

PART V

The Presidency

19. Office of the President



Photo by Abbie Rowe. Courtesy National Park Service

CONSTITUTIONAL POSITION OF THE PRESIDENT

THE executive power shall be vested in a President. . . ." So reads the Constitution. This bare, curt statement defines what is now the most powerful office in the world outside the dictatorships. As chief executive the President possesses broad functions—broader, in fact, than those of any other single executive in any other representative government. In addition, like the British monarch and the French President, he must represent the nation in numerous ceremonial roles.

The ceremonial or expressive role takes much of his time. Some of it, such as the entertaining of foreign dignitaries, finds counterparts throughout the world. Other parts of it, such as throwing out the first ball to open the major league baseball season, are peculiar to the United States. Hardly a day goes by without some example of such symbolic functions, in which the President typifies the nation.

Along with these decorative and expressive functions the President must move men and things. That is, he must perform tasks which in Great Britain, France, and other nations with kindred governments are the obligation of the Prime Minister or some other executive official. For example, the President must see to the execution of federal laws. In so doing, he supervises directly or indirectly the work of more than two million administrative employees. The President is also Commander in Chief of the armed forces of the United States. Finally, he represents the United States, in an active as well as in a symbolic sense, in relations with the nations of the world.

Moreover, in keeping with the principle of checks and balances, the President has considerable power outside his executive functions. He possesses considerable judicial authority. He has extensive legislative powers, through his authority to approve or to veto laws, to send messages to Congress, and the like. Hence the President not only is head of the executive branch but also plays an important part in each of the other two branches of the government as well.

DEVELOPMENT OF PRESIDENTIAL LEADERSHIP

Today the President occupies a position superior to that originally intended by most supporters and opponents of the Constitution. He is now the political leader of the American people. Almost certainly the authors of the Constitution did not intend that the President should achieve this stature. Rather, they aimed at creating a government whose three branches should be approximately equal in power. However, their philosophy did not comprehend the changes that might stimulate growth in the executive branch; nor could they predict the vigorous competition that has occurred among the three branches of government for power and prestige. Hence despite their efforts to perpetuate equality among these branches, Congress has lagged relatively; the judiciary long ago enjoyed its one great gain, the power of judicial review; but the President has vaulted far ahead of both.

Executive preeminence can be illustrated from the transformation of the legislative process. The authors of the Constitution expected that Congress would take the initiative in legislating; they felt that the representative body should assume the burden of steering government policy. It was anticipated that from time to time the President would have certain recommendations to make about legislation he desired; yet the legislative role of the President was supposed to lie chiefly in the field of approving or vetoing bills that had been originated in Congress. Today the bulk of legislation is proposed by the White House; it can be maintained that Congress does not so much initiate legislation as it approves, amends, or rejects the President's legislative program.

The President has secured this predominance in the government through a number of means, both constitutional and extraconstitutional. Of the two categories the constitutional has been the less important; the emergence of

presidential leadership can be ascribed largely to means outside the letter of the Constitution—although, of course, quite legal. For example, the President has been able to exploit the unity of his office—by comparison with the plurality of Congress—to show the public greater determination and singlemindedness in time of need. Undoubtedly the public reciprocates by looking toward the President as the one man who can provide the leadership it seeks; the public sees a symbol in the President. This situation was dramatized in the depression of 1929, when a part of the people sought leadership from President Hoover toward recovery, was disappointed in “seeing” none, turned to Franklin D. Roosevelt in 1932, and at once followed the leadership he offered.

Congress has sometimes accelerated this process by turning its leadership on some matters over to the President. For instance, by creating the Bureau of the Budget and establishing it in the Executive Office of the President, Congress lost some of its financial initiative. Moreover, Presidents Theodore Roosevelt, Wilson, F. D. Roosevelt, and Truman, while in office, frequently asserted their belief that they must lead the country. Wilson wrote and spoke eloquently in defense of the belief; he admired the chance for decisive leadership that the Prime Minister of Great Britain had. Finally, various Presidents have used their executive powers to take the leadership of their political party, and then, completing the circle, have used their party leadership to increase their control of Congress and of party policy. Many more details of the development of the powers of the chief executive are contained in the subsequent description of the presidency and Congress.

QUALIFICATIONS FOR THE PRESIDENCY

Constitutional qualifications

The Constitution briefly establishes three qualifications for the President that are effective today (Art. II, sec. 1, cl. 5). He must be “a natural-born citizen”; he shall “have attained to the age of thirty-five years”; and he must “have been fourteen years a resident within the United States.” The requirement of natural-born citizenship excludes anyone born a foreign subject or national. The age limit has probably never interfered with any serious candidacy, and almost certainly never will. The residence requirement has not been thought to mean the fourteen years immediately prior to the election or inauguration, for Herbert Hoover was out of the United States for lengthy periods during the era from 1914 to 1928.

Term of office

It has already been noted that the question of the President's term excited long discussions at the Philadelphia Convention. A four-year term was ultimately selected, with no bar to reelection. Probably the Founding Fathers agreed that a President might be reelected an indefinite number of times. President Washington retired after two terms, doubtless in part from age, fatigue, and resentment at the attacks directed at him by his opponents. Also, he probably felt that after eight years of successful func-

tioning the government was well enough launched on its course to have no further need of him.

The third President, Thomas Jefferson, who retired at the end of his second term, stated his belief as a general principle that no President should serve for more than two terms. This assertion should not be interpreted as a justification for any belief on Jefferson's part that he was faced by defeat in 1808; for it is widely acknowledged that he chose both of his successors, James Madison and James Monroe, each of whom served two terms. This display of Jefferson's influence suggests that he might have been reelected as many times as he sought office. Hence his statement that no President should serve more than two terms can be accepted as a principle rather than an expedient.

The two-term tradition established by Jefferson lasted more than a century, until 1940, when it was smashed by President Franklin D. Roosevelt. It can never be known definitely what the President might have done had World War II not begun in 1939; but there are grounds for surmising that he might have offered himself as a candidate in any case. Roosevelt enjoyed the exercise of power; he had suffered a defeat in the midterm elections of 1938, partly at the hands of his own party, which he probably wanted to recoup; and as a good politician Roosevelt knew that there were few if any prominent Democrats to succeed him (some say that he saw to it that no eligible politicians became prominent).

However, the advent of the war offered Roosevelt and the American people a strong justification for a third term: the argument that he was the only American who was well enough acquainted with the diplomatic situation to pilot the American government in the crisis. Prior to the Democratic convention of 1940, Roosevelt refused to commit himself when asked his intentions about reelection. There was some pre-convention discussion about other candidates, such as James Farley and John Nance Garner; nevertheless, at the convention Roosevelt was nominated on the first ballot. Four years later, before any "three-term tradition" had had an opportunity to crystallize, Roosevelt was nominated for, and elected to, a fourth term.

Today a barrier has been erected against unlimited presidential reelection, so that no future President may hope to emulate Roosevelt's achievement. The Twenty-second Amendment, which completed the ratification process in 1951, provides that no person shall be elected to the presidency more than twice, and that no person who has served more than two years of a term for which some other person was elected may be chosen more than once. Thus no person may possibly be President for more than ten years. Springing in part from Roosevelt's achievement, this Amendment was proposed in 1947 by the Eightieth Congress, the first to be dominated by the Republican Party after Roosevelt's death.

Salary

Although some leaders at the Philadelphia Convention, particularly Benjamin Franklin, expressed the wish that the President would serve without salary, the Constitution provides that the President shall receive a salary. It

is further provided that this salary may not be increased or diminished during the President's term (Art. II, sec. 1, cl. 6); thus Congress can neither reward nor punish a President for his official actions by raising or lowering his pay. Originally Congress set this salary at \$25,000 per annum. It was increased by steps over the years until, in 1949, Congress fixed it at \$100,000 plus a \$50,000 expense account that was tax-exempt and up to \$40,000 additional for entertainment and traveling. At the request of President

TABLE 15. A PRESIDENT'S PAY AND ALLOWANCES¹

Salary, expense allowance	\$150,000
Travel allowance	40,000
Servants' pay, upkeep of White House	443,000
Upkeep of airplanes, pay of crew	310,000
Protection by Secret Service and White House police	945,000
Upkeep of cabin cruisers, pay of crew	50,000
White House chauffeurs	50,000
Other (including upkeep of Camp David and cost of White House military detachment)	150,000
Total	\$2,138,000 per year

These Things Are Furnished to the President:

A mansion and grounds worth	\$25,000,000
Two airplanes worth	3,075,000
Cabin cruisers worth	500,000
A retreat (Camp David) worth	100,000
An automobile worth	30,000
Total	\$28,705,000

These People Work Directly for the President:

White House office workers and aides	289
Servants at the White House	72
White House police	151
Airplane crewmen	10
Cabin-cruiser crewmen	23
Total	545

¹ From *U.S. News & World Report*, an independent weekly news magazine published in Washington. Copyright 1953, United States News Publishing Corporation, July 22, 1955, pp. 31-32.

Eisenhower, Congress in 1953 removed the tax exemption from the expense account. Beyond this, numerous other goods and services are attached to the presidency, such as the White House, the presidential yacht, and a large secretarial staff. Altogether the President receives the equivalent of over two million dollars annually (see Table 15).

Privileges and immunities

Before George Washington was inaugurated as the first President, there were long debates as to what privileges the President should enjoy, by what title he should be addressed, and whether he should wear some sort of distinguishing attire. Washington felt some affection for kingly protocol, and

Vice President John Adams was at first quite insistent upon special recognition for his office. However, the steady infusion of the American government with the special notions of what is correct for a democratic representative regime ended many of these claims and practices.

The President does retain one major immunity: he cannot be sued or prosecuted in court, unless he waives his immunity. This privilege is not stated in the Constitution. It is a custom based on the principle of the separation of powers; if the President were subject to court action, it would mean that the executive branch of the government was subordinate to the judicial branch. Therefore the only judicial action to which the President is liable is impeachment; moreover, a conviction following impeachment may result in no more severe penalty than removal from office and disqualification for further officeholding. However, this immunity extends to the office, not to the person; hence once a President is removed by impeachment, he may be tried in court in the same fashion as any private citizen. Finally, the President is immune from interrogation by Congress, or any congressional committee, just as he is immune from court trial. He does not have to respond to a subpoena, which is an order by a committee or court to appear as a witness.

In 1953 the question arose whether this immunity extended to a former President with respect to events occurring while he was President. Chairman Harold Velde of the House Un-American Activities Committee subpoenaed former President Truman to testify concerning events that had occurred during Truman's term of office. Truman rejected the subpoena, claiming immunity; before his claim had an opportunity to be tested, however, Velde withdrew the subpoena.

THE VICE PRESIDENT

Until recent years the office of the Vice President has appeared to be one of the least significant executive positions in the American government. John Calhoun resigned from the vice presidency in order to enter the Senate. Theodore Roosevelt when President is said to have ordered that the large glass chandelier over his desk be transferred from his office to that of the Vice President, where the tinkling of the glass in the wind might keep its occupant awake. The Democratic Party candidate for the vice presidency in 1904 was more than eighty years old.

Succession to the presidency

Constitutionally the principal function of the Vice President is to assume the office of President should the incumbent die, resign, become incapacitated, or be removed through impeachment proceedings. Thus the Vice President provides the citizenry with reassurance that national leadership will continue in a crisis and that no free-for-all political struggle will ensue. The question has arisen as to whether the Vice President *becomes* President, or merely *occupies the office* of President. The problem was resolved largely by the determined personality of John Tyler, who in 1841 became

the first Vice President to succeed a deceased President. Congress, then relatively stronger than it is today, and containing such powerful members as John Calhoun, prepared to assume leadership of the country. However, Tyler refused to bow to Congress and insisted on being dealt with as President in fact. Tyler's success in his endeavors founded the principle that the Vice President upon succeeding becomes as surely President as if he had been elected to that office. Section Three of the Twentieth Amendment formally clarifies the situation to some extent in providing that if the President-elect should die before his inauguration, the Vice President-elect "shall become President."

Presiding officer of the Senate

While the Vice President is marking time, so to speak, he serves as the presiding officer of the Senate. However, he has only a casting vote; that is, he may vote only to break a tie. The Senate does not often regard the Vice President very highly, especially since he may be a comparative newcomer in politics; and it will countenance little if any criticism of its procedure by an impatient Vice President, if only because such action constitutes executive interference with the legislative branch, and because of the Senate's jealousy of its privileges. In any case the chair in the Senate frequently is occupied not by the Vice President, who may be absent on other business, but by the President *pro tem*.

Evolution of the vice presidency

The potentialities of the vice presidency have fluctuated considerably since 1788. The pressure of recent events has compelled the Vice President to assume a more weighty role in American politics than he did in the past. The President has become so burdened with duties that the Vice President has had to accept some of them, especially those dealing with ceremony—the entertainment of foreign potentates, visiting other countries, even substituting for the President in certain American political rituals. For example, in 1953 Vice President Richard M. Nixon made a trip around the world, visiting chiefly the nations of Asia, as the personal representative of President Eisenhower, to assure their governments of the good intentions of the United States.

Too, Vice Presidents have begun to take more seriously the possibility that the President may die in office; most Vice Presidents since Coolidge have attended cabinet meetings if only to grasp the general policy of the administration. Moreover, as presiding officer of the Senate, the Vice President can furnish liaison between the White House and Capitol Hill; this function can be very well implemented by a Vice President such as Alben Barkley, who had long been an influential and respected member of the Senate. Finally, Congress has added to the strength of the Vice President by making him a member of the National Security Council. Congress, however, probably cannot go very far in giving power to the Vice President without encountering vigorous opposition from the President, who can cite the Constitution as making the presidency the paramount executive.

Careers of some Vice Presidents

Seven Vice Presidents have succeeded to the presidency upon the death of the President. (Three more—John Adams, Thomas Jefferson, and Martin Van Buren—were elected to the presidency after completing their vice presidential terms.) Thus, about one out of five Vice Presidents has been summoned by fate to the highest office. Of these, only the last three—Theodore Roosevelt, Coolidge, and Truman—were afterward nominated for, and elected to, the presidency. All of the first four experienced difficulties with their party; and two, Tyler and Johnson, collided head-on with Congress. Of course, Johnson's case was unique; he was a Democrat who owed his nomination to the fact that he had been the only Senator from a seceded State who had not abdicated his seat in Congress prior to the Civil War. Sudden accession to the presidency has evoked different types of reactions from these men. In the case of Chester A. Arthur it called forth a sense of responsibility that amazed the nation and staggered his faction of the Republican Party. In 1878 he had been removed by President Hayes from his office as collector of the port of New York, for practicing too assiduously the spoils system; but as President (1881–1885) he urged adoption of the Pendleton Act, which set up a merit system in the Civil Service.

Qualifications and salary

For some reason the Constitution is mute as to the qualifications of the Vice President; probably the omission was due to the original mode of filling this office, whereby it was a sort of consolation prize for a man who had tried to win the presidency but had failed. In any event, the Twelfth Amendment, which establishes the present means for filling the office, also established the same qualifications for the Vice President that the Constitution demands of the President. As in the case of the President, there are numerous types of "eligibility" demands that change with the circumstances. The Vice President receives an annual salary of \$45,000. Not only is his salary considerably less than that of the President; so likewise are the perquisites of his office. Since the Vice President today must assume heavy and expensive social tasks, it is widely argued that the government should at least provide him with a suitable house.

SUCCESSION TO THE PRESIDENCY

The Constitution furnishes the Vice President as the immediate successor to the President; however, it leaves to Congress the fixing of a further line of succession (Art. II, sec. 1, cl. 6). Up to the present there has always been a Vice President to succeed when a President has died in office. However, seven Vice Presidents have died in office, and another has resigned. Hence arrangements for an extended line of succession to the presidency have been thought essential.

Congress twice, in 1792 and in 1886, provided for succession in the absence of both the President and the Vice President; each method was later

found unsatisfactory. The present arrangement, established by Congress in 1947, confers the presidency first upon the Speaker, then the President *pro tem*, and finally upon the Cabinet members in the order in which the cabinet posts were created.

A poet, impressed with the problem of succession in a republic, penned the following doggerel to celebrate the latest law:

*American law leaves nothing to chance
and makes its choice before death's dance.*

*Should the President unfortunately die
it's the Vice Presidential turn to try.*

*If the V.P. falters
and his grip gets weaker
the scepter is placed
in the hands of the Speaker.*

*The Senatorial President pro tem
comes next in line after them;*

*and should the latter pass away
the Secretary of State comes into play.*

State's demise gives Treasury the prize.

*To take it with him would create offense
were the financier to mount his bier,
so he must pass it to Defense;*

*and should the Bomb shake his aplomb,
shunning unpatriotic fright
the Attorney-General must plight.*

*Then Post, Interior, and Agriculture rate
while Commerce and Labor await a fate*

*whose chances to befall
are not very good at all.*

QUESTIONS AND PROBLEMS

1. The structure of the presidential office has been changed under the pressure of numerous demands upon it. What are some of these demands?

2. What have been some of the legal and extralegal means whereby the office of the President has expanded its powers?

3. Is it likely that the Twenty-second Amendment is as durable as the average provision of the Constitution, or is it likely to be changed whenever a President who is popular wishes a third term?

4. Consulting a good encyclopedia on the subject of monarchy or kingship, compare the American presidency with the traits and powers commonly found among kings. What are the important similarities and differences of training, selection, powers, functions, respect, and political difficulties?

5. What are the vice presidential duties that have evolved beyond those stated in the Constitution? Would you suggest others that might be undertaken? Explain your answer.

6. Suppose a Vice President who has become President on April 2, 1958, runs again for the presidency in 1960 and is elected. Could he run again in 1964?