



Society Commitment Democratically Effectuated only through Law

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Introduction

Election Law exhibits this commonplace problem to a much lesser degree. The field is important and always topical, and the course invariably attracts students with a serious and often intense interest in democratic politics [1]. Many of the decisions are well-known and much-discussed in public; after all, how many Supreme Court cases other than Citizens United have been the subject of extended commentary by a nationally known comedian like Stephen Colbert? Since I make a point of teaching the course during the fall of every federal election year, virtually everything I cover has some relevance to the prospects for some candidate or party that some students in the class are following enthusiastically [2]. It would be easy to capitulate to the topical, short-term interests of my students and permit class discussion to focus on the influence of various aspects of election law on the prospects of success for specific candidates or parties in whom they happen to take an interest. Yet by directing their attention constantly to much broader and more enduring principles of democratic theory I think I am able to accomplish something much more valuable [3]. By demonstrating performativity, in class, that contemplation of democratic theory satisfyingly both enlivens and deepens an understanding of election law, I show them or at least hope and aspire to show them the significance of this body of law to the way we live as citizens of a democracy, something in which we all have an interest that is not only profound, but profoundly shared [4]. I frame these issues by presenting them to the students under the heading of the ideal of impartial public service an idea which by itself contrasts starkly with what follows in the course, namely, the immense role of political parties in choosing candidates and structuring representation, an area in which raw partisanship based on the naked pursuit of self-interest sounds the dominant theme [5]. Here, though, I introduce the ideal of impartial rule with Henry St. John Bolingbroke's famous essay *The Idea of a Patriot King*, which greatly influenced the founding generation, followed by a short excerpt from Robert Wiebes *The Search for Order*, which describes the Progressive revival of the ideal of impartial governance in the early twentieth century [6]. With the students thus prepared, I begin the class with two questions, what, if anything, is at stake when we choose elected officials, and what qualities do we want in elected officials? This never fails to generate an energetic and illuminating discussion [7]. My students always have very strong opinions about the qualities candidates and elected officials ought to have, the standards of behavior by which they ought to conduct themselves, and the relationship between the personal qualities of candidates and the quality of their governance [8]. As a result, this material never fails to produce a lively conversation that effectively lays the conceptual groundwork for contemplation of the more mundane and sometimes repetitive doctrinal issues of government power, equal protection, and free speech and association that infuse the constitutional treatment of laws regulating candidacy [9]. For me, these extremely positive experiences in the classroom validate my choice of approach in teaching the course. Granted, it is probably harder to make Election Law boring than many other courses. In other fields, students almost invariably experience a disappointing disjunction between their expectations for a course and the deflating dull reality of the pertinent legal doctrine. Tree-huggers who take Environmental Law are often disappointed to find that the course has almost nothing to say about nature but a good deal to say about the fine details of administrative law [10]. Students with a passion for human

rights who take Constitutional Law are invariably disappointed to find a course that devotes more attention to the crating of apples and the shape of truck mud flaps than it does to the rights of the accused.

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Conflict of Interest

None

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