Extract from Gary Lawson, Federal Administrative Law (6th ed. 2013), citing Tillman's "Interpreting Precise Constitutional Text"

Seth Barrett Tillman

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FEDERAL ADMINISTRATIVE LAW

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Accordingly, we find even Appeals employees' authority over tax liability insufficient to rank them as inferior Officers.

This being so, it is plain that the authority they exercise in the pure collection aspects of * * * [the] hearings is not enough. As to those functions, the government is simply a creditor, and accordingly Appeals employees must make decisions based largely on the same mundane and practical concerns that any creditor faces * * *. [T]he significance and discretion involved in the decisions seem well below the level necessary to require an 'Officer.'

Id. at 1133-35. Would the court have been better off just to say that these employees are not important enough to be officers for purposes of the Appointments Clause? Did the court actually say something different?

The Appointments Clause only applies to "Officers of the United States, whose Appointments are not herein otherwise provided for." Because the appointments of the President and Vice President are "otherwise provided for," this phrasing could lead one to conclude that the President and Vice President are "Officers of the United States." The same phrase, however, also describes the officials who must receive presidential commissions. U.S. Const. art. II, § 3. It is not impossible that the President must commission himself or herself, but the idea has an odd ring. More substantively, the Impeachment Clause extends to "[t]he President, Vice President and all civil Officers of the United States." Id. § 4. The absence of the word "other" between "all" and "civil Officers" is strong textual evidence that the President and Vice President are not themselves "Officers of the United States." 2 Joseph Story, Commentaries on the Constitution § 791 (1833). So, if the President and Vice President are not "Officers of the United States," then what are they?

The Constitution at various times refers to "the Office of the President of the United States," "Office of honor, Trust or Profit under the United States," "civil Office under the Authority of the United States," "Office under the United States," "Office of Profit or Trust under [the United States]," "executive and judicial Officers, both of the United States and of the several States," and also to "Officer[es]" generically, without any modifiers. The scope of these various phrases in their particular constitutional contexts determines, among other things, which officials are subject to Congress' impeachment; the scope of the removal flowing from a Senate conviction following impeachment; the extent of various disqualifications from holding federal positions; and who is precluded from receiving gifts from foreign governments. These kinds of questions seldom reach the courts, but they are among the many questions of governmental structure with which executive and legislative department lawyers must often struggle. For an intriguing account of the significance of, and the vigorous debates concerning, the Constitution's varying usages of the word "officer," see Seth Barrett Tillman, Interpreting Precise Constitutional
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Once one determines that a federal official is an "Officer of the United States," one may further need to determine whether that officer is an "inferior Officer" whose appointment can be vested by statute in the President, department heads, or courts of law without Senate consent. How does one distinguish an inferior officer from a principal officer?