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WOODROW WILSON AND THE PRESIDENCY†

EDWARD S. CORWIN*

WHEN Thomas W. Wilson, Princeton '79, found it essential to select a theme for his senior essay—the institution goes back that far, apparently—he chose “Cabinet Government in the United States”. The choice was dictated by two circumstances: first, by the fact that he had been reading, especially in Bagehot’s misnamed *English Constitution*,¹ about the British cabinet system and had come to admire it; secondly, by the scars which as a Southerner he bore vicariously from the enormities of Congressional Reconstruction.

It can hardly be claimed that young Wilson’s essay was a literary masterpiece. The style is turgid, spasmodic and the work abounds in repetition. For all that, it was, for so young a man, a notable production, in that it marked an effort to assess government under the Constitution *functionally*, in contrast to the customary legalistic approach. How good a government are we really getting under the Constitution was the question presented.

What Wilson found was, in effect, that Congress was a tyrant, indeed, a faceless, voiceless tyrant, all of its powers being at the disposal of a proliferation of committees, whose proceedings and decisions, when they reached the American public at all, did so haphazardly, sporadically. Above all, Congress lacked a central guiding leadership.

What then was the remedy? In *Cabinet Government* young Wilson goes back a half century to Story’s *Commentaries* and takes from it the suggestion that heads of departments be allowed, like territorial delegates, seats in the House of Representatives, “where they might freely debate without a title to vote.”² But then he broaches a much bolder suggestion. “The highest order of responsible government,” he writes, “could . . . be established in the United States only by laying upon the

† The original version of this article was delivered as a lecture for the Stafford Little Foundation at Princeton in the spring of 1956.

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1. BAGEHOT, *THE ENGLISH CONSTITUTION* (1901).

2. WILSON, *CABINET GOVERNMENT IN THE UNITED STATES* 8 (1947).

President the necessity of selecting his Cabinet from among the number of representatives already chosen by the people, or by the legislatures of the States”³—in other words, from the House of Representatives and the Senate—in brief, by setting up a cabinet after the British model. Only thus, he argued, could governmental policy attain coherency; only thus could talent be drawn into the government. He continued:

Responsible ministers must secure from the House and Senate an intelligent, thorough, and practical treatment of their affairs; must vindicate their principles in open battle on the floor of Congress. The public is thus enabled to exercise a direct scrutiny over the workings of the Executive departments, to keep all their operations under a constant stream of daylight. Ministers could do nothing under the shadow of darkness; committees do all in the dark.⁴

Apparently Wilson’s instructor was well pleased with the young man’s performance. *Cabinet Government in the United States* was published in the August, 1879 issue of *International Review*, the editor of which was one Henry Cabot Lodge!

In *Congressional Government*,⁵ which was his Hopkins doctoral thesis, and which issued from the press in 1885, Wilson renewed and extended the argument of *Cabinet Government*. I quote some characteristic passages:

The noble charter of fundamental law given us by the Convention of 1787 is still our Constitution; but it is now our *form of government* rather in name than in reality, the form of the Constitution being one of nicely adjusted, ideal balances, whilst the actual form of our present government is simply a scheme of congressional supremacy.⁶

. . . .

It is said that there is no single or central force in our federal scheme . . . but only a balance of powers and a nice adjustment of interactive checks, as all the books say. How is it, however, in the practical conduct of the federal government? In that, unquestionably, the predominant and controlling force, the center and source of all motive and of all regulative power, is Congress . . .⁷

3. *Id.* at 11.

4. *Id.* at 23.

5. WILSON, *CONGRESSIONAL GOVERNMENT* (1900).

6. *Id.* at 6.

7. *Id.* at 11.

. . . .
 Congress [is] the dominant, nay, the irresistible, power of the federal system, relegating some of the chief balances of the Constitution to an insignificant rôle in the "literary theory" of our institutions.⁸

And again:

Congress is fast becoming the governing body of the nation, and yet the only power which it possesses in perfection is the power which is but a part of government, the power of legislation.⁹

With this, contrast the position which Wilson assigns the President of that period:

Except in so far as his power of veto constitutes him a part of the legislature, the President might, not inconveniently, be a permanent officer; the first official of a carefully-graded and impartially regulated civil service system, through whose sure series of merit-promotions the youngest clerk might rise even to the chief magistracy. He is a part of the official rather than of the political machinery of the government, and his duties call rather for training than for constructive genius. If there can be found in the official systems of the States a lower grade of service in which men may be advantageously drilled for Presidential functions, so much the better. The States will have better governors, the Union better presidents, and there will have been supplied one of the most serious needs left unsupplied by the Constitution,—the need for a proper school in which to rear federal administrators.¹⁰

And the consequence of the low estate of the President was that "no office [was] set apart for the great party leadership in our government. . . . [T]he presidency is . . . too little like a premiership and too much like a superintendency."¹¹

In short, the presidency was written off as a bad job. But a decade later, in consequence of the Spanish-American War, Wilson indicates a disposition to revise his estimate of the potentialities of the office, at least in some measure. Thus in his preface to the 15th impression of *Congressional Government* written August 15th, 1900, he says:

8. *Id.* at 23.

9. *Id.* at 301.

10. *Id.* at 254.

11. *Id.* at 203-204.

Much the most important change to be noticed [*i.e.*, since 1885] is the result of the war with Spain upon the lodgment and exercise of power within our federal system: the greatly increased power and opportunity for constructive statesmanship given the President, by the plunge into international politics and into the administration of distant dependencies, which has been that war's most striking and momentous consequence. When foreign affairs play a prominent part in the politics and policy of a nation, its Executive must of necessity be its guide: must utter every initial judgment, take every first step of action, supply the information upon which it is to act, suggest and in large measure control its conduct. The President of the United States is now, as of course, at the front of affairs, as no president, except Lincoln, has been since the first quarter of the nineteenth century, when the foreign relations of the new nation had first to be adjusted. There is no trouble now about getting the President's speeches printed and read, every word. Upon his choice, his character, his experience hang some of the most weighty issues of the future. The government of dependencies must be largely in his hands. Interesting things may come out of the singular change.¹²

The real herald of the twentieth-century presidency, however, its John the Baptist, was not Woodrow Wilson: it was a Pittsburg editor named Henry Jones Ford, whose brilliant volume *The Rise and Growth of American Politics*¹³ spotlights the presidency in the tradition of its successes, not of its failures. In these discerning pages we read:

The agency of the presidential office has been such a master force in shaping public policy that to give a detailed account of it would be equivalent to writing the political history of the United States. From Jackson's time to the present day it may be said that political issues have been decided by executive policy.¹⁴

.....

The rise of presidential authority cannot be accounted for by the intention of presidents: it is the product of political conditions which dominate all the departments of government, so that Congress itself shows an unconscious disposition to aggrandize the presidential office.¹⁵

.....

12. *Id.* at xi-xii.

13. FORD, *THE RISE AND GROWTH OF AMERICAN POLITICS* (1914).

14. *Id.* at 279.

15. *Id.* at 284.

The truth is that in the presidential office, as it has been constituted since Jackson's time, American democracy has revived the oldest political institution of the race, the elective kingship. It is all there: the precognition of the notables and the tumultuous choice of the freemen, only conformed to modern conditions. That the people have been able to accomplish this with such defective apparatus, and have been able to make good a principle which no other people have been able to reconcile with the safety of the state, indicates the highest degree of constitutional morality yet attained by any race.¹⁶

There is, to be sure, considerable exaggeration here. It is quite untrue that after Jackson's day political issues had been settled by executive policy. The issue of slavery in the territories first arose in Congress and was settled—temporarily to be sure—by the Supreme Court, eventually by war; and the issue of Reconstruction, as well as that of the tariff, was settled in Congress. But Ford's notable volume was really oriented toward the future, and the future came to its rescue.

The first exponent of the new presidency was Theodore Roosevelt. Assessing his performance in the illumination sparked by Ford's volume and the Spanish-American War, Woodrow Wilson wrote in his *Blumenthal Lectures* given at Columbia University in 1907:¹⁷

He cannot escape being the leader of his party except by incapacity and lack of personal force, because he is at once the choice of the party and of the nation. . . . He can dominate his party by being spokesman for the real sentiment and purpose of the country, by giving direction to opinion, by giving the country at once the information and the statements of policy which will enable it to form its judgments alike of parties and of men. . . . His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but the whole people. . . . He may be both the leader of his party and the leader of the nation, or he may be one or the other. If he lead the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it.

. . . .

Some of our Presidents have deliberately held themselves off from

16. *Id.* at 293.

17. WILSON, *CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES* (1927).

using the full power they might legitimately have used, because of conscientious scruples, because they were more theorists than statesmen. . . . The President is at liberty, both in law and conscience, to be as big a man as he can.¹⁸

The following year the lectures were published under the title *Constitutional Government in the United States*. The same year Wilson, as president of Princeton University, offered its author a professorship in politics, which the latter in due course accepted. His indebtedness to Roosevelt Mr. Wilson was less prompt to acknowledge. In the index to *Constitutional Government* T. R.'s name appears just once, and the reference is of no significance. Indeed, without mentioning Roosevelt, who had just emerged victorious from a hard fought battle with the Senate over certain pending legislation—the famed Hepburn Act—Wilson contrives to read him a lecture on how Presidents ought to treat that august body. “If,” he writes, “he [the President, has] character, modesty, devotion and insight as well as force, he can bring the contending elements into a great and efficient body of common counsel.”¹⁹ Little did he foresee that ten years later he would be describing the Senate as “the only legislative body in the world which cannot act when its majority is ready for action. A little group of willful men, representing no opinion but their own, have rendered the great Government of the United States helpless and contemptible!”²⁰

Woodrow Wilson abandoned academic and entered public life in 1910. Was it *contingency* or *predestination* that determined this, the most momentous choice in his career? The question is the more intriguing for the reason that, as a sound Calvinist, Mr. Wilson undoubtedly believed in predestination, and identified with it his own destiny. Still that there was at the outset an element of contingency in his decision cannot be gainsaid, inasmuch as it was in the first place the consequence of his defeat in his controversy with Dean West over the location of the Graduate College. Was the College to be located on the Princeton campus or on the Princeton golf course? President Wilson wanted the former; Dean West the latter.

Early in 1910 William Cooper Procter, of Ivory Soap fame, offered Princeton \$500,000.00 to be expended in furtherance of Dean West's

18. *Id.* at 67-70.

19. *Id.* at 141.

20. II THE PUBLIC PAPERS OF WOODROW WILSON, vol. ii, 435 (Baker and Dodd ed. 1927).

plan, but when Mr. Wilson demanded that the condition be rescinded, Mr. Procter withdrew the gift. So far the President enjoyed the support of his Trustees, albeit by a precarious margin. In June, however, the news broke upon the world that a person named Wyman, of Marblehead, Massachusetts, had died leaving Princeton substantially his entire estate, which was variously estimated as falling "somewhere between three and thirty millions of dollars." The condition on which the bequest hinged was that it should be used to forward Dean West's design. Confronted with this turn of affairs, Mr. Wilson remarked with adequate decision, "The size of the gift alters the perspective," and the following October resigned as President of the University, whereupon he was quickly snatched up by expectant politicians and run for Governor of New Jersey.

For all that, I am quite convinced that Mr. Wilson would have resigned his academic post sooner or later to run for public office—and sooner rather than later—Wyman or no Wyman. Not only was there that hovering brood of politicians, which was headed in New Jersey by "Jim Smith Junior," there was also the redoubtable George Harvey, editor of the *North American Review* and *Harper's Weekly*, who had been for some years carrying Mr. Wilson's name at the mastheads of his publications as just the man needed to spike T. R.'s Square Deal. I also place reliance on the testimony of Mr. Talcott Williams, distinguished Philadelphia editor, who came to Princeton in 1906 or thereabouts to give a lecture. Following the talk, he and Mr. Wilson repaired to "Prospect," where they had a long conversation in the course of which Mr. Wilson told about certain reading he had been recently doing, including, mayhap, Mr. Ford's book. Mr. Williams listened with increasing intentness, and at the conclusion of Mr. Wilson's remarks charged the latter with harboring political ambitions, and Mr. Wilson admitted the soft imperchment.

The real reason why Woodrow Wilson finally decided to enter public life was a two-fold one. On the one hand, he had learned that in the potentialities of the presidency public life in the United States did, after all, afford ample field for talent. On the other hand, his defeat in his battle against the club system and his impending defeat—which he no doubt clearly foresaw—in the battle over the location of the Graduate College, he had a mission revealed to him. What this mission was he clearly expressed in his famous Pittsburg Speech of April 16, 1910. Re-

ferring to the question of the location of the Graduate College, Mr. Wilson asked:

What does the country expect of Princeton? It expects of Princeton what it expects of every other college, the accommodation of its life to the life of the country.

The colleges of this country are in exactly the same danger that the churches are in. I believe that the churches of this country, at any rate the Protestant churches, have dissociated themselves from the people of this country. They are serving the classes and they are not serving the masses. They serve certain strata, certain uplifted strata, but they are not serving the men whose need is dire. The churches have more regard to their pew-rents than to the souls of men, and in proportion as they look to the respectability of their congregations to lift them in esteem they are depressing the whole level of Christian endeavor.

. . . .

Where does the strength of the nation come from? From the conspicuous classes? Not at all. It comes from the great mass of the unknown, of the unrecognized men, whose powers are being developed by struggle, who will form their opinions as they progress in that struggle, and who will emerge with opinions which will rule.

. . . .

What we cry out against is that a handful of conspicuous men have thrust cruel hands among the heartstrings of the masses of men upon whose blood and energy they are subsisting.

The universities would make men forget their common origins, forget their universal sympathies, and join a class—and no class ever can serve America.

The great voice of America does not come from seats of learning. It comes in a murmur from the hills and woods and the farms and factories and the mills, rolling on and gaining volume until it comes to us from the homes of common men. Do these murmurs echo in the corridors of universities? I have not heard them.²¹

Thus was "the New Freedom" born which first spread its healing wings over New Jersey, then over the nation, then, bereft, to be sure, of some of its plumage, over "abroad".

In 1911 Mr. Wilson informed Editor Harvey that he wished the

21. Speech by Woodrow Wilson, Princeton alumni meeting at Pittsburg, April 16, 1910. Copy on file at the University of Virginia Law Library.

latter to discontinue his attentions, that they had become "embarrassing". In short, Mr. Wilson was not questing for Lotus Club votes. When Harvey next adopted a candidate for the presidency, the beneficiary was one Warren G. Harding!

I turn now to evaluate Mr. Wilson's exercise of the office of President of the United States. What was his impact on the office; and first of all, by what procedures did he convert the presidency into an instrument of social reform? The answer is, by making the President an active participant in the national legislative process far beyond any of his predecessors, even T. R.; by converting it, in other words, into a species of prime ministership. Mr. Wilson had dismissed his early idea of superseding the presidency with a cabinet government after the British model. He now substituted for that idea an amalgamation, as it were, of the British prime ministership and the presidency.

A document of first importance in this connection is the letter which Mr. Wilson wrote a short time before his inauguration to his future Attorney General, A. Mitchell Palmer. The letter was in answer to one from Palmer urging the President-Elect to endorse a plank in the Democratic platform favoring a single term presidency. Mr. Wilson sharply demurred:

[The President] is expected by the nation to be the leader of his party as well as the chief executive officer of the Government and the country will take no excuses from him. He must play the part and play it successfully or lose the country's confidence. He must be Prime Minister, as much concerned with the guidance of legislation as with just and orderly execution of law; and he is the spokesman of the nation in everything, even the most momentous and most delicate dealings of the Government in foreign affairs.²²

To deny the President the possibility of re-election was out of the question. To be sure:

Sooner or later it would seem he must be made answerable to opinion in a somewhat more informal and intimate fashion, answerable, it may be, to the Houses whom he seeks to lead, either personally or through a cabinet, as well as to the people for whom they speak. But that is a matter to be worked out—as it will inevitably be in some natural American way which we cannot yet even predict.²³

22. BINKLEY, *PRESIDENT AND CONGRESS* 206 (1947).

23. *Ibid.*

In fact, Mr. Wilson himself worked "the matter out" for one contingency. He planned that if Mr. Hughes was elected in 1916, he would ask Marshall to resign from the vice-presidency and then appoint Mr. Hughes Secretary of State so that, under the Succession Act of 1886, the latter could assume the office of President at once, as the logic of the prime minister concept undoubtedly required.

Mr. Wilson took office on March 4, 1913. His first official act after taking the oath was to summon Congress to meet in special session on April 7th. The following day he electrified the country by going up to Capitol Hill to present his first message in person, thereby returning to a practice which his great predecessor Jefferson had discarded 112 years earlier. "Gentlemen of the Congress" were his opening words, a locution which toppled an equally venerable precedent. For while the original Constitution does say "The Congress," the first amendment says "Congress," and I find no instance in which Washington, Jefferson, Lincoln, or John Marshall, not to mention sundry others, used the older form save when they were quoting directly from the Constitution.

But Wilson's greatest innovation is to be seen in the form and content of his message. The old state of the union message which had become established custom on similar occasions, had grown to inordinate length. Some of T. R.'s ran to 30,000 words and over. Sent up to Capitol Hill by a messenger, they were handed over to a sleepy clerk who droned along for two or three hours, while the members drowsed.

Naturally, no President would care to submit himself in person to such an ordeal. Wilson's message was brief and was devoted to a single topic, tariff reduction; and his later messages followed this same model. They dealt crisply with banking and currency reform, with antitrust legislation, and so on. They asserted for the President his legislative leadership in the achievement of specific reforms. As Professor Small remarks:

Whereas Roosevelt confused both Congress and the public by attempting to enlist its attention immediately to his entire legislative program, as expounded in a vague message or two, Wilson, by proceeding in this more methodical fashion, enabled his legislative associates to direct their undivided attention to single items of his platform, and accordingly escaped many of the delays produced by congested calendars. Wilson's method also helped him in crystalizing and mobilizing public opinion in support of his proposals.²⁴

24. SMALL, *SOME PRESIDENTIAL INTERPRETATIONS OF THE PRESIDENCY* 175 (1932).

One can readily imagine the chagrin of T. R. when he read in the morning papers of April 9, 1913, what Woodrow Wilson had been up to the day before. Why had he never thought that one up!

I also cite Dr. Small for his estimate of Wilson's achievement in the legislative field. He accords it an easy primacy, with the possible exception of that of Jefferson, whose methods were, however, vastly different, being conditioned by Jefferson's professed deference to the principle of the separation of powers. In these circumstances, while Jefferson's guidance of Congress was constant and unremitting, it was often secret and always disavowed.

Another facet of Wilson's legislative activities emerged in 1916. World War I had now broken; a presidential campaign was looming; and the Republican Party was split. To be sure, the Democrats had what many of them reckoned was a winning shibboleth, "He kept us out of war"—a slogan which Mr. Wilson himself endorsed in his Shadow Lawn speech early in September, when he warned the country, "If you elect my opponent [Mr. Hughes], you elect a war." But was this enough? Many Democrats doubted it. What the doubting Thomases demanded was that a definite effort be made to capture "Progressive" (Roosevelt) votes—but how? Looking to this end, Democratic leaders urged the passage of an anti-child labor bill. But could Mr. Wilson endorse it? Hardly, if he still adhered to the views he had expressed in his Blumenthal Lectures anent an earlier proposal of the same sort. There he wrote:

The proposed federal legislation with regard to the regulation of child labor affords a striking example [of the devitalization of the federal principle.] If the power to regulate commerce between the States can be stretched to include the regulation of labor in mills and factories, it can be made to embrace every particular of the industrial organization and action of the country. The only limitations Congress would observe, should the Supreme Court assent to such obviously absurd extravagancies of interpretation, would be the limitations of opinions and of circumstances.²⁵

A bill after the pattern of the measure which Mr. Wilson had stigmatized as "absurd" passed the House of Representatives early in February, 1916 but got stalled in the Senate. On July 17th the President

25. WILSON, *CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES* 179 (1927).

was warned by certain of his followers in that body that passage of the measure was "necessary," and the following day the President went to the Capitol to plead with the Democratic command of that body to permit the measure to come to a vote. The bill was finally passed on August 8th and was signed by the President on September 1st, "with real emotion," he said. In point of fact, the bill had already become law several days earlier owing to the President's failure to disapprove it within the required "ten Days (Sundays excepted)." His belated signing of it was nevertheless valuable politically; it may even have turned the trick in closely-contested California.

Twenty-two months later the act was held void in a five-to-four decision of the Supreme Court,²⁶ which rested substantially on the grounds urged by Mr. Wilson in *Constitutional Government*, to wit, its damaging effect on the federal system. Fortunately, the decision was not retroactive as to the election of 1916. Mr. Wilson continued to be President till the end of his term on March 4, 1921. Not till 1941 did the Supreme Court accept²⁷—in a unanimous judgment—the principle underlying the measure, the simple principle, to wit, of national supremacy within the realm of national powers.

I now turn to Mr. Wilson's exercise of the presidency in the field of foreign relations. Here, too, at the outset his past caught up with him. Japan was demanding a treaty from Washington which would give its subjects the right to own land in the U. S. Confronted with the choice of fighting Japan or "The Sons of the Golden West", the Administration elected to pursue a middle course. By what in effect was a *modus vivendi*, Japan abandoned her attempt to get the treaty and the Administration admitted her special rights in China. Thus early was Yalta foreshadowed.

For the rest, history was on Mr. Wilson's side, history that stemmed from the time of Washington. "The transaction of business with foreign nations," Jefferson proclaimed, was "Executive altogether,"²⁸ doctrine which was reiterated by Jefferson's little-loved cousin, John Marshall, on the floor of Congress: "The President is the sole organ of the nation in its external relations and its sole representative with foreign nations;"²⁹ and four years later, Marshall expounded even broader

26. *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

27. *United States v. Darby*, 312 U.S. 100 (1941).

28. PADOVER, *COMPLETE JEFFERSON* 138 (1943).

29. II BEVERIDGE, *THE LIFE OF JOHN MARSHALL* 470-71 (1919).

doctrine from the Bench: "By the Constitution, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his conscience"³⁰—is, in brief, autonomous.

This autonomy Wilson labored constantly and successfully to maintain, bringing at times his prime minister conception of the office into operation in its support. Thus he repeatedly asked Congress during the War for what was in effect a "vote of confidence." Two items from *The New York Times* illustrate the point:

Washington, July 23, 1917.—A virtual threat to veto the Administration Food Bill if the conferees retain the Senate amendment creating a joint committee to supervise war expenditures is contained in a letter sent tonight by President Wilson to Chairman Lever of the House Committee on Agriculture. The letter says the President would interpret 'the final adoption of Section 23 as arising from a lack of confidence in myself.'³¹

Washington, May 15, 1918.—Three moves of prime importance were made today in connection with the aircraft controversy:

President Wilson in a letter to Senator Martin, the Democratic floor leader, vehemently opposed the Chamberlain resolution for an investigation of the conduct of the war by the Committee on Military Affairs of the Senate. He said passage of the resolution would be 'a direct vote of want of confidence in the Administration,' and would constitute 'nothing less than an attempt to take over the conduct of the war.' The President called upon supporters of the Administration in the Senate to rally in his support.³²

Mr. Wilson also contemplated resignation had he been defeated on the Panama tolls issue and in his opposition to the McLemore Resolution of March 1916, warning American citizens to refrain from traveling in armed belligerent vessels. He got his way in all four instances.

Mr. Wilson's famous appeal to the country of October 24, 1918, in behalf of the Treaty of Versailles and the League smacks also of the same general idea of prime ministership. It read, in part, as follows:

My fellow-Countrymen, the Congressional elections are at hand. They occur in the most critical period our country has ever faced or

30. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 164 (1803).

31. *New York Times*, July 24, 1917, p. 1, col. 1.

32. *New York Times*, May 16, 1918, p. 1, col. 3.

is likely to face in our time. If you have approved of my leadership and wish me to continue to be your unembarrassed spokesman in affairs at home and abroad, I earnestly beg that you will express yourselves unmistakably to that effect by returning a Democratic majority to both the Senate and the House of Representatives.

I have no thought of suggesting that any political party is paramount in matters of patriotism. I feel too deeply the sacrifices which have been made in this war by all our citizens, irrespective of party affiliations, to harbor such an idea. I mean only that the difficulties and delicacies of our present task are of a sort that makes it imperatively necessary that the nation should give its undivided support to the Government under a unified leadership, and that a Republican Congress would divide the leadership.³³

Although this time he failed, he neglected to resign—an omission which some of his critics condemned as at least illogical.

The truth of the matter is that Mr. Wilson had always two strings to his official bow—the prime minister concept and the historic traditions of the American presidency—and he retained to the end complete liberty of choice between them. Thus, when that “little group of wilful men” in the Senate foiled him in his effort early in 1917 to obtain Congressional authorization to arm American merchantmen plying in the war zone, backed by high legal authority, he went ahead and did it anyway; and one of his last acts as President, following his partial recovery from his collapse in October 1919, was to refuse to carry out a provision of the Jones Shipping Act of 1920, which ordered him to denounce certain treaties which other provisions of the measure over-rode. The requirement, he asserted, invaded his prerogative in the field of foreign relations. His partisan enemies assailed his action as “unconstitutional” and “presumptuous.” One of these same critics was Mr. W. G. Harding, one of whose first official acts on becoming President was to adopt his predecessor’s position.

In asserting his monopoly of the right to determine the foreign relations of the United States, Mr. Wilson was fighting, as it were, a defensive action, the constitutional basis of which was the “executive power” clause as it had been interpreted by presidential spokesmen from the time of Washington. His direction of the domestic phases of our war with Germany was based, in important part, on that clause of Article II, which makes the President “Commander-in-Chief of the

33. 56 CONG. REC. 11494 (1918); FARMER, *THE WILSON READER* 191 (1956).

Army and Navy of the United States, and of the Militia of the several States when called into the actual service of the United States” But in this case the historical record was somewhat more complicated.

Expounding the “Commander-in-Chief” clause in *THE FEDERALIST* No. 69 Hamilton had asserted that it would be altogether erroneous to compare this power with the superficially similar prerogative of the British monarch. The President was top admiral and top general, and nobody could issue him a military command; but that was all. And in 1850, in a case growing out of the Mexican War, the Supreme Court, speaking by Chief Justice Taney, substantially repeated Hamilton’s language.³⁴ The “Commander-in-Chief” clause remained the forgotten clause of the Constitution until the day when Sumter fell, April 14, 1861. Then came the great break-through.

First calling Congress to assemble on July 4th, then more than ten weeks away, Lincoln proceeded forthwith to take certain measures of his own, based on the idea that in the circumstances “the war power” was his; and on this premise proclaimed a blockade of the Southern ports, summoned an army of 300,000 volunteers, increased the regular Army and Navy, took over the rail and telegraph lines between Washington and Baltimore, and eventually as far as Boston, and suspended the writ of habeas corpus along these lines. Congress and/or the Supreme Court sustained all these measures as within the President’s powers as commander-in-chief in a rebellion which had attained the dimensions of public war. Secretary Seward summed up the business more compactly in conversation with Russell, Washington correspondent of the *London Times*: “We elect a king for four years, and give him absolute power within certain limits, which after all he can interpret for himself.”

Between the Civil War and World War I two profound contrasts appear in retrospect. In the first place, most of the fighting in World War I took place 3,000 miles from our shores. There was, consequently, no question at any time of treating the country at large as a “theatre of military operations” in the conventional sense of that term. In the second place, however, the vast development between the two wars of the technological aspects of warfare had created in this greatest of industrial nations an industrial theatre of war of immense proportions. Great industry in the United States had, in brief, become part and parcel of the fighting forces not only of the United States but of its allies

34. *Fleming v. Page*, 50 U.S. (9 How.) 603 (1850).

as well, and as such it had to be subjected to detailed regimentation by the government of the United States. To meet this requirement Congress was compelled to develop a new technique in legislative practice, one capable of meeting the fluctuating demands of a fluid war situation. This it did by delegating the President at his insistence vast unchanneled powers to be exercised by him through men of his own choosing. John Locke's ban upon delegated legislation simply went by the board, nor has it since been revived so far as concerns powers which are shared by the two departments. As to these "cognate" powers, as it terms them, the Court will not attempt nowadays to plot nicely, or at all, the delimiting line. More than that, however, President Wilson took upon himself, without consulting Congress, both the government of labor relations and the screening of information regarding the war, the former function being performed by the War Industries Board, under Mr. Baruch; the latter by the Committee of Public Information, headed by Mr. Creel. Both agencies were created out of hand by the President, as was also the later War Labor Board under the joint chairmanship of ex-President Taft and Frank P. Walsh.

But this hand-made solution of the problem of "agencies" soon gave rise to another, inasmuch as the powers and duties entrusted to these bodies were frequently unknown to any statute, with the result that if their orders—or rather, "advice," as the Court termed it—was ignored by those to whom it was addressed, the latter could not be brought to book for having committed an "offense against the United States." How were such recalcitrants to be dealt with?

Another Wilsonian contrivance speedily supplied the answer. I refer to what came to be variously known as "sanctions," "administrative sanctions," or "indirect sanctions." An illustration of the way in which "sanctions" were applied is afforded by an episode involving the Remington Arms Company of Bridgeport, Connecticut, in the autumn of 1918. I am following the narrative of a member of Mr. Wilson's War Labor Board. After a protracted strike and the rendering of a decision by the Board, the strikers still refused to return to work, whereupon Mr. Wilson took his pen in hand in the Board's behalf. He pointed out that an appeal from that body should be made through the regular channels and not by strike, and informed the strikers that if they did not return to work at once, they would be barred from any work in Bridgeport for a year; that the United States Employment Service would not obtain jobs for them elsewhere; and that the government

would no longer consider their exemptions from the draft to be justified on the theory that they were useful in war production. The narrative concludes: "That ended the strike."³⁵

Mr. Wilson's performance was important for its immediate effect; it was even more so for laying the groundwork for F. D. R.'s course in World War II. World War II is World War I writ large; and F. D. R.'s conduct of it is Mr. Wilson's conduct of World War I writ large; besides which F. D. R. did not wait for war to break; he went to meet it—"looked the brink in the face," as it were.

In 1942, I wrote the Executive Office of the President and asked it to give me a list of all the war agencies and to specify to me the supposed legal warrant by which they had been brought into existence. I got back a detailed answer which listed 43 executive agencies, of which 35 were admitted to be of purely executive provenience. F. D. R. also governed labor relations, at times indeed with a high hand, albeit without statutory authorization prior to the enactment of the War Labor Disputes Act of June 25, 1943. His principal technique was to seize plants in which strikes were going on, and some plants he seized for other reasons. For example, he ordered Montgomery Ward to adopt a maintenance of membership rule. Ward's at first agreed, but after Mr. Sewell Avery got to thinking the matter over he decided that the President entirely lacked authority to issue such an order, and so reneged. A morning or two later, when he got down to his office, he found that the 70 persons whom the Chicago post office was accustomed to send Ward's each day to look after their parcel post orders had not shown up. He thereupon capitulated, but not until after the touching episode in which, looking "the knight of the rueful countenance," he was carried out of his office on the joined hands of Sergeant Lepak and Pfc. Dies. Eventually a case dealing with the episode reached the Supreme Court, which declined jurisdiction, saying that the matter had become "moot."³⁶

I come now to my final topic: How did Mr. Wilson's quest for international peace affect the presidency; and how did it affect his own standing in history? I answer as follows: it added a vast new dimension to the presidency; and despite its tragic failure, due to Mr. Wilson's own tragic errors, it adds immeasurably to the stature of the Woodrow Wilson of history.

35. See CORWIN, *THE PRESIDENT: OFFICE AND POWERS* 490 (1948).

36. *Montgomery Ward & Co. v. United States*, 326 U.S. 690 (1945).

Mr. Wilson came early to believe that the United States must take a hand in the making of the peace that would end the war, and in the possibility of doing so beneficially. In an address to The League to Enforce Peace on May 27, 1916, he said:

We are participants, whether we would or not, in the life of the world. The interests of all nations are our own also. We are partners with the rest. What affects mankind is inevitably our affair as well as the affair of Europe and of Asia.³⁷

And again on May 30th, 1916 he spoke of uniting "the people of the world to preserve the peace of the world upon a basis of common right and justice;"³⁸ and on January 22, 1917, ten weeks before he asked for a declaration of war on the Teutonic powers, he urged before the Senate that no lasting peace could ensue from a "peace forced upon the loser." The peace must be one of which "the very principle is equality and a common participation in a common benefit." [It must be a] "peace without victory."³⁹

Two immense difficulties confronted Mr. Wilson from the outset of his quest for "peace without victory." The first was the commitment of our "associates" to certain secret treaties comprising mutual promises of spoliation of the common enemy when and if they defeated him. Of these Mr. Wilson had been fully apprised when we entered the war, although he later made an ineffectual effort to obscure the fact. In the second place, the President had to win the support of an isolationist Senate.

The President announced his Fourteen Points in an address to Congress on January 18, 1918. Then taking a leaf from McKinley's book, who in 1898 had incorporated in the protocol leading to the Peace of Paris all the material provisions of that peace, the President set to work to get the Fourteen Points incorporated in an armistice bringing the war with Germany to an end. On October 24th, as we have seen, he appealed to the people of the United States to give him a majority in the approaching November election "for the sake of the Nation itself, in

37. II THE PUBLIC PAPERS OF WOODROW WILSON, vol. ii, 185 (Baker and Dodd ed. 1927).

38. *Id.* at 195.

39. 54 CONG. REC. 1742 (1917); FARMER, THE WILSON READER 157 (1956).

order that its inward duty of purpose may be evident to the world itself." ⁴⁰

A fortnight later, on November 5th, to be exact, two events took place, both of ominous significance for Mr. Wilson's program of "peace without victory." First, the Allies consented to embody the Fourteen Points in the Armistice which was offered the Teutonic Allies six days later, but with "reservations" touching "Freedom of the Seas" and with the stipulation that Germany must pay reparations for the damage she had wrought in the course of the war she had herself begun. In the second place, on this same day, November 5th, the American people returned the Republican opposition to power in Congress. In the Senate, to be sure, the Republican majority was a very narrow one, but counting Mr. Truman Newberry of Michigan, who was under indictment for violating the Federal Corrupt Practices Act, it was sufficient to enable the opposition to reorganize the all-important Foreign Relations Committee under the chairmanship of Senator Lodge. As Mr. Wilson caustically remarked, "the Republican majority is out on bail." In fairness, however, it should be added, that when Newberry came to trial, the measure he was convicted under was pronounced void by the Supreme Court in a six to three decision which is no longer good law.⁴¹

On December 4, 1918, Mr. Wilson sailed for Europe to attend the Peace Conference. The rest is familiar history. The Conference opened in Paris January 18, 1919. The treaty was signed at Versailles June 26th. Mr. Wilson submitted it to the Senate July 10, and straightway began a speaking tour in its behalf. Unfortunately his own following was divided, the malcontents alleging that, while he had got his League of Nations, he had got it at the expense of "peace without victory." On September 26th, the President was stricken in Colorado en route to Kansas, and brought back to Washington, where on October 3rd he suffered a second stroke which paralyzed his left side, and insulated him from the world for several weeks, in the course of which twenty-eight bills became laws without his signature. Later he partially recovered and was urged by his supporters in the Senate to accept a modified version of the Lodge Reservations. He repelled the

40. III THE PUBLIC PAPERS OF WOODROW WILSON, vol. i, 287 (Baker and Dodd ed. 1926).

41. Cf. *Newberry v. United States*, 256 U.S. 232 (1921); *Burroughs v. United States*, 290 U.S. 534 (1934).

suggestion, and on March 19th, 1920 the treaty was finally rejected by a vote of 49 for the treaty with reservations and 35 against it. The League of Nations was established; the United States was not a member of it.

Ought Wilson have accepted the League even with the Lodge Reservations added? It is certainly arguable in the light of subsequent events that great advantage might have ensued from his doing so. Had the United States been a member of the League, even with the Lodge Reservations to hamper its performance thereunder, Japan might well have hesitated to invade China in 1931; Mussolini might well have hesitated to invade Abyssinia in overt defiance of the League in 1935; and Hitler might well have hesitated to invade the Rhineland, to remilitarize Germany, and to seize Austria in the years 1934 to 1938, all in arrant defiance of the Treaty of Versailles. In a word, the League would have been in position to offset the imbecilities of British foreign policy which culminated in the Munich Pact and which, instead of giving us "peace in our time," led directly to World War II.

"Wisdom after the event," you may say. Yes; but, not after events that could by no chance be foreseen or the League would never have been proposed in the first instance. For the rest, I find very persuasive the following passage from a recent defense by Henry Cabot Lodge, Jr., of his grandfather's course in 1920:

The Senate majority, in 1919 and 1920, wanted to change the covenant in three major ways: (a) So that United States military actions to preserve the territorial integrity of a nation under Article X would first be approved by Congress; (b) so that the United States would be the sole judge of whether a matter involving its interests was or was not a domestic question; and (c) so that the United States would not have merely equal power with the small nations. These are all implicit in the United Nations Charter today. No one even debates them any more.⁴²

In short, President Wilson demanded of the American people things they still would not concede even a quarter of a century later: or indeed, even today.

What was the motivation of Wilson's fight for the League; and how did the fight affect the Presidency? In his brilliant volume, *Woodrow*

42. New York Times Magazine, Jan. 22, 1956, p. 72, col. 3.

Wilson and the People,⁴³ Professor Bell stresses the religious quality of Wilson's crusade. From the first, and even before our own entrance into the war, Wilson, as I have noted, advanced the idea that it must eventuate in a peace embracing all men; and, as Professor Bell shows, his language is tinged not infrequently with an apocalyptic quality. Even so, I regard Mr. Wilson's quest for peace to be of essentially the same stamp as his quest for social justice; to have been governed by the same compassionate concern for the common lot. He was fighting the battle, as he thought, of the common man, always the helpless, hopeless victim of war and its outrages.

On the other hand, while Mr. Wilson was indeed a deeply religious man, I am constrained to add there were times when his Calvinistic faith hindered rather than assisted his last great fight, by stiffening his own stubborn nature. It compelled him to reject any accommodation with the infidel—with those, to wit, who disagreed with him.

"The office of President," Mr. Wilson remarked on one occasion, "is so much greater than any man could honestly imagine himself to be that the most he can do is to look grave enough and self-possessed enough to seem to fill it."⁴⁴ And that is just what he himself was able to do. In this connection, I quote, with a few emendations, some words which I penned at the request of a friend at the time of Mr. Wilson's death:

The event of main interest this week has been Wilson's death. Though the University administration is largely in the hands of those who were in the opposition in his closing days here, everything in recognition of the occasion is being done which the demise of Princeton's most illustrious son properly calls for. Thus while individuals pass on, institutions remain, and recruit strength from the fame even of those whom in their lifetime they did not always support or even repudiated. My own opinion is that the elements of greatness were so intermingled in Wilson with cramping limitations that his fame, like that of Jefferson before the New Deal came to his rescue, will be slow to emerge from the folds of controversy. Wilson was a finished speaker, and this with his personal dignity made him a splendid figure on great occasions. But it also exposed him to the danger of self-deception, and to the temptation to substitute words for facts. A pure amateur when he entered politics, he soon displayed a finesse,

43. BELL, *WOODROW WILSON AND THE PEOPLE* (1945).

44. ROSSITER, *THE AMERICAN PRESIDENCY* 137 (1956).

an imperturbability, and a strategic skill that have been rarely equalled in American political annals. But, owing to his long residence in the shades of Academia, he was accessible much more readily to intellectual currents—or to intellectualized currents—than to the spontaneous reactions of the people, wherein he contrasted with his robustious rival Roosevelt. For problems that demanded an intellectual approach he was masterly, but his emotional appeals did not always ring true, as in his unfortunate “too proud to fight” speech. When indeed was he ever too proud to fight?

Wilson’s critics were wont to charge that he was more concerned with the appearance of achievement than in the solid reality, since the former most affected his fortune and fame at the moment, but certainly he did not sin more grievously in this respect than most public men do, and are constrained to do, in a democracy. It is perhaps as a judge of men that Mr. Wilson shone least in his day-to-day conduct of affairs, being prone to evaluate them for their attitude toward himself, rather than their ability or their competence for the assigned task. Partly this was egotism, but partly again it was political expediency. Woodrow Wilson was no snob, he was devoid of social ambitions, and unquestionably sympathized with the common lot. But the core of his being was a flaming ambition, which his religion fanned rather than quenched, by presenting it with successive programs of reform. And along with ambition went an impatient craving for immediate domination which was kept reasonably in curb by his own good sense until health deserted him. His career ended in defeat when he refused to accept much of the substance of what he was fighting for because the offer was not accompanied by tokens from his opponents of their discomfiture and surrender.⁴⁵

Then, as to his impact on the presidency—he not only filled it; he added dimensions to it, in three respects. In the first place, he made the President the leader of the legislative process. He made of the office what, in the words of Walter Lippmann, it ought always to be, “the active . . . the asking and the proposing power [of the State].”⁴⁶ Secondly, he established the precedents for presidential dictatorship in time of war or of grave international crisis—a condition of affairs that is likely to remain a factor of our daily lives for many years to come. Finally, he converted the presidency into an international, a global institution—into an office with a world-wide, non-voting constituency.

45. See MYERS, *SOME PRINCETON MEMORIES* 34-35 (1946).

46. LIPPMANN, *THE PUBLIC PHILOSOPHY* 30 (1955).

To be sure, in this respect his performance was outstripped by that of the second Roosevelt. He, nevertheless, set the pattern; he created the precedents, he took that indispensable first step.