be condemned as perpetuating “an idolatry of mere place of birth.”<sup>1</sup> Not surprisingly, then, compared with the amount of commentary on restricting the American presidency to natural-born citizens of long residence, almost nothing has been written about the age requirement. What follows is my attempt to bring that particular choice of the men at Philadelphia into the discussion of larger constitutional decisions made there. Note that I did not say “back” into the discussion, because the Founders did not discuss their reasons for settling on thirty-five at the convention nor did they see the need to explain themselves during the subsequent struggle over ratification. Thus, almost all of what I will say about the Founders’ intentions is based on inference—on my understanding of their intellectual world and their unspoken reasons for acting as they did. But then that puts me in good company.

I will take as my point of departure Akhil Reed Amar’s widely read and highly regarded book, *America’s Constitution*. Professor Amar went through the text

with great care, article by article, section by section, with two chapters devoted to the executive branch as outlined in Article II. Under the heading “thirty five years” he puts the presidential age requirement in the category of a “populism and liberality” that “fit snugly into a larger egalitarian pattern.” The delegates at Philadelphia created an office within “a culture of republican merit and equal opportunity” —*but*, Professor Amar emphasizes, actual participation in national political life at the time was essentially restricted to free, property-owning, white, adult males (Amar 2005, 3). Drawing on commentaries written after the convention, and by men who had not been there, he suggests that thirty-five may have been settled on as the age minimum to prevent a dashing young military hero from vaulting prematurely into the highest office or, more likely, to guard against the young son of a trusted patriot succeeding his father as president without having proven himself by his own merits first.<sup>2</sup> Professor Amar turned to those sources because, as he concedes, nothing came out of the convention itself to give him any indication of the thinking behind the decision.

Sure enough, there is very little to go on from Madison’s notes, the notes of others in attendance, and the official records of what transpired in Philadelphia. Given the delegates’ charge by the Continental Congress to revise the Articles of Confederation, not replace them with something new, it seems unlikely that many of the men who attended had thought in detail beforehand about how to fashion a national executive. James Madison confessed in a letter to George Washington as he prepared to leave New York, where Congress sat, for the convention in Philadelphia, that he had “*some outlines*” of what should be done. The basic federal arrangement of national and state governments, he realized, was nonnegotiable, “a consolidation of the whole into one simple republic” being “as inexpedient as it is unattainable.” Changing the basis of representation in the national government was essential; so was increasing its authority and power. “A national Executive must also be provided,” he added, though “I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed.”<sup>3</sup>

The “Virginia Plan” that Madison helped draft and Edmund Randolph introduced on May 29, which for all intents and purposes became the basis of discussion from that point on, was vague by design. Its very existence initially

struck some delegates as going too far in exceeding the charge given them by Congress. The Virginians said nothing about the length of a term for their proposed new chief executive; likewise for the terms of men elected to serve in the two houses of a new national legislature. They did leave space in their draft for age requirements that would apply to members of both houses, the specific lengths to be filled in later. By contrast, the executive had no space left for an age requirement at all.<sup>4</sup> The alternative proposal submitted that same day by Charles Pinckney and, weeks later, another proposal by Alexander Hamilton, said nothing about an age requirement for the chief executive either.<sup>5</sup> Both Pinckney and Hamilton went directly to a single executive; the Virginians, for their part, called for a “National Executive,” the details—single or multiple—again, to be discussed later by the delegates. The precise impact that Pinckney’s and Hamilton’s proposals had on the final form months later is impossible to determine.<sup>6</sup>

With the battle over representation being ended by the so-called “great compromise” of July 16, “quite the most important subject of discussion was that of the executive, especially with reference to the method of his election and term of office,” contended historian Max Farrand.<sup>7</sup> Rough divisions between large and small states that tended to dominate the proceedings over what became the House and Senate, or between northern and southern states over the question of slavery, taxes, and representation, did not carry over into discussion of the executive.

In a draft submitted August 6, the committee of detail put flesh on the original Virginia Plan bones. There would be a single executive and his title would be president. His term of office would be for seven years and he could not be re-elected. There was not a residency or an age requirement for the proposed chief executive, though both had been put in place for the House and Senate: twenty-five years of age and three years U.S. residency for the House; thirty years of age and four years of U.S. residency for the Senate. All Senators and Representatives were obliged to be residents of the states in which they were elected.<sup>8</sup> With that draft as the foundation, debate resumed until September 8. Then the various suggested changes to the August 6 text were turned over to a new committee of style, which reported back with its revisions four days later. The ages of eligibility for prospective members of Congress remained the same even as the delegates boosted residency requirements up

to seven years for the House and nine for the Senate. Delegates decided to decrease the length of a presidential term to four years but they made the sitting president eligible for re-election. And, for the first time the convention, without a division, added the now familiar presidential age and residency requirements: a minimum of thirty-five years of age, a natural born citizen or citizen at the time of the proposed constitution's ratification, and fourteen years a U.S. resident.<sup>9</sup>

Delegates did not insert the claim that they wanted to “form a more perfect union” until they polished the preamble during the final week of the convention. If the most basic component of that union was its federal structure, then the delegates who approved the final version could hardly be dismissed as disingenuous. George Read's repeated suggestion—that, as long as they were making fundamental changes, the nation ought to be reconstituted under a unitary governmental system—had gone nowhere. Read's failure is proof that Madison's political instincts going into the convention about the attachment to a federal union as cobbled together in 1776 had been correct.<sup>10</sup>

Read made his suggestion after Elbridge Gerry's motion that the new “national executive” of the Virginia Plan be chosen by state governors went down to resounding defeat.<sup>11</sup> Perhaps, in Read's mind, Gerry's failure forebode ill, a warning that the new arrangement would not escape the state and national divisions that had plagued the old. Hence the need, as he saw it, to eliminate state governments as then constituted altogether, or at least make them clearly subordinate to the national government. After all, apparently no one during the debates, not even Gerry, had claimed that governors should be called on to select the president because of their unique, statesman-like characters; rather, Gerry contrived to placate state interests in order to strengthen national ties.

What became evident with continued debate was that even if the proposed national executive was being patterned more after state governors in the new nation than provincial governors in the old empire—or the king who had presided over it, this would nevertheless be an office apart.<sup>12</sup> How distinctive became clearer as the delegates decided there should be a single chief executive. Having settled (for the moment) on that, they discussed how he should be elected, how long his term should last, whether he could be re-elected, what his specific powers should be, whether he should have a council to advise him, and how he could be removed from office.

Discussion of the national executive had actually begun as early as June 1 and continued, off and on, through most of the convention. The delegates reconsidered their decisions again and again. At one time or another it had been proposed that the new president serve on “good behavior” with no fixed term, that he serve for as few as three years or as many as twenty, that he not be eligible for re-election at all, or only eligible after the passage of a certain number of years out of office—they too varied. Concern that the president be native born had been expressed to at least one delegate in July even though that stipulation did not work its way into the text until September.<sup>13</sup> Through July delegates revisited the notion of a single versus a multiple executive, with Madison and others who preferred just one attempting to reassure skeptical colleagues that an American president would be nothing like a British king.<sup>14</sup> But even Madison could not assuage all fears. Hugh Williamson, who had traveled to England just before the war erupted, preferred a fixed term with no possibility for re-election because, he warned, anyone elected president would otherwise try to stay in office for life and find a way to enable his son to succeed him. “It was pretty certain,” Madison reported him as saying, “that we should at some time or another have a King; but he wished no precaution to be omitted that might postpone the event as long as possible.”<sup>15</sup>

Convention delegates had been sensitive to any charge that their proposed president would be nothing more than an elected king. Before leaving for Philadelphia, and already anticipating that the question of fundamental government forms would arise, Washington expressed concern that “those who lean to a Monarchical government” did not understand that pressing for it would shake “the Peace of this Country to its foundation.”<sup>16</sup> And indeed, no one at the constitutional convention suggested that the federal republic should be abandoned for it. Nonetheless, at the Virginia ratifying convention, Patrick Henry would charge that the men in Philadelphia had produced just that, under the guise of a strengthened federalism. “This Constitution is said to have beautiful features, but when I come to examine” them they appear “frightful: Among other deformities, it has an awful squinting; it squints towards monarchy” (Jensen 1976, 9:963). However many shared Henry’s fears, they were countered effectively enough that worries over the president as king did not prove a stumbling block to ratification at the Virginia convention, or in the other state conventions before it.

Ultimately all of the talk about elections, term length, the presidential veto, and removal from office, both at the Philadelphia convention and during ratification, was an oblique way of addressing the question of presidential character: that is, what qualities should an American chief executive possess that would encourage the people to believe he would not violate their trust? As John Rutledge observed early on in Philadelphia, the delegates had been “shy” discussing such things (Farrand 1937, 1:87)—not simply, we could infer, because George Washington, the obvious first choice for the new office, presided over the convention, but because the topic was inherently awkward. Though the Founders’ decision to base impeachment on the commission of “high crimes and misdemeanors” was vague in the legal sense—removal from office not being synonymous with the commission of a prosecutable offense—it was in keeping with their notions of the disinterested, virtuous public servant, held to a higher standard.<sup>17</sup> And yet, even if all might agree that good character mattered, the evidence of what constituted good—or bad—character could cause those same people to disagree. Perhaps in some way their approach anticipated that of Justice Potter Stewart nearly two centuries later, who, when he famously wrote in one of his opinions that he was not sure he could provide an intelligible definition of hard-core pornography, also stated “but I know it when I see it.”<sup>18</sup>

During ratification there had been a few who questioned thirty-five as the age of eligibility, and they pushed for forty or even forty-five as better guarantees of wisdom and experience. Those scattered objections aside, the idea of an age minimum had not proved to be much of a factor in the debates in any of the states, for members of Congress as well as for president.<sup>19</sup> One of the few comments on the president’s age requirement to appear in the press, essentially positive, ran as follows:

In America, as the President is to be one of the people at the end of his short term, so will he and his fellow citizens remember, that he was originally one of the people; and that he is created by their breath. Further, he cannot be an idiot, probably not a knave or tyrant, for those whom nature makes to discover it before the age of *thirty-five*, until which period he cannot be elected.<sup>20</sup>

In effect, thirty-five was good enough because soon enough to see the leopard’s spots. The same could presumably be said about lower ages for lesser offices.<sup>21</sup>



At the Philadelphia convention George Mason had introduced twenty-five as the benchmark for members of the House on June 22. Although twenty-one had stood throughout the colonies as the basis for voting and participation for generations, which the new states by-and-large did not change, Mason contended that the political opinions common to that age group “were too crude & erroneous to merit an influence on public measures.” According to the surviving notes, James Wilson objected to “abridging the rights of election in any shape”; eligibility by age to vote for House members should be one-in-the-same with eligibility to hold that office, Wilson contended. Nonetheless, with apparently little else being said, Mason’s motion carried handily. Compared with discussions the previous day about the length of a Representative’s term and paying him a salary, passage went swiftly and the issue never came up again.<sup>22</sup> Thirty as the minimum age for Senators, approved the next day, passed with even less discussion, sparking none of the heat generated by the question of term length or method of election.<sup>23</sup> Only Charles Pinckney spoke at length on the matter, to suggest that, the genius of the British electoral system notwithstanding, with antecedents stretching back to “the forests of Germany,” American conditions were different and the leaders of the new nation would have to find their own way (Farrand 1937, 1:399).

Pinckney made the point because, in Britain, twenty-one was the only age qualification—to vote in parliamentary elections, to run for a seat in the House of Commons, or for a peer to be received in the House of Lords. The Lords had had that rule in place by a “standing order” since 1685; the Commons would be bound by a 1696 statute.<sup>24</sup> Although twenty-one stood as the basic legal demarcation separating adulthood from minority status in England, Scotland retained the *quadriennium utile*, between the ages of twenty-one and twenty-five, a grace period during which an individual could challenge the validity of contracts that had bound him or her while still a minor. The presumption was that during those four years newly stamped adults would better learn their rights and how to defend them. Interestingly enough, three of the new state constitutions written in 1776—for Delaware, Maryland, and Virginia—had made twenty-one the voting age and the age of eligibility for the lower house, with twenty-five as the minimum age for the upper house.<sup>25</sup> There is no *direct* evidence that such a consideration played any role in Philadelphia when delegates decided to make a distinction between those eligible to vote for members of the new House of Representatives and those eligible to serve in it.<sup>26</sup>

And age, after all, had been a secondary consideration when it came to voting rights in British America; property had mattered much more. “Aside from property qualifications, there were no firm principles governing colonial voting rights,” concluded historian Alexander Keyssar, “and suffrage laws accordingly were quite varied. Not only Catholics and Jews, but also Native Americans, free blacks, and nonnaturalized aliens could vote in some places and not in others” (Keyssar 2000, 5–6). Although most colonies did not expressly bar women, social practices acted as a deterrent. The great English jurist William Blackstone had captured the symbolic importance of the property requirement in Anglo-American culture, using a legal logic accepted by his political adversaries across the Atlantic even as they rejected his view of Parliament’s authority over them. “The true reason of requiring any qualification, with regard to property, in voters,” Blackstone explained, “is to exclude such persons in so mean a situation that they are esteemed to have no will of their own” (Blackstone 1979, 1:165). Only those who owned their land—yeoman farmers of yore, he avowed—had a sufficient stake in society to deserve a say in determining who should lead it.

Though the thinking behind a property requirement had not changed over the generations, ideas about age, historian Holly Brewer believes, were in flux, first in England, then in America. She sees a “paradigm shift” away from a hierarchical society that subordinated both adults and children, with all owing obedience to “their parents and social superiors regardless of age.” By the seventeenth century this set of priorities had begun to change. Political reformers distinguished “children’s political identities from adults’, emphasizing experience and reason as requirements for the exercise of political power. Their distinctions grew out of attempts to justify a form of government based on consent.” Brewer offers as proof the 1696 parliamentary statute restricting voting for and seats in the House of Commons. She contends it reflected a concern that only those of proven intellectual capacity participate in the electoral process, as wealth, property, and family connections bumped up against increasingly stronger notions of responsible government. Nevertheless, she concedes, opportunities for political participation did not automatically increase across the board. Even as democratic rhetoric empowered the people, the age standard could be used to narrow participation as well as expand it, particularly since the status of child rather than adult could be applied to a

wide range of those not qualifying politically as part of the “people,” from women to Blacks to Native Americans as well as to minors by age.<sup>27</sup>

Brewer only mentions in passing the minimum age requirements under the Constitution in her complex, nuanced argument (Brewer 2005, 34–36). Her overall emphasis differs from that of Professor Amar but, for our purposes, they have one notable characteristic in common: their contention that the Constitution was part of a newly emerging political order, with change overshadowing continuity. For Brewer, new age restrictions on voting and office holding became a way to empower the “people”—at that moment essentially free white adult males—to claim greater political authority because of their growing social power. Graduated age restrictions tied to Lockean notions of reason and responsibility seemed more defensible, even more just, than traditional notions that simply obliged the young to defer to the old and the poor to the rich, but would also allow a child to wear a crown. Political reformers had pushed the “people” of that time to look forward rather than backward, to the new age that could be rather than the earlier age that once was.

Recall Professor Amar’s emphasis on the age requirements in the Constitution as reflecting a progressive republicanism. Political leaders, he contends, used age liberatingly to help define a new governmental structure for a new political age. Neither Professor Amar nor Professor Brewer talks specifically about the age requirement for president written into the Constitution in 1787, leaving it to be included by inference within their larger view.<sup>28</sup>

Appealing as their arguments are, I have another in mind, one that at first glance appears wholly at odds with theirs. Where Professors Amar and Brewer see change, I see continuity. They emphasize the future in Revolutionary Era political thinking; on the matter of presidential age I see a stronger connection to the past. That the men in Philadelphia could have been looking ahead and back simultaneously is in keeping with a persistent historiographical theme about the contradictions that have defined Americans.<sup>29</sup>

Professor Amar underscored the important role that delegate James Wilson played at the Philadelphia convention; so have others, who have also pointed to the incisive arguments he made in his defense of the new system at the Pennsylvania ratifying convention.<sup>30</sup> Wilson attached democratic principles to republican forms more easily than many of the other delegates. He was

therefore less fearful of centralized power within the proposed new system. Wilson was particularly emphatic on the need for a president, calling for a strong executive as he dismissed warnings that they ran the danger of creating an American king. He did not carry every point: for example, he lost in his bid to have the president chosen directly by the people. But he served on the committee of detail that submitted the specifics on the presidency included in the August 6 draft. He eventually sat as an associate justice on the new Supreme Court, and he remained an emphatic defender of what he considered the uniquely representative American governmental system.<sup>31</sup> At the Philadelphia convention it appears that he, he and no other, said something about presidents and their age, a comment he made on July 24 that sparked no response and which he did not repeat. Even so, it is difficult to determine exactly how he helped shape the presidency in its final form, including the creation of a minimum age requirement.

By the time that delegates added the thirty-five year minimum to the text, age requirements for the House and Senate had long been accepted as necessary. Given the twenty-five settled on for the House and thirty for the Senate, with hindsight it could be contended that thirty-five had become numerically self-evident, the next logical benchmark in an upward-moving five year sequence: the more prestigious and more demanding the political office, the greater the need for the wisdom and experience that could only come through age.<sup>32</sup> That could explain why the president's minimum age never came up in debate on the convention floor.

It is possible, too, that delegates were receptive to the sequence that put thirty-five at the top because there were famous instances of the linkage of leadership and the wisdom achieved by that age. No doubt some delegates knew the tale of Jehoshaphat in the Old Testament, the good king of Israel who "was right in the eyes of the Lord" when he ascended the throne at thirty-five (1 Kings 22:43). Or they may have recalled that Caesar Augustus brought a symbolic end to the civil wars that had troubled Rome when, at age thirty-five, he announced that he would thereafter take on the title of "princeps" (Duncombe 1757, 10).

I suppose I should allow for yet another possibility, one having less to do with historical perspective and more to do with personal experience. The committee of style added the age thirty-five requirement. Gouverneur Morris

is usually pointed to as the most influential member of that committee, some even calling him the “father” of the Constitution because he did so much to shape its final language. Morris was himself thirty-five; in fact, he was the only delegate who was exactly that age.<sup>33</sup> Morris could be impish but I doubt if that explains how the age requirement ended up in the text. Active as he may have been in debates up to that point, he apparently said nothing about the subject, however much his own age may have given him pause.

A far more intriguing—and I think more likely—possibility is tied to James Wilson’s July 24 comment during discussions on how long the proposed executive’s term in office should be, and whether he should be eligible for re-election. (It would be just after this discussion that Wilson’s colleagues chose him, along with four others, to form the committee of detail that produced the August 6 draft.<sup>34</sup>) As James Madison recorded it, Wilson commented he “was persuaded that the longest term would not be equivalent to a proper mode of election, unless it should be during good behaviour.” He was convinced that there were men in the nation devoted to public service who would be suitable choices for a chief executive and that some could be fairly advanced in age—as had been seen with various popes and even an eighty-year-old Doge of Venice. Limiting service by too short a term or eliminating the possibility of re-election would be counter-productive, Wilson contended. “If the Executive should come into office at 35 years of age, which he presumes may happen & his continuance be fixt at 15 years, at the age of 50, in the very prime of life, and with all the aid of experience” and his term ended, with no chance of re-election, then, Wilson lamented, “he must be cast aside like a useless hulk.”<sup>35</sup>

Wilson, alone among the delegates, talked in these age terms and marked the prime time of public service as between the years of thirty-five and fifty—a most interesting observation for someone who opposed any formal age limit beyond twenty-one for either voting or office holding. The issue of a suitable age for the president had not come up before during debates in the convention; it would not be raised again. As far as I know, there was only one source in the Founders’ intellectual world that made such a pairing: Plato’s *Republic*. In this idealized construct of a city state, “guardians” would be drawn from that age group, as Plato explained in Book VII. He discussed the guardians after his better-known depiction—better known to modern readers, anyway—of

the cave, where those inside see shadowy images flickering in the light striking a wall in front of them. They could not see the actual movements behind them; they experienced the reality of those others at a remove, a simulacrum of the thing rather than the thing itself. The two sections of Book VII have this crucial tie: future guardians were to be chosen from an already select group of citizens and trained to lead. In effect, as youth they would be removed from the cave, but then, as adults, they must descend back into it. They, unlike those who never left, would be expected to be able to distinguish between truth and lie, to discern what is real from what is false.<sup>36</sup>

“The most complete guardians must be made philosophers,” Plato advised. They should not be introduced to complex ideas too soon because “like whelps” they would delight “in dragging and tearing to pieces, in their reasonings, those always who are near them” (Spens 1763, 258, 311). Accordingly, though their education led toward mastery of dialectic give-and-take, in their youth they would be trained in simpler, basic athletics, mathematics, and music, learning how to control mind and body, their physical agility reinforcing their mental acuity. By the age of twenty the most talented from among the original group of youths, those who had shown that they understood the connection “between the sciences and the nature of real being,” could go on to advanced studies and, if called upon, serve as soldiers in war. Glaucon then asks Socrates in their dialogue that forms the basis of this book, how many years past age thirty the preparation in formal reasoning and the lessons on making wise choices should continue; Socrates responds, “make it five,” after which the role of guardian could finally be played. For how long should that thirty-five-year-old guardian hold office, asks Glaucon; “for fifteen years,” answers Socrates.<sup>37</sup> At fifty the best among them would in turn be looked to as elder statesmen, adorning the city, serving the people where needed and engaging in philosophy as they prepared to “depart to inhabit the islands of the blest.”<sup>38</sup>

Copies of the *Republic* published in the British Isles had long been available to American readers, in Greek and Latin as well as English.<sup>39</sup> In fact, when James Madison headed a committee appointed by the Continental Congress in 1783 to compile a list of books it ought to own, the committee included the English edition of the *Republic* from which I quoted in the previous paragraph.<sup>40</sup> Commentaries on Plato’s *Laws* as well as the *Republic* had even begun to appear.<sup>41</sup> Besides, if readers turned to an author like Cicero

they could in turn be directed to Plato, a reminder that Greek and Roman thinking often overlapped.<sup>42</sup> This in no sense means that Madison or the other delegates in Philadelphia were slavish admirers of Plato. When writing as “Publius” to explain and defend what they had done, Madison conceded that “a reverence for the laws, would be sufficiently inculcated by the voice of enlightened reason.” But believing that experience trumped theory, he cautioned that “a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato.”<sup>43</sup>

Plato’s low point among the Founding generation, at least as remembered now, did not come until a later exchange between Thomas Jefferson and John Adams. Jefferson wrote Adams that he had finally had the leisure to read the *Republic*, which he had begun years before but had never been able to bring himself to finish. “While wading thro’ the whimsies, the puerilitates, and the unintelligible jargon of this work I laid it down often to ask myself how it could have been that the world so long consented to give reputation to such as this?” He lamented that Plato’s “foggy mind” had influenced so many, that Plato was all too like the sophists he condemned, and that he, like them, could not be consigned to oblivion too soon. Adams shared his disdain and “rejoiced” to find that Jefferson’s opinion of the *Republic* “so perfectly” harmonized with his. Unable to resist a little one-upmanship, he added that he had undertaken “the severe task of going through all his Works,” equipped with two Latin, one English and one French translation, thirty years before. “My disappointment was very great, my Astonishment was greater and my disgust was shocking.”<sup>44</sup>

Now, of course, neither Jefferson nor Adams had been at the Philadelphia convention, and they were still abroad at the time of the ratification debates. Besides, their observations were made over a quarter of a century later. And had Adams forgotten that, at the time the convention had been busy in Philadelphia, he had devoted a portion of his *Defence* of American constitution-making to Plato? He allocated Plato more space than he did Machiavelli or Milton, Sidney or Locke, or even Montesquieu. “Plato has given us the most accurate detail of the natural vicissitudes of manners and principles, the usual progress of the passions in society, and revolutions in government into one another,” Adams wrote approvingly. Plato may have failed to explain how the prerogatives of the “guardians” and the legal extent to their purview should be balanced, but he “has sufficiently asserted the honor of the laws and the necessity of proper guardians of them.”<sup>45</sup>

Adams's reframing of his intellectual world over time was common enough in the new nation. Determined to prove nay-sayers about the American experiment wrong, the Founders were understandably defensive about their own efforts even as they derided the flaws in political systems that had gone before. They emphasized what they created for themselves more than what they borrowed from others. And most of what they had borrowed, they contended, they adapted from their own experience: colonies as precursors to states, the new national government as a better version of what crown and parliament never were or could have been. "Is not the glory of the people of America," Madison asked rhetorically as "Publius," that "whilst they paid a decent regard to the opinion of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their situation, and the lessons of their own experience?" (Cooke 1961, 88). But to claim, as historian Forrest McDonald did, that the Founders had been truly "original" in what they created at Philadelphia does not mean that they also set "aside every political writer from Plato to Montesquieu" (McDonald 1985, 287). In both governmental forms and the expectations for those who filled them, they had not left Plato behind, a discarded relic from an irrelevant past.

Plato talked of political tendencies where power could be concentrated in the hands of the one, the few, or the many. John Adams did it most famously in his *Defence* and he was hardly alone.<sup>46</sup> But then Plato had not been alone either: Aristotle's discussion in *Politics* was even more deliberate in explaining how the three types were natural, even inevitable, and how, since monarchy could devolve into tyranny, aristocracy into oligarchy, and democracy into anarchy, the best government found a way to minimize the danger posed by any one of them alone by using all three together to check each other.<sup>47</sup> Plato's and Aristotle's thinking survived them, working its way into the Anglo-American political world. And thus, not coincidentally, we see what evolved as the notion of mixed and balanced government that Blackstone used to defend the British system and Americans like Adams would use to describe the subsequent adaptation of American forms (Blackstone 1979, 1:150–51).

The new American president that came out of Philadelphia in 1787 was in some sense expected to play the same executive role as a state governor, though on a larger national stage. He was also expected to possess the personal



attributes that Plato had attributed to his guardians, though no one said as much in so many words. The 1776 Maryland constitution sought a “person of wisdom, experience and virtue;” the 1777 New York constitution called for a governor who was “wise and discreet” (Thorpe 1909, 3:1695, 5:2632). Both thereby showed a desire to find someone worthy of the office, someone with the right sense of dutiful service, someone who would not violate the public trust. During debates over the method of presidential election, Gouverneur Morris contended that the president ought to be considered the people’s “great protector;” consequently, if “he is to be the Guardian of the people let him be appointed by the people” (Farrand 1937, 2:52).

This is not to contend that American political ideas had not changed over time. If Morris’s characterization of a guardian was reminiscent of Plato’s, John Dickinson, during a later Philadelphia convention debate, called the people themselves “the best guardians of liberty”—which Morris thought overly optimistic (Farrand 1937, 2:202). It would be the utmost in reductionism to claim that Dickinson stood for the democratic future and Morris the aristocratic past. Rather than create false dichotomies or artificial turning points in the political thinking of the new nation’s leaders, we should remember that the Founders looked back even as they looked ahead, that they believed in a usable past even as they contemplated an uncharted future. What Mark David Hall wrote about James Wilson—that “he borrowed elements from a variety of intellectual traditions and applied them to the creation of the American republic” (Hall 1997, 194)—could be said of all his colleagues in Philadelphia.

Too many scholars separate intellectual strands that the Founders interwove. There is no need to favor one intellectual tradition to the exclusion of others, especially to emphasize the modern at the expense of the classical. The former was informed by the latter, which the Founders well understood. The Madison of “Federalist No. 14,” who emphasized American originality, was also the Madison who compiled detailed “Notes on Ancient and Modern Confederacies.” It would be perverse to argue that Madison only studied those earlier experiments to learn what not to think or what not to do himself.<sup>48</sup> Speaking inclusively of the Revolutionary generation, not just those who drafted the Constitution, Gordon Wood reminded us that “the writings of classical antiquity provided more than window-dressing” for educated men in the British Atlantic world; “they were in fact, the principal source of their public morality and values” and political leaders “were held to ancient republican standards.”<sup>49</sup>

Sometimes the Founders identified their sources in their political texts; more often they did not. They drew from a common intellectual stock that cannot be reduced to citation frequency in trying to determine influence. Equally as important, if considerably more nebulous, they did not always put their political beliefs and their expectations of political leaders into words at all. The constitutions for the new states of New York and Maryland were specific about their highest expectations for their governors; those of the other states were not—which is no proof that the people there cared any less about the attributes their leaders brought into governmental office.

I will close with two reminders about what could be considered the “grundnorm” of the Founders—the underlying values and unspoken assumptions that united them (Kelsen 1967). One, echoing Madison in the Virginia ratifying convention, was their concern that a nation without energetic citizens or virtuous leaders to guide them cannot expect to prosper for very long. The new constitutional arrangements that Madison had helped devise were “auxiliary precautions;” absent good leadership, no governmental form could act as a guardian of liberty.<sup>50</sup> And second, as Laurence Tribe emphasized, there is an “invisible” constitution at the core of the “visible” Constitution, a broader, unwritten set of beliefs that acts as a foundation for the more narrowly written text. “In plain English,” Tribe wrote of the new constitution that came out of Philadelphia, “there’s more there than meets the eye.”<sup>51</sup> Shared beliefs about the rule of law are not stated expressly and yet they were vital to the Founders. What Professor Tribe could have included among those unspoken beliefs is why the Founders considered thirty-five a good age for someone to become president.<sup>52</sup> There, I think they silently, even subconsciously, followed Plato.

**Neil York** is a professor of history at Brigham Young University.

## Notes

1. So charged Randall Kennedy in “A Natural Aristocracy,” one of the brief essays in Eskridge and Levinson 1998, 54–56. Matthew D. Michael suggested in “The Presidential Age Requirement and Public Policy Agenda Setting” in that same collection that the age requirement “is a needless barrier in bringing together Generation X and Baby Boomer Americans in addressing

- inter-generational issues" (57). In July 2003, Senator Orrin Hatch proposed that the Constitution be amended to allow naturalized citizens to run for president if they have lived in the United States for twenty years and can satisfy the other requirements for the office. Nothing has been done with the proposal as of yet.
2. Professor Amar included in his notes references at Amar 2005, 553 (at notes 74–76) to essay no. 14, dated January 17, 1788, of "The Federal Farmer" series, which is gathered most conveniently by Bennett 1978, 90–97; to "An American Citizen" [Tench Coxe?] *An Examination of the Constitution of the United States of America* (Philadelphia: Zachariah Poulson, 1788), a reprint of essays that first appeared in Philadelphia's *Independent Gazetteer*, beginning in September 1787, soon after the convention ended; and "A Native of Virginia," *Observations upon the Proposed Plan of Federal Government* (Petersburg: Hunter and Prentiss, 1788). "The Federal Farmer," incidentally, preferred that the age be raised to forty or forty-five, to be more in line with the age of consuls in republican Rome. Professor Amar could have started with Hugh Williamson's comment made at the convention on July 24. He did not, though he did turn to him on other contested points.
  3. Madison to Washington, April 16, 1787, in Hutchinson 1962, 9:383 and 385, resp. Madison repeated to Washington what he had already written to Edmund Randolph in a brief letter eight days earlier. See *ibid.*, 9:370. For Madison's thinking about the nature of the union at this moment, see Banning 1995.
  4. For the text of the Virginia Plan (or more correctly "Virginia Resolutions"), see Farrand 1937, 1:20–22. For the fleshing out of presidential requirements between May and September, see Nelson 2011.
  5. Pinckney's plan (as Pinckney remembered it), also submitted on May 29, is in Farrand 1937, 3:595–601, Appendix D; Hamilton's of June 18 is in *ibid.*, 1:291–93, with a more detailed version at 3:619–30, Appendix F. These alternative plans, along with that of the Virginians (noted above) and the subsequent drafts of the full text, through the final version agreed to on September 17, are also in Jensen 1976, 1:232–96.
  6. Following the lead of Collier and Collier 1986, 64–74, Beeman 2009, 93–98, attempts to bring Pinckney and his proposal back into the historiographical mainstream. Apparently Pinckney had referred to his proposed executive as "president"—see James Wilson's abbreviated notes for May 29 in Jensen 1976, 1:245–47, as well as the full text that Pinckney himself sent to John Quincy Adams many years later, in Farrand 1937, 3:595–601. Less has been made of Hamilton's alternative. His proposed "governor" (as opposed to "president") would have been elected with no fixed term; likewise members of the Senate. The offices were not hereditary and were contingent on "good behavior." Corruption and malfeasance would bring impeachment and removal. Hamilton, like the absent John Adams as well as others in Philadelphia, wanted to create "a mixed government—one that combined the principles of democracy, aristocracy, and monarchy." See Stourzh 1970, 52.
  7. Farrand 1913, 115. "In every Stage of the Question relative to the Executive, the difficulty of the subject and the diversity of opinions concerning it have

- appeared,” George Mason observed (according to Madison’s notes) on July 26, in Farrand 1937, 2:18.
8. Farrand 1937, 2:177–89; Jensen 1976, 1:260–69. On June 12 the convention had voted 10–1 to eliminate the blank left in the Virginia resolutions for an age requirement in the “first branch” altogether, and then had voted 7–4 that thirty be settled upon as the age requirement for the “second branch.” See the voting breakdown in Farrand 1937, 1:213. Madison and Robert Yates, who both recorded notes for that date, did not explain the reasoning behind either choice.
  9. Farrand 1937, 2:565–80; Jensen 1976, 1:270–84. The report to the full convention submitted by the committee of eleven on August 22 had included for the president: “he shall be of the age of thirty-five years, and a Citizen of the United States, and shall have been an Inhabitant thereof for twenty one years.” Farrand 1937, 2:367.
  10. See Read during debates on June 6 and June 11 in Farrand 1937, 1:136–37 and 206, respectively.
  11. Gerry on June 9, in Farrand 1937, 1:175. His motion went down to defeat 10–0, with the Delaware delegation divided and therefore not included in that tally.
  12. Adams 1980, 271–75, warned against exaggerating the adverse Revolutionary American reaction to executive power, given the extensive authority given to governors in many states under their new constitutions as well as what would be created with the national presidency under the provisions of the 1787 text. Also see Compton and Orren 2014, 27 in particular, which had been prompted by Nelson 2011. There, see 572 in particular, the comments by Daniel Hulsebosch on 587 in that same issue, Professor Nelson’s rejoinder on 595–96; his extended argument in Nelson 2014; and Prakash 2015.
  13. In a letter from John Jay to George Washington of July 25, printed in Farrand 1937, 3:61. Thach 2007, 121–22, was convinced that Jay must have had Baron von Steuben in mind, because of his support of Shays’ rebellion. But he provided no hard evidence to support his conclusion.
  14. See, for example, Madison’s record of his own comments on July 17, with the convention voting 10–0 to reaffirm the single executive. Farrand 1937, 2:35 and 24, respectively.
  15. Williamson on July 24, Farrand 1937, 2:101.
  16. Washington to Madison, March 31, 1787, in Hutchinson 1962, 9:343.
  17. Examined so carefully in Wood 1969. For the question of presidential character and impeachment see the overview in Brown 2010.
  18. From Stewart’s concurring opinion in *Jacobellis v. Ohio*, 378 U.S. 184 (1964).
  19. See the “Federal Farmer” essay alluded to in no. 2 *supra*; also Melancton Smith in the New York ratifying convention on July 3, 1788, in Jensen 1976, 22:2097. For a brief defense of thirty-five see [Webster] 1787, 14–16. For the defense by “Publius” of the executive that came out of Philadelphia see Cooke 1961, 452–521 (nos. 67–77).
  20. As excerpted from “Number 1” in the *Pennsylvania Gazette*, October 24, 1787.
  21. As John Jay put it in Federalist no. 64, dated March 5, 1788: “By excluding men under thirty five from the first office, and those under thirty from the second,

- it confines the electors to men of whom the people have had ample time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism, which like transient meteors sometimes mislead as well as dazzle." In Cooke 1961, 433.
22. The motion carried 7–3–1 (with the CT, NJ, DE, MD, VA, NC, and SC delegations voting aye; MA, PA, and GA nay, and NY divided). This particular matter was not raised on the floor for debate again. Farrand 1937, 1:375.
  23. *Ibid.*, 1:395. The vote in favor was unanimous, 11–0. As with the minimum age for members of the House, the age of eligibility for Senators would not be revisited.
  24. For the Commons see Pickering 1762, 9:428–31 (7 & 8 William III c. 25); Dr. Ruth Paley, of the History of Parliament Trust, informed me of the 1685 rule implemented within the Lords.
  25. See Thorpe 1909, 1:562 (Delaware), 2:1694 (Maryland), and 7:3816 (Virginia).
  26. [Erskine] 1777, 90, explained the nature of this provision. James Wilson, native Scot, was perhaps the delegate most likely to know of it, though he did not study law until he came under John Dickinson's tutelage in Philadelphia. Whatever the case may have been, he argued against the age distinction between voter and representative.
  27. Brewer 2005, "paradigm shift" on p. 5, "emphasizing experience" on 2, and 338–67 for Native Americans, Blacks, and women.
  28. No delegate at the convention, at least in the surviving record, said anything about the setting of age requirements as a liberalizing act. Madison did say, however, when discussing residency requirements on August 13 for members of the House, that he preferred a short period rather than long because immigrants brought strength to the nation and (Madison summarizing himself in the third person) "he wished to maintain the character of liberality which had been professed in all the Constitutions & publications of America." Farrand 1937, 2:268.
  29. I am thinking here, for example, of the "venturesome conservatives" characterization of Jacksonian Democrats in Meyers 1957 and the talk of "national biformities" in Kammen 1972. Both historians walked a path first trod by Alexis de Tocqueville in seeking to explain contradictory tendencies in the national psyche.
  30. Amar 2005, 154–57, and Nelson 2014, 185–91. Also see William Ewald's attempt to bring Wilson out of Madison's shadow in Ewald 2008; also see Seed 2008, 58–69; Collier and Collier 1986, 206–333; and Beeman 2009, 124–43, for Wilson's position on the executive as stated at the convention, and Wood 1969, 530–31, for Wilson's explication of the new system during the ratification struggle, preceded by Wood's caution (on 389) that "Men were always only half aware of where their thought was going." For Wilson's thinking in general, see Hall 1997.
  31. "The order of things in Britain is exactly the reverse of the order of things in the United States," Wilson proclaimed. "Here, the people are the masters of government; there, the government is master of the people." From his "Lectures on Law" in Hall and Hall 2007, 1:719.
  32. Thirty-five may simply have seemed "logical" in the national office age sequence, suggests Nelson 1987, 393, since the requirements for the House and Senate had already been set.

33. Morris had turned thirty-five in January. Jacob Broom of Delaware, like Morris born in 1752, would not turn thirty-five until October. For Morris, see Brookhiser 2003, 78–93. Madison, Hamilton, William Samuel Johnson, and Rufus King served with Morris on the committee of style.
34. The other members were Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, Edmund Randolph of Virginia, and John Rutledge of South Carolina. Farrand 1937, 2:97. Wilson did not serve on the committee of style that produced the September 12 draft. Nor had he served on the committee of eleven formed on August 18 that reported the age of thirty-five recommendation for the president to the full convention on the 22. Each state had one delegate on that committee; George Clymer, not Wilson, sat on it for Pennsylvania.
35. Ibid., 2:102. Interestingly enough, Madison used the example of Chief Justice Mansfield, who served on the Court of King's Bench another thirty years after turning fifty, as evidence of the foolishness of any such policy. That he did is an indication of his different frame of reference than that of some of his older colleagues (notably Benjamin Franklin), who thought of Mansfield less in his role in the 1772 *Somerset* case and more as an advocate of imperial policies designed to keep the American colonies subordinate to crown and empire.
36. "The *Republic* is not a treatise on politics but a dramatic portrait of people conversing about the connection between justice and the good," contended Rosen 2005, 2. Treating Plato's *Republic* as a contemplation on the possibilities of an engineered society rather than as a handbook on how to build a political utopia strikes me as a better reading of this particular Socratic dialogue. The sort of dispute over how to read Plato that pitted Leo Strauss against Karl Popper would not, I think, have occurred to the Founders.
37. Spens 1763, 311 ("five") and 312 ("fifteen"). Spens's translation matches more modern renditions fairly well. See, for example, Hamilton and Cairns 1961, 771.
38. Spens 1763, 313. Plato's emphasis in the (apparently) less read *Laws* was actually more on those who had reached fifty, guardians in the special class of "nomophylakes" who were to insure that the rule of law was applied equitably. See Morrow 1960, 211–14.
39. Finding titles now is simple compared with just twenty years ago, when scholars had to search through various library catalogs (private and college), booksellers' advertisements, and the National Union Catalog. Now they can search the Internet, using the Early American Imprints, First Series, 1639–1800 (usually called the Evans Collection) online version for books published in what became the United States, and Eighteenth-Century Collections Online (ECCO) for British sources.
40. Madison submitted his report to Congress on January 23, 1783. It was not adopted; Congress could ill afford to try and build its own collection of books. In Hutchinson 1962, 6:63–115. Madison had included over three hundred titles, some of them multi-volume, divided into various categories. He included Spens's 1763 Glasgow translation/edition of the *Republic*, no. 142 in the list, under the category of "Politics." A 1776 London edition of Aristotle's *Treatise on Government*

came immediately after. Works by Machiavelli, Hobbes, Harrington, Sidney, and Locke fell under that same category. Blackstone's *Commentaries* appeared further down the list, no. 186, under "Law."

41. [Macfait] 1760 stands out. Though modern critics would probably dismiss his commentary as rudimentary, Macfait did observe, for both the *Laws* and the *Republic*, that "they were by no means intended as a perfect model for real life"; rather, "they were, what he himself expressly calls them, A *Fiction* only, as it were a *dream*" (94).
42. For example, Thomas Cockman's *Tully's Three Books of Offices* went through numerous London editions in the eighteenth century, after first being translated into English in 1699, all of which had a chapter that included Cicero's urging his readers to consult Plato to learn about how governments should put the needs of the people over the preferences of the rulers.
43. Madison as "Publius" in Federalist no. 49, in Cooke 1961, 340. Madison echoed the sentiments expressed more famously by John Dickinson at the convention: "Experience must be our only guide. Reason may mislead us." Madison recorded him as saying this during debates on August 13 over money bills originating in the proposed House of Representatives, in Farrand 1937, 2:278. Nearly as famous is Madison's recording of Pierce Butler's June 5 allusion to Solon, on how they should follow Solon's example of giving Athenians the best government they would receive, not the best he could devise (*ibid.*, 1:125). It is likely that Butler had read the Solon allusion in Langhorne 1778, 1:215. In that same volume, incidentally, the Langhornes had noted that Plutarch borrowed from Plato (at 1:106 n, in Plutarch's essay on Lycurgus).
44. Jefferson to Adams on July 5, 1814, with Adams's quick response eleven days later, in Cappon 1959, 432–33 and 437, respectively.
45. Adams began writing *A Defence of the Constitutions of Government of the United States of America* in 1786, when he was in London, where the first volume appeared early in 1787. Adams dated the preface to the first volume January 1, 1787; Charles Dilly published it on February 1. The *Pennsylvania Gazette*, May 30, 1787, advertised that volume 1 would be reprinted in Philadelphia the next day by Hall and Sellers. All three volumes are available online through ECCO and the Evans collection, and are most accessible in print form in Adams 1850, 4:271–6:220. The quotations are from 4:448 and 462, resp. Owen Dudley Edwards offered trenchant insights on Adams and Plato in his essay "John Adams and Constitutions," which is in Barron 1987, 62–100. Plato, or Adams's take on him, suggests Professor Edwards, "may also have had influence on the Constitution makers of 1787: the idea of a philosopher-king chosen by Guardians seems to have an echo in the choice of President by an electoral college sworn to choose the best person in the republic for the post" (87).
46. Adams, *Defence*, in Adams 1850, 4:284, 579. In a famous chapter on "The Relevance and Irrelevance of John Adams" in Wood 1969, 567–86, Gordon Wood contended that Adams may have been out of step with his contemporaries, being too much the political philosopher and not enough the politician. As Wood also

noted in a comment on the Aristotelian sense of the one, the few, and the many, Americans had kept the forms even as they altered the substance of government (604). Wood's student, C. Bradley Thompson 1994 had a different take on how far Adams strayed from what was becoming an American political science; for Plato in Adams' thinking, see particularly 136–40.

47. For Plato's somewhat convoluted discussion, see Spens's translation of *The Republic*, Book VIII, 315–54. [Macfai's] 1760, 177–80, touts Plato's understanding of the tendencies, though he points more to the "Statesman" than to the *Republic*, a dialogue that may not have been available in English to the Founding generation. Madison and his contemporaries could have read Aristotle's brief explication in Ellis 1776, 133–34. It was this edition of Aristotle that Madison recommended the Continental Congress purchase for its own library, a book collection that Congress did not fund.
48. Madison's "Notes" were apparently made between 1784–1786; his "Additional Memorandums on Ancient and Modern Confederacies" date from when he began writing as "Publius." Both sets can be found in Hutchinson 1962, 9:3–24, and 10:273–83, respectively. Once again, for Madison as "Publius" no. 14, see Cooke 1961, 83–89. As Pierce Butler wrote in a letter of October 8, 1787, "We, in many instances took the Constitution of Britain, when in its purity, for a model, and surely We cou'd not have a better. We tried to avoid what appeared to Us the weak parts of Antient as well as Modern Republicks. How well we succeeded is left to you and other Lettered Men to determine." In Farrand 1937, 3:102–3.
49. Wood 1992, 103. Also see Sellers 1994; and the final chapter in Nelson 2004.
50. "Auxiliary precautions" from Federalist no. 51, in Cooke 1961, 349; virtue, on June 20, 1788, in the Virginia ratifying convention, from Hutchinson 1962, 11:163.
51. Tribe 2008, 8. Strauss 2010, 3, argues for the English common law as the "ancient source" for our "constitutional system." I would add that the common law itself is tied to even more ancient antecedents. A jurist like Edward Coke cited the Old Testament, Justinian's code, and writers in the classical tradition, from Aristotle to Cicero, as often as he turned to England's own ancient constitution.
52. That the 1787 Convention did nothing about age requirements for members of the proposed Supreme Court is not surprising, given how terse Article III is on the Judiciary in general. But it is interesting that the Judiciary Act of 1789, passed by the first session of the first new Congress under the new Constitution, said nothing about age requirements for judges as well as justices; indeed, they did not even have to be lawyers to be appointed to the federal bench. There are virtually no specific requirements provided, presumably because the Roman sense of "gravitas" that judges were expected to bring to office was even more self-evident to the Founders than the expectations for presidents and members of Congress. Perhaps the general silence on judges even better underscores the points made by Professors Kelsen and Tribe about unspoken and yet very real assumptions that a people can share.



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