The Logic of Aspirations: Dual Office Holding / Status Acquisition Issues, Continued

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THE LOGIC OF ASPIRATIONS:
DUAL OFFICE HOLDING / STATUS ACQUISITION ISSUES
CONTINUED
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ABSTRACT.
Constitutional and customary prohibitions on (a) dual office holding in government or (b) acquisition of status – along with other requirements, typically with conditions – are commonplace. Those seeking to acquire an office or enjoy a status are obliged to conform their aspirations to these rules, the logic of which is explored.

KEY WORDS. dual office holding, status acquisition

A. INTRODUCTION. In a previous article, Dual Office Holding / Status Acquisition in the Federal Constitution: The Logic of Aspirations Introduced, 2 OCL 129, the six provisions (in four locations) of federal constitutional text were quoted and discussed, exposing the dual office holding / status acquisition rules. At first glance, the rules appear to be a species of training artifact.

Example: Senator Foghorn seeks to serve as an elector from his state, so that he can cast his vote in the quadrennially named electoral college. His oath of office should be sufficient to remind him to read the constitution to see if her aspiration suffers any impediments, conditional or not.

This instance is a species of dual office holding: the convention’s thinking seems to underline its determination that the President not be elected by the national legislature.

Is that all that’s at stake?

B. THE LOGIC OF ASPIRATIONS. Assuming the reader is sympathetic with the convention’s reasoning – or accepts that some similar motivation guided the convention to craft some text – what were the convention’s choices? Is there a logic of aspirations that exists prior to or (here is my preferred phrase) – is accessible anterio to the crafting of constitutional text which can supply an inventory of rules by which text can be crafted? Here I reference logical possibilities, impossibilities, unreliabilities and indeterminacies. So what are/were the logically possible situations for which constitutional text could be crafted?

C. TABLE ANNEXED. The reader is referred to the Table annexed hereto. For this and other works see http://works.bepress.com/peter_aschenbrenner/

D. MOTIVATION OF TEXT WRITERS DISTINGUISHED FROM LOGIC. It should be obvious that constitutional text writers do not consult inventories of available situations for which text might be crafted; this modest concession is the point. Logic exists whether you appeal to it, resort to it, use it, or ignore it. There are typically insights of interest that can be drawn from a less-than-complete exploitation of logic.

Here’s an example. Hatsell, whose works have been venerated by citation (see 102 OCL 130) from his American admirers, offers the following from Precedents of Proceedings in the House of Commons:

By the 6th of Anne, ch. 7, sect. 25, no person who shall have in his own name, or in trust for him, any new office or place of profit, created since the 25th of October, 1705, nor a Commissioner or Receiver of Prizes, nor Comptroller of the Accounts of the Army, nor Commissioner of Transports, or of Sick and Wounded, nor any Agent for any regiment, nor any Commissioner for Wine Licenses, nor any Governor or Deputy Governor of any of the Plantations, nor any Commissioner of the Navy, nor any person having a pension from the Crown during pleasure, shall be capable of being elected, or of sitting or voting as a Member of the House of Commons. [1]

Applying rules (a) and (b) is straightforward: She who is a “Commissioner of the Navy … shall [not] be capable of being elected, or of sitting or voting as a Member of the House of Commons.
Commons.” But she who has “resigned as Deputy Governor of any of the Plantations … being elected, or of sitting or voting as a Member of the House of Commons” has just unbecome that status and can aspire to “being elected, or of sitting or voting as a Member of the House of Commons.”

Is it obvious that the starting point for analysis – Bob is the Comptroller of the Accounts of the Army and takes it into his head to stand for Parliament – has its reverse view? Considered from a purely logical point of view?

Of course, text might be crafted with that converse in mind: something along the line of ‘no member of the House of Commons shall ….’

By the 5th of William and Mary, ch. 7, sect. 57, no Member of the House of Commons shall at any time be concerned in the collecting or managing any of the duties granted by that or any future Act of Parliament, except the Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise.

Six years passing, Parliament repealed the exception.

E. ENTER THE COOKBOOK. Dual office holding embraces two different perspectives: It’s not enough to say, ‘If X is an officer holding X office then X can’t also hold any of the following [Y, Z, etc.] offices.’

That’s a lovely elocution, as far it goes.

The logic of aspirations can generate the following form of rule:

‘X (an officer holding X office) cannot aspire to Y, without unbecoming X before he enters upon office Y.’

Hence the logic of aspirations teases out enough forms; in turn this brings us back to the inventories which supply content for training artifacts for official actors.

F. CONDITIONALS. The reader will have noticed that if one discovers that the Eminences of Ruritania would like to make you a Grand Chamberlain these worthies require Congress’s consent. (I assume you’re an American citizen or prefer to surrender that office upon being named to the post of Grand Chamberlain.)

The use of conditionals is present in Hatsell as well. For example, an MP who “accept[s] any office of profit from the Crown” will find that his election is void; but he can retrieve the situation by resigning his office and standing for election.

The persons here enumerated are rendered totally incapable of being Members; but by the 26th section, if any Member shall accept of any office of profit from the Crown, his election is declared void, and a new writ shall issue; but such person shall be capable of being again elected.[1]

The convention did not lay out the logic of aspiration. The delegates did not lay out the inner monologues of official actors; the delegates did not instruct officialdom (or would-be officials or status seekers) to read the constitution.

Both the convention and Parliament, equivalent in text crafting, assume that, anterior to this effort, there existed an inventory of rules which are entirely logical in shape and operate as paradigms for text. That is, these paradigms may be converted to text by inserting the titles of offices or statuses with appropriate grammatical recasting.

G. REFERENCES.


H. STATUS. Complete.

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